

WSR 07-03-158
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
(Division of Developmental Disabilities)

[Filed January 23, 2007, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-23-133.

Title of Rule and Other Identifying Information: Adopting chapter 388-828 WAC, The division of developmental disabilities (DDD) assessment.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 28, 2007.

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. on March 27, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 23, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to govern and support the administration of the division's newly developed, computer-based assessment tool that is designed to measure the support needs of clients for service determination. The DDD assessment will replace existing paper-based methods resulting in a universal assessment and support planning process. The purpose of the DDD assessment is to provide a comprehensive assessment process that: (1) Collects a common set of assessment information for reporting purposes to the legislature and the department; (2) promotes consistency and accuracy in evaluating client support needs for purposes of planning, budgeting, and resource management; (3) identifies a level of service and/or number of care hours that is used to support the assessed needs of clients who have been authorized to receive Medicaid/waiver personal care, waiver respite care, and/or voluntary placement program services; (4) records clients' service requests.

Reasons Supporting Proposal: In 2003, the Joint Legislative Audit and Review Committee (JLARC) issued its performance audit of the division and recommended that DSHS develop a standardized assessment process for developmentally disabled clients that is designed to be consistently applied to all clients in all parts of the state. The legislature appropriated funds for the development and implementation of the DDD assessment per section 205(3), chapter 518, Laws of 2005.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW and chapter 518, Laws of 2005.

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: Mark Eliason, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-2517; Implementation and Enforcement: Don Clintman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has identified that there are approximately forty-five supported living (SL), twenty-three group home (GH), and four hundred twenty-five adult family home (AFH) providers who provide services to DDD clients and meet the definition of a small business as defined above. DDD conducted a survey of these providers regarding their reported costs to participate in a client's annual assessment and concluded that overall costs to them will be minor, if there are any costs at all. In addition, DDD is not able to determine if there is a disproportionate impact to AFHs since all are considered small businesses. Based on this information, DDD has concluded that preparation of a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mark Eliason, 640 Woodland Square Loop S.E., Lacey, WA 98504, phone (360) 725-2517, fax (360) 407-0954, e-mail eliasmr2@dshs.wa.gov.

January 19, 2007

Jim Schnellman, Chief

Office of Administrative Resources

Chapter 388-828 WAC

The Division of Developmental Disabilities (DDD) Assessment

Purpose and Scope

NEW SECTION

WAC 388-828-1000 What is the purpose and scope of this chapter? This chapter establishes rules governing the administration of the division of developmental disabilities (DDD) assessment to persons determined eligible to be clients of the division per chapter 71A.16 RCW.

Definitions

NEW SECTION

WAC 388-828-1020 What definitions apply to this chapter? The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions

that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"ADSA" means the aging and disability services administration (ADSA), an administration within the department of social and health services, which includes the following divisions: home and community services, residential care services, management services and division of developmental disabilities.

"ADSA contracted provider" means an individual or agency who is licensed, certified, and/or contracted by ADSA to provide services to DDD clients.

"Adult Family Home" or "AFH" means a residential home 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 services (see RCW 70.12.-010).

"Agency provider" means a licensed and/or ADSA certified business who is contracted with ADSA or a county to provide DDD services (e.g., personal care, respite care, residential services, therapy, nursing, employment, etc.).

"Algorithm" means a numerical formula used by the DDD Assessment for one or more of the following:

- (1) Calculation of assessed information to identify a client's relative level of need;
- (2) Determination regarding which assessment modules a client receives as part of his/her DDD assessment; and
- (3) Assignment of a service level to support a client's assessed need.

"Authorization" means DDD approval of funding for a service as identified in the Individual Support Plan or evidence of payment for a service.

"CARE" refers to the Comprehensive Assessment Reporting Evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"Collateral contact" means a person or agency that is involved in the client's life (e.g., legal guardian, family member, care provider, friend, etc.).

"Companion home" is a DDD contracted residential service that provides twenty-four hour training, support, and supervision, to one adult living with a paid provider.

"DDD" means the division of developmental disabilities, a division with the aging and disability services administration (ADSA), department of social and health services (DSHS).

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

"Group home" or "GH" means a ADSA licensed adult family home or boarding home contracted and certified by ADSA to provide residential services and support to adults with developmental disabilities.

"ICF/MR" means a facility certified as an intermediate care facility for the mentally retarded to provide habilitation services to DDD clients.

"ICF/MR Level of Care" is a standardized assessment of a client's need for ICF/MR Level of Care per 42 CFR 440 and 42 CFR 483. In addition, ICF/MR Level of Care refers to one of the standards used by DDD to determine whether a client meets minimum eligibility criteria for one of the DDD HCBS waivers.

"Individual Support Plan" or "ISP" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Legal Guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of eighteen.

"LOC score" means a score for answers to questions in the Support Needs Assessment for Children that are used in determining if a client meets eligibility requirements for ICF/MR Level of Care.

"Modules" refers to three sections of the DDD Assessment. They are: the Support Assessment, the Service Level Assessment, and the Individual Support Plan (ISP).

"Panel" refers to the visual user-interface in the DDD Assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Plan of Care" or "POC" refers to the paper-based assessment and service plan for clients receiving services on one of the DDD HCBS waivers prior to June 1, 2007.

"Raw Score" means the numerical value when adding a person's "Frequency of Support," "Daily Support Time," and "Type of Support" scores for each activity in the support needs and supplemental protection and advocacy scales of the Supports Intensity Scale (SIS) Assessment.

"Residential Habilitation Center" or "RHC" is a state-operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW.

"Respondent" means the adult client and/or another person familiar with the client who participates in the client's DDD Assessment by answering questions and providing information. Respondents may include ADSA contracted providers.

"SIS" means the Supports Intensity Scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD). The SIS is in the Support Assessment module of the DDD Assessment.

"Service Provider" refers to an ADSA contracted agency or person who provides services to DDD clients. Also refers to state operated living alternative programs (SOLA).

"SOLA" means a state operated living alternative program for adults that is operated by DDD.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDD eligible Social Security Income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by ADSA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver personal care" means physical or verbal assistance with activities of daily living (ADL) and instrumental

activities of daily living (IADL) due to your functional limitations per chapter 388-106 WAC to individuals who are authorized to receive services available in the Basic, Basic Plus, and Core waivers per chapter 388-845 WAC.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the Basic, Basic Plus, and Core waivers per chapter 388-845 WAC.

"You/Your" means the client.

Division of Developmental Disabilities Assessment

NEW SECTION

WAC 388-828-1040 What is the DDD assessment?

(1) The DDD Assessment is an assessment tool designed to measure the support needs of persons with developmental disabilities.

(2) The DDD Assessment has three modules:

(a) The Support Assessment (see WAC 388-828-2000 to WAC 388-828-6020);

(b) The Service Level Assessment (see WAC 388-828-7000 to WAC 388-828-7080); and

(c) The Individual Support Plan (ISP) (see WAC 388-828-8000 to 388-828-8060).

(3) The DDD Assessment is part of the Aging and Disability Services Administration's (ADSA) Comprehensive Assessment Reporting Evaluation system (CARE).

NEW SECTION

WAC 388-828-1060 What is the purpose of the DDD assessment? The purpose of the DDD Assessment is to provide a comprehensive assessment process that:

(1) Collects a common set of assessment information for reporting purposes to the legislature and the department.

(2) Promotes consistency in evaluating client support needs for purposes of planning, budgeting, and resource management.

(3) Identifies a level of service and/or number of hours that is used to support the assessed needs of clients who have been authorized by DDD to receive:

(a) Medicaid personal care services or DDD HCBS Waiver Personal Care per chapter 388-106 WAC;

(b) Waiver respite care services per chapter 388-845 WAC;

(c) Services in the Voluntary Placement Program (VPP) per chapter 388-826 WAC.

(4) Records your service requests.

NEW SECTION

WAC 388-828-1080 Who must administer the DDD assessment? Only DDD employees can administer the DDD Assessment.

NEW SECTION

WAC 388-828-1100 Who receives the DDD assessment? DDD must administer a DDD Assessment when you meet any of the following conditions:

(1) You are currently approved by DDD to receive a DDD paid service evidenced by meeting one of the conditions in WAC 388-828-1440;

(2) You request enrollment in one of the DDD HCBS waivers per chapter 388-845 WAC;

(3) You are age three or older and request a DDD Assessment;

(4) You have been determined eligible for categorically needy medical coverage per WAC 388-475-0100 and requested one of the following Medicaid state plan services:

(a) You have requested an assessment for Medicaid personal care services per chapter 388-106 WAC; or

(b) You have been approved to receive Private Duty Nursing services for clients seventeen years of age and younger per WAC 388-551-3000.

(5) You are receiving SSP in lieu of a DDD paid service per chapter 388-827 WAC;

(6) You request admission to a RHC per title 42 CFR 440, title 42 CFR 483, and title 71A RCW;

(7) You reside in a RHC or community ICF/MR and you are involved in discharge planning for community placement;

(8) You do not meet any of the conditions listed in WAC 388-828-1120.

NEW SECTION

WAC 388-828-1120 Who does not receive the DDD assessment? DDD will not administer the DDD Assessment when you meet any of the following conditions:

(1) You have not identified a person willing to receive notice on your behalf regarding specific DDD decisions as required per RCW 71A.10.060 and DDD does not believe you are capable of understanding department decisions that may affect your care; or

(2) A respondent cannot be identified to participate in your DDD Assessment;

(3) You reside in a RHC and are not currently involved in discharge planning for community placement;

(4) You reside in a community ICF/MR and are not authorized by DDD to receive employment/community services paid through the counties; or

(5) You are under the age of three and do not meet any of the conditions in WAC 388-828-1100.

NEW SECTION

WAC 388-828-1140 What will DDD do if there is no one willing to receive notice on your behalf regarding specific DDD decisions? If there is no one available to receive notice on your behalf regarding specific DDD decisions, DDD will do all of the following:

(1) Consult with the Assistant Attorney General to determine if:

(a) You are able to represent yourself; or

(b) You require a legal representative/guardian.

(2) Continue current services until the issue is resolved per section (1) above.

NEW SECTION

WAC 388-828-1160 Does everyone receive all three modules of the DDD assessment? (1) The Support Assessment module is administered to all clients who receive a DDD Assessment.

(2) Only clients receiving a DDD paid service, SSP in lieu of a DDD paid service, or who are approved for a DDD paid service will receive the Service Level Assessment and Individual Support Plan modules since these modules are required:

(a) Prior to the authorization/reauthorization of a DDD paid service or SSP; and

(b) To determine a service level and/or number of hours for a service; and

(c) To authorize the DDD approved paid service(s) per WAC 388-828-8000.

NEW SECTION

WAC 388-828-1180 How will your assessed unmet need(s) be met if there is no approved funding to provide a DDD paid service? If you complete the DDD Assessment and are assessed to have an unmet need and there is no approved funding to support that need, DDD will offer you referral information for ICF/MR services per title 71A RCW, chapter 388-825 WAC, and chapter 388-837 WAC. In addition, DDD may:

(1) Provide information and referral for Non-DDD community-based supports; and

(2) Add your name to the waiver data base, if you have requested enrollment in a DDD HCBS waiver per chapter 388-845 WAC; and

(3) Authorize short-term emergency services as an exception-to-rule (ETR) per WAC 388-440-0001.

NEW SECTION

WAC 388-828-1200 Will DDD ask your family to disclose financial and dependent information? DDD will only ask for information regarding your family's annual gross income and the number of household dependents when:

(1) You are age seventeen or younger; and

(2) Your family has not made a request for your admission to a Residential Habilitation Center (RHC).

NEW SECTION

WAC 388-828-1220 Will DDD require your family to provide supporting documentation of their annual gross income and number of household dependents? DDD accepts your family's verbal report and does not require your family to provide supporting documentation of their annual gross income and number of household dependents.

NEW SECTION

WAC 388-828-1240 What does DDD do when family income and household dependent information are not provided? If you meet the criteria in WAC 388-828-1200 and your family does not report family income and dependent

information, the only consequence will be a denial for any new state-only DDD paid services.

NEW SECTION

WAC 388-828-1260 What action will DDD take if your family does not report income and dependent information? If during your DDD Assessment your family does not report family income and dependent information, DDD will:

(1) Ask if you would like referral information for ICF/MR services; and

(2) Continue to administer your DDD Assessment; and

(3) Continue to authorize the DDD paid services or SSP you are receiving at the time of your DDD Assessment if you continue to meet the eligibility requirements for those services.

NEW SECTION

WAC 388-828-1280 How will your access to, or receipt of, DDD HCBS waiver services be affected if your family does not report family income and dependent information? Your waiver eligibility or right to request waiver enrollment is not affected if your family does not report family income and dependent information.

NEW SECTION

WAC 388-828-1300 How will your access to, or receipt of, Medicaid personal care, private duty nursing services, or SSP be affected if your family does not report family income and dependent information? Your access to, or receipt of, Medicaid personal care services per chapter 388-106 WAC, Private Duty Nursing services for children seventeen years of age and younger per WAC 388-551-3000, or SSP per chapter 388-827 WAC is not affected if your family does not report income and dependent information.

NEW SECTION

WAC 388-828-1320 What happens if you are approved to receive a DDD paid service and you refuse to have a DDD assessment administered? If you are approved to receive a DDD paid service and refuse to have a DDD Assessment administered, DDD is unable to authorize new or current DDD paid services and will do all of the following:

(1) Explain what happens if you refuse to allow DDD to administer the DDD Assessment to you, your respondents, and the person you have identified to receive notice on your behalf per RCW 71A.10.060.

(2) Consult with the Assistant Attorney General when you have not identified a person to receive notice on your behalf per RCW 71A.10.060 to determine if:

(a) You are able to represent yourself; or

(b) You require a legal representative/guardian.

(3) Terminate existing DDD paid services when they reach their authorized end date.

(4) Provide you notice and appeal rights for denied and/or terminated service(s) per WAC 388-825-100 and WAC 388-825-120.

(5) Provide you with information on how to contact DDD in case you later decide you want a DDD Assessment administered.

NEW SECTION

WAC 388-828-1340 After administering the DDD assessment, how long does DDD have to complete your DDD assessment? (1) DDD will complete your DDD Assessment as soon as possible after it is administered.

(2) DDD will complete your DDD Assessment no later than thirty days from the date it was created in CARE.

NEW SECTION

WAC 388-828-1360 Are there any exceptions to completing your DDD assessment within thirty days? DDD will not complete your DDD assessment when:

- (1) You are approved to receive a DDD paid service; and
- (2) You have not identified an ADSA contracted provider.

NEW SECTION

WAC 388-828-1380 What will DDD do if you are unable to identify an ADSA contracted provider? If you are unable to identify an ADSA contracted provider, DDD will provide you with contact information for ADSA contracted agency providers.

NEW SECTION

WAC 388-825-1400 What is your responsibility when selecting and/or hiring an ADSA contracted individual provider? You or your legal representative/guardian has the primary responsibility for identifying, hiring, supervising, and/or terminating an ADSA contracted individual provider.

Reviser's note: The above new section was filed by the agency as WAC 388-825-1400. This section is placed among sections forming new chapter 388-828 WAC, and therefore should be numbered WAC 388-828-1400. 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 388-828-1420 What is your responsibility when selecting an ADSA contracted agency provider? You or your legal representative/guardian has the responsibility of choosing an agency provider. DDD or the county will provide you information on contracted and qualified agency providers.

NEW SECTION

WAC 388-828-1440 What is the definition of DDD "paid service" in chapter 388-828 WAC? For the purpose of this chapter, a DDD paid service is defined as an authorization of a program and/or service as evidenced by one or more of the following:

(1) An open social service payment system (SSPS) authorization within the past ninety days used for payment of a service or SSP; or

(2) A current county service authorization for one of the following services:

- (a) Person to Person; or
- (b) Individual Employment; or
- (c) Group Supported Employment; or
- (d) Pre-vocational/Specialized Industries; or
- (e) Community Access; or
- (f) Individual and Family Assistance.

(3) A current waiver POC or waiver ISP; or

(4) Residence in a State Operated Living Alternative (SOLA) program; or

(5) Authorization of Family Support services within the last twelve months per chapter 388-825 WAC; or

(6) 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; or

(7) Evidence of approval for funding of a DDD service or enrollment in a DDD HCBS waiver; or

(8) Payment of services using Form A-19 State of Washington Invoice Voucher for receipt of:

- (a) Dangerous Mentally Ill Offender funds
- (b) Crisis stabilization services;
- (c) Specialized psychiatric services; or
- (d) Diversion bed services.

NEW SECTION

WAC 388-828-1460 When will you receive an initial DDD assessment? DDD intends to assess all clients per WAC 388-828-1100 based on available resources. DDD must administer an initial DDD Assessment when:

(1) You are receiving a DDD paid service and your annual reassessment is due for continuation of the DDD paid service; or

(2) You are receiving a DDD paid service and a reassessment is needed due to a significant change that may affect your support needs; or

(3) You are receiving SSP in lieu of a DDD paid service and your eligibility for SSP needs to be re-determined per WAC 388-827-0120;

(4) You are not receiving a paid service and you are approved for funding of a DDD paid service and an assessment must be performed prior to the authorization of services; or

(5) You make a request to have a DDD Assessment administered and meet the criteria in WAC 388-828-1100; or

(6) You are contacted by DDD and offered an opportunity to have a DDD Assessment.

NEW SECTION

WAC 388-828-1480 Are there any exceptions allowing authorization of a DDD paid service prior to administering a DDD assessment? During the year prior to July 2008, due to staff resources, DDD may authorize or reauthorize the following services before a DDD assessment is administered:

(1) Funding from the legislature that provides resources for services to be available by a certain date;

(2) The annual reallocation of dollars for Traditional Family Support in June 2007; or

(3) Emergency services as determined by DDD as critical to the client's health and safety.

NEW SECTION

WAC 388-828-1500 When does DDD conduct a reassessment? A reassessment must occur:

(1) On an annual basis if you are receiving a paid service or SSP; or

(2) When a significant change is reported that may affect your need for support. (e.g. changes in your medical condition, caregiver status, behavior, living situation, employment status).

NEW SECTION

WAC 388-828-1520 Where is the DDD assessment and reassessment administered? The DDD Assessment and reassessment are administered in your place of residence.

NEW SECTION

WAC 388-828-1540 Who participates in your DDD assessment? (1) All relevant persons who are involved in your life may participate in your DDD Assessment, including your parent(s), legal representative/guardian, advocate(s), and service provider(s).

(2) DDD requires that at a minimum: you, one of your respondents, and your DDD case resource manager/social worker participate in your DDD Assessment interview. In addition:

(a) If you are under the age of eighteen, your parent(s) or legal guardian(s) must participate in your DDD Assessment interview.

(b) If you are age eighteen or older, your court appointed legal representative/guardian must be consulted if he/she does not attend your DDD Assessment interview.

(c) If you are age eighteen and older and have no legal representative/guardian, DDD will assist you to identify a respondent.

(d) DDD may require additional respondents to participate in your DDD Assessment interview, if needed, to obtain complete and accurate information.

NEW SECTION

WAC 388-828-1560 Do all questions in the DDD assessment have to be answered? All questions in the DDD Assessment that are on a mandatory panel must be answered.

NEW SECTION

WAC 388-828-1580 Why does DDD require all questions on mandatory panels to be answered in the DDD assessment? DDD requires that all questions on mandatory panels be answered because:

(1) The legislature has directed DDD to assess all eligible clients with a common, standardized assessment process that measures the support needs of individuals with developmental disabilities.

(2) The DDD Assessment algorithms in the Support Assessment module are designed to:

(a) Determine acuity scores and acuity levels for a variety client needs; and

(b) Provide a valid measure of each client's support needs relative to the support needs of other clients who have received the DDD Assessment.

NEW SECTION

WAC 388-828-1600 What happens if you refuse to answer a question on a mandatory panel in the DDD assessment? If you refuse to answer a question on a mandatory panel in the DDD Assessment, DDD is unable to complete your DDD Assessment and will do all of the following:

(1) Explain what happens if you refuse to answer a question on a mandatory panel to you, your respondents, and the person you have identified to receive notice on your behalf per RCW 71A.10.060.

(2) Consult with the Assistant Attorney General when you have not identified a person to receive notice on your behalf per RCW 71A.10.060 to determine if:

(a) You are able to represent yourself; or

(b) You require a legal representative/guardian.

(3) Terminate existing DDD paid services when they reach their authorized end date;

(4) Provide you notice and appeal rights for denied and/or terminated service(s) per WAC 388-825-100 and WAC 388-825-120; and

(5) Provide you with information on how to contact DDD in case you later decide you want a DDD Assessment administered.

NEW SECTION

WAC 388-828-1620 How does DDD determine which panels are mandatory in your DDD assessment? DDD determines which panels are mandatory in your DDD Assessment by assigning you to a client group using the following table:

If you are approved by DDD to receive:	Your client group is:
(1) DDD DCBS Waiver services per chapter 388-845 WAC; or (2) State-only residential services per chapter 388-825 WAC; or (3) ICF/MR services per 42 CFR 440 and 42 CFR 483.	Waiver and State-Only Residential

If you are approved by DDD to receive:	Your client group is:
(4) Medicaid personal care (MPC) per chapter 388-106 WAC; or (5) DDD HCBS Basic, Basic Plus, or Core Waiver services per chapter 388-845 WAC and Personal Care services per chapter 388-106 WAC; or (6) Medically Intensive Health Care Program services per chapter 388-551 WAC; or (7) Adult Day Health services per chapter 388-106 WAC; or (8) Private Duty Nursing services per chapter 388-551 WAC; or (9) Community Options Program Entry System (COPES) services per chapter 388-106 WAC; or (10) Medically Needy Residential waiver services per chapter 388-106 WAC; or (11) Medicaid Nursing Facility Care services per chapter 388-106 WAC.	Other Medicaid Paid Services
(12) County Employment services per chapter 388-850 WAC. (13) Other DDD paid services per chapter 388-825 WAC, such as: (a) Family support services; or (b) Professional services. (14) Non-waiver voluntary placement program services per chapter 388-826 WAC; (15) SSP only per chapter 388-827 WAC;	State-Only Paid Services
(16) You are not approved to receive any DDD paid services.	No Paid Services

NEW SECTION

WAC 388-828-1640 What are the mandatory panels in your DDD assessment? After DDD has determined your client group, DDD determines the mandatory panels in your DDD Assessment using the following tables. An "X" indicates that the panel is mandatory; an "O" indicates the panel is optional. If it is blank, the panel is not used.

(1) DDD "Assessment Main" and Client Details Information

DDD Assessment Panel Name	Client Group			
	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State Only Paid Services
Assessment Main	X	X	X	X
Demographics	X	X	X	X
Overview	X	X	X	X
Addresses	X	X	X	X
Collateral Contacts	X	X	X	X
Financials	X	X	X	X

(2) Supports Intensity Scale Assessment

DDD Assessment Panel Name	Client Group			
	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Home Living	X	X	X	X
Community Living	X	X	X	X
Lifelong Learning	X	X	X	X
Employment	X	X	X	X
Health & Safety	X	X	X	X
Social Activities	X	X	X	X
Protection & Advocacy	X	X	X	X

(3) Support Assessment for Children

DDD Assessment Panel Name	Client Group			
	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Activities of Daily Living	X	X	X	X
IADLs (Instrumental Activities of Daily Living)	X	X	X	X

DDD Assessment Panel Name	Client Group			
	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Family Supports	X	X	X	X
Peer Relationships	X	X	X	X
Safety & Interactions	X	X	X	X

(4) Common Support Assessment Panels

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Medical Supports	X	X	X	X
Behavioral Supports	X	X	X	X
Protective Supervision	X	X	X	X
DDD Caregiver Status*	X	X	X	X
Programs and Services	X	X	X	X

*Information on the DDD Caregiver Status panel is not mandatory for clients receiving paid services in an AFH, SL, GH, SOLA, or RHC.

(5) Service Level Assessment Panels

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Environment		X	X	O
Medical Main		O	X	O
Medications		X	X	X
Diagnosis		X	X	X
Seizures		X	X	X
Medication Management		X	X	X
Treatments/programs		X	X	X
ADH (Adult Day Health)		O	O	O
Pain		X	X	X
Indicators-Main		O	X	O
Allergies		X	X	X
Indicators/Hospital		X	X	X
Foot		X	X	O
Skin		X	X	O
Skin Observation		O	O	O
Vitals/Preventative		X	X	O
Comments		O	O	O
Communication-Main		O	X	O
Speech/Hearing		O	X	O
Psych/Social		O	X	O
MMSE (Mini-Mental Status Exam)		O	X	O
Memory		O	X	O
Behavior		O	X	O
Depression		O	X	O
Suicide		O	O	O
Sleep		O	O	O
Relationships & Interests		O	O	O

DDD Assessment Panel Name	No Paid Services	Waiver and State Only Residential	Other Medicaid Paid Services	State-Only Paid Services
Decision Making		O	X	O
Goals		X	O	O
Legal Issues		O	O	O
Alcohol		O	O	O
Substance Abuse		O	O	O
Tobacco		O	X	O
Mobility Main		O	X	O
Locomotion In Room		O	X	O
Locomotion Outside Room		O	X	O
Walk in Room		O	X	O
Bed Mobility		O	X	O
Transfers		O	X	O
Falls		O	O	O
Toileting-Main		O	X	O
Bladder/Bowel		O	X	O
Toilet Use		O	X	O
Eating-Main		O	X	O
Nutritional/Oral		O	X	O
Eating		O	X	O
Meal Preparation		O	X	O
Hygiene-Main		O	X	O
Bathing		O	X	O
Dressing		O	X	O
Personal Hygiene		O	X	O
Household Tasks		O	X	O
Transportation		O	X	O
Essential Shopping		O	X	O
Wood Supply		O	X	O
Housework		O	X	O
Finances		O	O	O
Pet Care		O	O	O
Functional Status		O	O	O
Employment Support*		X*	X*	X*
Mental Health		X	X	X
DDD Sleep*		X*	O	O

*Indicates that:

(a) The "Employment Support" panel is mandatory only for clients age twenty-one and older who are on or being considered for one of the county services listed in WAC 388-828-1440(2).

(b) The "DDD Sleep" panel is mandatory only for clients who are age eighteen or older and who are receiving:

(i) DDD HCBS Core or Community Protection waiver services; or

(ii) State-Only residential services.

Support Assessment Module

NEW SECTION

WAC 388-828-2000 What is the support assessment module? The Support Assessment module is the first section of the DDD Assessment and is administered to all DDD clients.

NEW SECTION

WAC 388-828-2020 What is the purpose of the support assessment module? The purpose of the Support Assessment module is to:

- (1) Collect a common set of assessment information that is scored for all persons who are eligible to receive a DDD Assessment per WAC 388-828-1100;
- (2) Promote a consistent process to evaluate client support needs;
- (3) Determine whether a person meets the ICF/MR level of care standard for potential waiver eligibility; and
- (4) Identify the persons receiving, or approved for, DDD paid services or SSP who will need the additional two assessment modules:
 - (a) The Service Level Assessment module; and
 - (b) The Individual Support Plan module.

NEW SECTION

WAC 388-828-2040 What components are contained in the support assessment module? The Support Assessment module contains the following components:

- (1) The Support Assessment for Children;
- (2) The Supports Intensity Scale (SIS) Assessment;
- (3) DDD Protective Supervision Acuity Scale;
- (4) DDD Caregiver Status Acuity Scale;
- (5) DDD Activities of Daily Living (ADL) Acuity Scale;
- (6) DDD Behavioral Acuity Scale;
- (7) DDD Medical Acuity Scale;
- (8) DDD Interpersonal Support Acuity Scale;
- (9) DDD Mobility Acuity Scale;
- (10) DDD Respite Assessment; and
- (11) Programs and Services component.

NEW SECTION

WAC 388-828-2060 How does your assessment age affect the support assessment module? Age guidelines are incorporated into the support assessment module to exclude age appropriate supports unrelated to a disability. The following table illustrates which components DDD includes in your Support Assessment module based on your assessment age:

Components contained in the Support Assessment module	Age (0-15)	Age (16+)
The Support Assessment for Children	Yes	No
SIS Support Needs and Supplemental Protection and Advocacy Scales	No	Yes
SIS Exceptional Medical and Behavior Support Needs Scales	Yes	Yes
DDD Protective Supervision Acuity Scale	Yes	Yes
DDD Caregiver Status Acuity Scale	Yes	Yes
DDD Activities of Daily Living Acuity Scale	Yes	Yes
DDD Behavioral Acuity Scale	Yes	Yes
DDD Medical Acuity Scale	Yes	Yes
DDD Interpersonal Support Acuity Scale	Yes	Yes
DDD Mobility Scale	Yes	Yes
Current Programs and Services component	Yes	Yes

NEW SECTION

WAC 388-828-2080 How does DDD determine your assessment age? If you are within thirty calendar days of your next birthday, DDD determines your assessment age to be that of your next birthday.

The Support Assessment for Children

NEW SECTION

WAC 388-828-3000 What is the purpose of the support assessment for children? The Support Assessment for Children measures the support needs of children from birth to age fifteen.

NEW SECTION

WAC 388-828-3020 What is the purpose of the support assessment for children? The purpose of the Support Assessment for Children ages fifteen or younger is to determine:

- (1) Your ICF/MR Level of Care score for DDD HCBS waiver eligibility;
- (2) The health and welfare needs that must be addressed in your individual support plan if you are enrolled in a DDD HCBS waiver; and
- (3) Your support need levels for:
 - (a) The DDD Activities of Daily Living Acuity Scale;
 - (b) The DDD Interpersonal Support Acuity Scale; and
 - (c) The DDD Mobility Acuity Scale.

NEW SECTION

WAC 388-828-3040 What questions are asked in the support assessment for children and how are they scored? DDD scores the answers to each of the following questions in the Support Assessment for Children based on the respondent information:

(1) Dress and groom self: What support does the child need to dress and groom self as expected of others of same age?

Answers	Definitions	LOC Score	Acuity Score
Physical Assistance	Needs major support in the form of total physical assistance, intensive training and/or therapy for dressing and grooming.	1	4
Training	Needs moderate support in the form of some physical assistance and/or training and/or therapies to dress and groom self.	0	3
Reminders/Prompts	Needs reminders or prompts to dress and groom self appropriately.	0	2
No support needed or at age level	At age level (may have physical supports) in dressing and grooming.	0	0

(2) Toilet self: What support does the child need to toilet self as expected of others in his/her age group?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of total physical support. Intensive training intervention and/or daily therapy to toilet self.	1	4
Partial physical assistance, training	Needs moderate support in the form of some physical assistance, standard training and/or regular therapy.	0	3
Reminders/prompts	Needs reminders or prompts.	0	2
No support needed or at age level	Toilets self or has physical support in place to toilet self.	0	0

(3) Eat at age level: What support does the child need to eat at age level?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of total physical assistance, intensive training and/or daily therapy.	1	4
Partial physical assistance, training	Needs moderate support in the form of some physical assistance, standard training, and/or regular therapy.	1	3
Reminders/prompts	Needs help with manners and appearance when eating, in the form of reminders and prompts.	0	2
No support needed or at age level	At age level (may have physical supports) in eating.	0	0

(4) Move Around: What support does the child need to move around in the same ways as other children of same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major intervention in the form of total physical support to move around, intensive training and/or daily therapy.	1	4
Partial physical assistance, training	Needs moderate support such as someone's help to move around or may use or learn to use adaptive device or may require standard training.	1	3
Reminders/prompts	Needs mild intervention in the form of training and physical prompting for scooting/crawling/walking behaviors.	0	2
No support needed or at age level	No supports needed - child is scooting/crawling/walking at age level	0	0

(5) Communicate: What support does the child need to communicate as others of same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Currently someone else must always determine and communicate child's needs.	1	4
Training/therapy	With intensive training or therapy support, child may learn sufficient verbal and/or signing skills to make self easily understandable to others. May include partial physical support.	1	3
Adaptive device/interpreter	With physical support (adaptive device, interpreter), child is always able to communicate.	0	2
No support needed or at age level	No supports needed and/or at age level.	0	0

(6) Learn about and use money: What support does the child need to learn about and use money?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Child is not old enough to know about money.	0	4
Partial physical assistance, training	Family must devise special opportunities for child to earn/or spend money.	0	3
Create opportunities, reminders/prompts	Needs to learn about earning and/or spending money in typical age-level ways.	0	2
No support needed or at age level	Needs no support. Independently uses opportunities typical to his/her age group to earn and/or spend money.	0	0

(7) Make choices and take responsibility: What support does the child need to make choices and take responsibility?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of special and/or technical help to and from family/teachers to create opportunities for making choices and taking responsibility.	1	4
Partial physical assistance, training	Needs moderate support in the form of family/teachers creating and explaining a variety of opportunities for making choices and taking responsibility.	1	3
Create opportunities, reminders/prompts	Needs some support in the form of explanation of available options for making choices and taking responsibility.	1	2
No support needed or at age level	Needs no support. Readily uses a variety of opportunities to indicate choices (activity, food, etc.) and take responsibility for tasks, self, etc.	0	0

(8) Explore environment: What support does the child need to explore environment?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs major support in the form of specialized technical help to and from family/teachers to create ways which support/encourage child to explore and reach out.	1	4
Partial physical assistance, training	Needs moderate support in the form of some training/physical help to and from family and teachers to create ways and opportunities for child to explore environment and reach out.	1	3
Reminders/prompts	Needs some support in the form of verbal encouragement or presence of someone child trusts to explore environment and reach out.	0	2

Answers	Definitions	LOC Score	Acuity Score
No support needed or at age level	Needs no support and/or is at age level. Readily explores environment (may have adaptive device) and reaches out in ways typical to child's age group.	0	0

(9) Meet therapy health needs: What supports are necessary to get child's therapy health needs met?

Answers	Definitions	LOC Score	Acuity Score
Daily intervention by professionals	Child requires medical/health intervention or monitoring by professionals at least daily.	1	4
Monitoring by health professionals	Child needs regular (weekly, monthly) monitoring by health professionals.	1	3
Monitoring by trained others	Child needs daily support and/or monitoring by training others.	1	2
Community health system	Needs regular on-going therapy and/or monitoring of health needs through typical community health systems.	0	1
No support needed or at age level	No specialized supports or ongoing therapies necessary.	0	0

(10) Help family continue to meet child's needs: What support services should the system provide to help family continue to meet child's needs?

Answers	Definitions	LOC Score	Acuity Score
Urgent extensive support	Substantial significant supports to child and parents needed. Child in, or at risk of, out-of-home placement at this time.	1	4
Substantial support/referrals needed	Substantial support needed/requested; (e.g., requests for more than two days per month respite, referral to homemakers, homebuilders; request for long term behavior management training, need extensive and/or expensive environmental modification or equipment; request frequent contact with case manager.)	1	3
Moderate support	Moderate external support needed/requested; (e.g., requests for regular respite, intensive but short-term behavior management, referral for parent training help, referral to day care services; and/or request for regular contact with case manager.)	0	2
Minimal support	Minimal external support needed/requested; (e.g., requests for occasional respite, referrals to parent support group, and/or case manager helps obtain adaptive equipment.)	0	1
No support needed or at age level	No external supports are necessary. Family has obtained any necessary adaptive equipment.	0	0

(11) Have relationships with family members: What support does the child need to make the kind of relationships with family members expected of non-disabled children of the same age?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Opportunities for contributing to family life totally dependent on others to maintain, interpret child's role to other family members.	0	4
Partial physical assistance, training	Requires major support in the form of daily/weekly creation of opportunities to be seen as a contributing member and assume typical family responsibilities.	0	3

Answers	Definitions	LOC Score	Acuity Score
Reminders/prompts	Requires moderate support in the form of adaptive device, training and/or reminders to be seen as contributing member and assume typical family responsibilities.	0	2
No support needed or at age level	Needs no support to form positive family relationship.	0	0

(12) Explore and use typical community resources: What support does the child need to explore and use typical community resources such as stores, parks, and playgrounds?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Family needs major support (perhaps respite) to continue to provide child total physical support to use typical resources.	0	4
Partial physical assistance, training	Moderate support is needed - family must create ways for child to use these resources in ways typical to child's age group.	0	3
Reminders/prompts	Minimal support needed - family may wish suggestions or some support on ways to enable child's regular use of typical resources.	0	2
No support needed or at age level	Needs no support and/or at age level. Uses these resources regularly.	0	0

(13) Play with others: What supports are needed for the child to develop age-level skills in playing with others?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Major support needed by others to help child play. Parents may request special adaptive equipment and training to foster child's playing skills.	0	4
Partial physical assistance training	Moderate support needed in the form of a verbal and/or some physical intervention to help child play. Parents may be requesting suggestions instruction in ways to help child develop playing skills.	0	3
Reminders/prompts	Minimal support needed.	0	2
No support needed or at age level	No supports needed and/or at age level. Child's playing skills developing at age level.	0	0

(14) Have opportunities to play with typically developing children: What supports does the child need to have opportunities to play with typically developing children?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Substantial system support (e.g., system must set up "programs" that allow for interaction with typically developing children and the "programs".)	0	4
Partial physical assistance, training	Moderate supports (e.g., parents have to create opportunities for contacts). Parents may ask for instruction in how to facilitate such contacts. System may need to provide structural supports (e.g., transportation, barrier-free public play environments, etc).	0	3
Reminders/prompts	Minimal support (e.g., some monitoring). Parents may request help on how to broaden child's range of contacts or to increase the age appropriateness of contacts.	0	2
No support needed or at age level	No support needed.	0	0

(15) Identify and respond safely to emergencies: What support does the child need to identify and respond safely to emergencies?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs total physical support to respond to emergencies.	1	4
Always needs help to identify and respond	Needs help all of the time to identify emergencies and to respond.	1	3
Sometimes needs help to identify and respond	Needs help some of the time to identify emergencies and to respond.	1	2
Can identify, needs help to respond	Independently identifies emergencies; needs help from others to respond.	1	1
No help needed or at age level	Needs no help from others in emergencies.	0	0

(16) Practice age-level safety measures: What support does the child need to practice age-level safety measures?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs total physical support for safety measures in daily activities and routines.	1	4
Partial physical assistance, training	Does not recognize own safety needs and requires help in most safety areas.	1	3
Reminders/prompts	Knows importance of safety measures. Needs training and/or physical support in many areas.	1	2
No support needed or at age level	Needs no support in providing for own safety.	0	0

(17) Effectively relate to other students/peers: What support does the child need to most effectively relate to fellow students and/or peers?

Answers	Definitions	LOC Score	Acuity Score
Total physical support	Needs physical support by others in the form of interpretation of self to others to interact with peers.	1	4
Partial physical assistance, training	Needs physical intervention in the form of modeling to enable child to reach out to peers to give and take support.	1	3
Reminders/prompts	Needs much encouragement, supervision and guidance in how to give and ask for support and interact with peers.	0	2
No support needed or at age level	Without support, child relates to others as a valued member of work/learning unit.	0	0

(18) Have behaviors which promote being included: What support is needed for this child to have behaviors which promote being included?

Answers	Definitions	LOC Score	Acuity Score
Continuous behavioral interventions	Needs major tolerance and control. Could include being dangerous to self and/or others.	1	4
Major behavior modifications	Needs major behavior modifications to be perceived as typical. Child's behaviors are extremely disagreeable to others.	1	3
Modeling, reminders, prompts	Needs participation in typical settings with typically developing others to model desirable behaviors. Child's behaviors cause him/her to be easily recognized as different from others.	0	2

Answers	Definitions	LOC Score	Acuity Score
Minor support	Needs interactions with typically developing others. Child's behaviors are different from others in minor ways and the child may not immediately be perceived as different.	0	1
No support needed or at age level	Needs no support. Behaviors are similar to others in general community of same age and culture.	0	0

NEW SECTION

WAC 388-828-3060 How does DDD determine your total LOC score for ICF/MR level of care if you are age birth through fifteen years old? DDD determines your total LOC score for ICF/MR Level of Care by adding all of your LOC scores on questions one through eighteen in the Support Assessment for Children.

NEW SECTION

WAC 388-828-3080 How does DDD determine if you meet the eligibility requirements for ICF/MR level of care (LOC) if you are age birth through fifteen years old? DDD determines you are eligible for ICF/MR Level of Care when:

- (1) You are age birth through five years old and the total of your LOC scores is five or more; or
- (2) You are age six through fifteen years old and the total of your LOC scores is seven or more.

The Supports Intensity Scale Assessment

NEW SECTION

WAC 388-828-4000 What is the supports intensity scale (SIS) assessment? The Supports Intensity Scale assessment is a standardized tool developed by the American Association on Intellectual and Developmental Disabilities (AAIDD), to measure the relative intensity of support needs for persons age sixteen and older.

NEW SECTION

WAC 388-828-4020 What is the purpose of the supports intensity scale (SIS) assessment? The purpose of the Supports Intensity Scale assessment in the DDD Assessment is to determine all of the following:

- (1) Your ICF/MR Level of Care score for DDD HCBS waiver eligibility;
- (2) The health and welfare needs that must be addressed in your individual support plan if you are enrolled in a DDD HCBS waiver;
- (3) Your DDD behavioral and medical acuity levels regardless of your age; and
- (4) Your support need acuity levels specific to the:
 - (a) DDD Activities of Daily Living Acuity Scale;
 - (b) DDD Interpersonal Support Acuity Scale; and
 - (c) DDD Mobility Acuity Scale.

NEW SECTION

WAC 388-828-4040 What scales are contained in the supports intensity scale (SIS) assessment? The Supports Intensity Scale Assessment contains the following:

- (1) The Support Needs scale;
- (2) The Supplemental Protection and Advocacy scale;
- (3) Exceptional Medical Support Needs scale; and
- (4) Exceptional Behavioral Support Needs scale.

NEW SECTION

WAC 388-828-4060 What subscales are contained in the support needs Scale? The Support Needs Scale contains the following subscales:

- (1) Home living activities;
- (2) Community living activities;
- (3) Lifelong learning activities;
- (4) Employment activities;
- (5) Health and safety activities; and
- (6) Social activities.

NEW SECTION

WAC 388-828-4080 How does the SIS measure your support need(s) in the support needs and supplemental protection and advocacy scales? The SIS measures your support needs in the Support Needs and Supplemental Protection and Advocacy Scales using the following three dimensions of support intensity:

- (1) Type of support;
- (2) Frequency of support; and
- (3) Daily support time.

NEW SECTION

WAC 388-828-4100 How is type of support scored in the SIS assessment? DDD scores the type of support you need to perform the assessed activity using the following rating scale:

Type of Support: What kind of support is needed for the assessed activity?	
Answer	Score
None	0
Monitoring	1
Verbal/gestural prompting	2
Partial physical assistance	3
Full physical assistance	4

NEW SECTION

WAC 388-828-4120 How is frequency of support scored in the SIS assessment? DDD scores how frequently support is needed for you to perform the assessed activity using the following rating scale:

Frequency: How frequently is support needed for the assessed activity?	
Answer	Score
None or less than monthly	0
At least once a month, but not once a week	1
At least once a week, but not once a day	2
At least once a day, but not once an hour	3
Hourly or more frequently	4

NEW SECTION

WAC 388-828-4140 How is daily support time scored in the SIS assessment? DDD scores the amount of daily support time you need to perform the assessed activity using the following rating scale:

Daily Support Time: On a typical day when support in this area is needed, how much time should be devoted?	
Answer	Score
None	0
Less than 30 minutes	1
30 minutes to less than 2 hours	2

Daily Support Time: On a typical day when support in this area is needed, how much time should be devoted?	
2 hours to less than 4 hours	3
4 hours or more	4

NEW SECTION

WAC 388-828-4160 How does DDD determine your raw score for each of the activities that are assessed in the support needs and supplemental protection and advocacy scales? DDD adds the three dimensions of support intensity scores for each activity to determine your raw score for the activity.

NEW SECTION

WAC 388-828-4180 Are all questions in the support needs and supplemental protection and advocacy scales scored the same way? Some questions in the Support Needs and Supplemental Protection and Advocacy Scales have scoring limitations and some scores are not available for selection related to the standardization process per AAIDD.

NEW SECTION

WAC 388-828-4200 What activities are assessed in the home living activities subscale of the support needs scale? The Home Living Activities subscale measures your personal support needs for the following home living activities:

#	Home Living Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
		0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A1	Using the toilet	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A2	Taking care of clothes (includes laundering)	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A3	Preparing food	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
A4	Eating food	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A5	Housekeeping and cleaning	0	1	2	3	4	0	1	2	3	4	0	1	2	*	*	
A6	Dressing	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A7	Bathing and taking care of personal hygiene and grooming needs	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
A8	Operating home appliances	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
A9	Using currently prescribed equipment or treatment	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	

Total Raw Score for Home Living Activities:

* = Score is not an option per AAIDD.
 Note: Question A9 is a question added by DDD. It is for information purposes only and is not used to calculate scores or levels for service determination.

NEW SECTION

WAC 388-828-4220 What activities are assessed in the community living activities subscale of the support needs scale? The Community Living Activities subscale measures your personal support needs for the following community living activities:

#	Community Living Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
B1	Getting from place to place throughout the community (transportation)	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B2	Participating in recreation/leisure activities in community settings	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B3	Using public services in the community	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B4	Going to visit friends and family	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B5	Participating in preferred community activities (church, volunteer, etc.)	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
B6	Shopping and purchasing goods and services	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
B7	Interacting with community members	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
B8	Accessing public buildings and settings	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total Raw Score for Community Living Activities:																	
* = Score is not an option per AAIDD.																	

NEW SECTION

WAC 388-828-4240 What activities are assessed in the lifelong learning activities subscale of the support needs scale? The Lifelong Learning Activities subscale measures your personal support needs for the following lifelong learning activities:

#	Lifelong Learning Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
C1	Interacting with others in learning activities	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
C2	Participating in training/educational decisions	0	1	2	3	4	0	1	2	3	*	0	1	2	3	*	
C3	Learning and using problem-solving strategies	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C4	Using technology for learning	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C5	Accessing training/educational settings	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C6	Learning functional academics (reading signs, counting change, etc.)	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C7	Learning health and physical education skills	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C8	Learning self-determination skills	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
C9	Learning self-management strategies	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
Total Raw Score for Lifelong Learning Activities:																	
*= Score is not an option per AAIDD.																	

NEW SECTION

WAC 388-828-4260 What activities are assessed in the employment activities subscale of the support needs scale? The Employment Activities subscale measures your personal support needs for the following employment activities:

#	Employment Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
		0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D1	Accessing/receiving/job/tasks accommodations	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D2	Learning and using specific job skills	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D3	Interacting with co-workers	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D4	Interacting with supervisors and/or coaches	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D5	Completing work-related tasks with acceptable speed	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D6	Completing work-related tasks with acceptable quality	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
D7	Changing job assignments	0	1	2	3	4	0	1	2	*	*	0	1	2	3	4	
D8	Seeking information and assistance from an employer	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
Total Raw Score for Employment Activities:																	
* = Score is not an option per AAIDD.																	

NEW SECTION

WAC 388-828-4280 What activities are assessed in the health and safety activities subscale of the support needs scale? The Health and Safety Activities subscale measures your personal support needs for the following health and safety activities:

#	Health and Safety Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
		0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E1	Taking medications	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E2	Avoiding health and safety hazards	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E3	Obtaining health care services	0	1	2	3	4	0	1	2	3	4	0	1	2	*	*	
E4	Ambulating and moving about	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E5	Learning how to access emergency services	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E6	Maintaining a nutritious diet	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E7	Maintaining physical health and fitness	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
E8	Maintaining emotional well-being	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total Raw Score for Health and Safety Activities:																	
* = Score is not an option per AAIDD.																	

NEW SECTION

WAC 388-828-4300 What activities are assessed in the social activities subscale of the support needs scale? The Social Activities subscale measures your personal support needs for the following social activities:

#	Social Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
		0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
F1	Socializing within the household	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
F2	Participating in recreation and/or leisure activities with others	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
F3	Socializing outside the household	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
F4	Making and keeping friends	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
F5	Communicating with others about personal needs	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	

#	Social Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
F6	Using appropriate social skills	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
F7	Engaging in loving and intimate relationships	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
F8	Engaging in volunteer work	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
Total Raw Score for Social Activities:																	
* = Score is not an option per AAIDD.																	

NEW SECTION

WAC 388-828-4320 What activities are assessed in the supplemental protection and advocacy activities subscale?

The Supplemental Protection and Advocacy Activities subscale measures your personal support needs for the following protection and advocacy activities:

#	Protection and Advocacy Activities	Type of Support					Frequency of Support					Daily Support Time					Raw Score
G1	Advocating for self	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
G2	Managing money and personal finances	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G3	Protecting self from exploitation	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G4	Exercising legal responsibilities	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G5	Belonging to and participating in self-advocacy/support organizations	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G6	Obtaining legal services	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G7	Making choices and decisions	0	1	2	3	4	0	1	2	3	4	0	1	2	3	4	
G8	Advocating for others	0	1	2	3	4	0	1	2	3	*	0	1	2	3	4	
Total Raw Score for Protection and Advocacy Activities:																	
* = Score is not an option for AAIDD.																	

NEW SECTION

WAC 388-828-4340 How does DDD determine your support score for each of the items identified in the SIS exceptional medical and behavioral support needs scales? DDD examines the amount of support you need for medical treatments and behavioral support using the following rating scale:

Answer	Score
No support needed	0
Some support needed	1
Extensive support needed	2

NEW SECTION

WAC 388-828-4360 What exceptional medical support activities are evaluated to assess your medical support needs? The SIS Exceptional Medical Support Needs Scale measures your personal support needs for the following medical support need(s) activities:

#	Medical Supports Needed	No Support Needed	Some Support Needed	Extensive Support Needed
1.	Inhalation or oxygen therapy	0	1	2
2.	Postural drainage	0	1	2
3.	Chest PT	0	1	2
4.	Suctioning	0	1	2
5.	Oral stimulation or jaw positioning	0	1	2
6.	Tube feeding (e.g., nasogastric)	0	1	2
7.	Parenteral feeding (e.g., IV)	0	1	2

#	Medical Supports Needed	No Support Needed	Some Support Needed	Extensive Support Needed
8.	Turning or positioning	0	1	2
9.	Dressing of open wound(s)	0	1	2
10.	Protection from infectious diseases due to immune system impairment	0	1	2
11.	Seizure management	0	1	2
12.	Dialysis	0	1	2
13.	Ostomy care	0	1	2
14.	Lifting and/or transferring	0	1	2
15.	Therapy services	0	1	2
16.	Diabetes Management*	0	1	2
17.	Other(s) - Specify:	0	1	2
Sub-total Scores of 1s and 2s:				
Add Sub-totals scores for 1's and 2's for total exceptional Medical Support Needs Score:				
* #16 is a question added by DDD. It is used as part of the DDD Medical Acuity Scale and is not used to calculate SIS percentiles.				

NEW SECTION

WAC 388-828-4380 What exceptional behavioral support activities are evaluated to assess your behavioral support needs? The SIS Exceptional Behavioral Support Needs Scale measures your personal support needs for the following behaviors:

#	Behavioral Supports Needed	No Support Needed	Some Support Needed	Extensive Support Needed
1.	Prevention of assaults or injuries to others	0	1	2
2.	Prevention of property destruction (e.g., fire setting, breaking furniture)	0	1	2
3.	Prevention of stealing	0	1	2
4.	Prevention of self-injury	0	1	2
5.	Prevention of PICA (ingestion of inedible substances)	0	1	2
6.	Prevention of suicide attempts	0	1	2
7.	Prevention of sexual aggression	0	1	2
8.	Prevention of non-aggressive but inappropriate behavior (e.g., exposes self in public, exhibitionism, inappropriate touching or gesturing)	0	1	2
9.	Prevention of tantrums or emotional outbursts	0	1	2
10.	Prevention of wandering	0	1	2
11.	Prevention of substance abuse	0	1	2
12.	Maintenance of mental health treatments	0	1	2
13.	Managing attention-seeking behavior*	0	1	2
14.	Managing uncooperative behavior*	0	1	2
15.	Managing agitated/over reactive behavior*	0	1	2
16.	Managing obsessive/repetitive behavior*	0	1	2
17.	Prevention of other serious behavior problem(s) - Specify:	0	1	2
Sub-total Scores of 1s and 2s:				
Add sub-totals scores for 1s and 2s for total exceptional Behavioral Support Needs Scores:				

#	Behavioral Supports Needed	No Support Needed	Some Support Needed	Extensive Support Needed
*#13-16 are questions added by DDD. They are used as part of the DDD Behavior Acuity Scale and are not used to calculate SIS percentiles.				

NEW SECTION

WAC 388-828-4400 How does DDD determine if you meet the eligibility requirements for ICF/MR level of care if you are age sixteen or older? If you are age sixteen or older, DDD determines you to be eligible for ICF/MR Level of Care from your SIS scores. Eligibility for ICF/MR Level of Care requires that your scores meet at least one of the following:

- (1) You have a percentile rank that is over nine percent for three or more of the six subscales in the SIS Support Needs Scale;
- (2) You have a percentile rank that is over twenty-five percent for two or more of the six subscales in the SIS Support Needs Scale;
- (3) You have a percentile rank that is over fifty percent in at least one of the six subscales in the SIS Support Needs Scale;

- (4) You have a support score of one or two for any of the questions listed in the SIS Exceptional Medical Support Needs Scale;
- (5) You have a support score of one or two for at least one of the following items in the SIS Exceptional Behavior Support Needs Scale:
 - (a) Prevention of assaults or injuries to others;
 - (b) Prevention of property destruction (e.g., fire setting, breaking furniture);
 - (c) Prevention of self-injury;
 - (d) Prevention of PICA (ingestion of inedible substances);
 - (e) Prevention of suicide attempts;
 - (f) Prevention of sexual aggression; or
 - (g) Prevention of wandering.
- (6) You have a support score of two for any of the questions listed in the SIS Exceptional Behavior Support Needs Scale; or
- (7) You meet or exceed any of the qualifying scores for one or more of the following SIS questions:

Question # of SIS Support Needs Scale	Text of Question	Your score for "Type of Support" is:	And your score for "Frequency of Support" is:
A1	Using the toilet	2 or more	4
		3 or more	2
A2	Taking care of clothes	2 or more	2 or more
		3 or more	1
A3	Preparing food	2 or more	4
		3 or more	2
A4	Eating food	2 or more	4
		3 or more	2
A5	Housekeeping and cleaning	2 or more	2 or more
		3 or more	1
A6	Dressing	2 or more	4
		3 or more	2
A7	Bathing and taking care of personal hygiene and grooming needs	2 or more	4
		3 or more	2
C3	Learning and using problem-solving strategies	2 or more	3 or more
		3 or more	2
C9	Learning self-management strategies	2 or more	3 or more
		3 or more	2
B6	Shopping and purchasing goods and services	2 or more	2 or more
		3 or more	1
E1	Taking medication	2 or more	4
		3 or more	2
E2	Avoiding health and safety hazards	2 or more	3 or more
		3 or more	2

Question # of SIS Support Needs Scale	Text of Question	Your score for "Type of Support" is:	And your score for "Frequency of Support" is:
E4	Ambulating and moving about	2 or more	4
		3 or more	2
E6	Maintaining a nutritious diet	2 or more	2 or more
		3 or more	1
E8	Maintaining emotional well-being	2 or more	3 or more
		3 or more	2
F6	Using appropriate social skills	2 or more	3 or more
		3 or more	2
G2	Managing money and personal finances	2 or more	2 or more
		3 or more	1

NEW SECTION

WAC 388-828-4420 How does DDD determine your percentile rank for each subscale in the SIS support needs scale? DDD uses the following table to convert your total raw score for each subscale into a percentile ranking:

If your raw score for the following SIS subscale is:						Then your percentile rank for the SIS subscale is:
Home Living	Community Living	Lifelong Learning	Employment Support	Health and Safety	Social Activities	
						>99
>88	>94					>99
87-88	93-94					>99
85-86	91-92			>97		99
81-84	88-90	>96	>95	92-97	>97	98
77-80	84-87	92-96	91-95	86-91	91-97	95
73-76	79-83	86-91	85-90	79-85	84-90	91
68-72	74-78	79-85	78-84	72-78	76-83	84
62-67	69-73	72-78	70-77	65-71	68-75	75
55-61	63-68	64-71	61-69	57-64	58-67	63
48-54	56-62	55-63	52-60	49-56	48-57	50
40-47	49-55	46-54	42-51	42-48	38-47	37
32-39	41-48	36-45	32-41	34-41	28-37	25
25-31	33-40	27-35	23-31	27-33	19-27	16
18-24	25-32	18-26	15-22	20-26	10-18	9
11-17	16-24	9-17	7-14	13-19	3-9	5
3-10	6-15	<9	<7	7-12	<3	2
<3	<6			1-6		1
				<1		<1
						<1

DDD Protective Supervision Acuity Scale

NEW SECTION

WAC 388-828-5000 What is the DDD protective supervision acuity scale? The DDD Protective Supervision Acuity Scale is an assessment of your protective supervision support need(s).

NEW SECTION

WAC 388-828-5020 How is information in the protective supervision acuity scale used by DDD? (1) Information obtained in the Protective Supervision Acuity Scale is one of the factors used by DDD to determine the amount of waiver respite, if any, that you are authorized to receive.

(2) The Protective Supervision Acuity Scale is not used when determining your Medicaid personal care or waiver personal care; and

(3) The information is used for reporting purposes to the legislature and the department.

NEW SECTION

WAC 388-828-5040 What questions are asked in the DDD protective supervision acuity scale? The three questions that are asked for the DDD Protective Supervision Acuity Scale are in WAC 388-828-5060.

NEW SECTION

WAC 388-828-5060 How does DDD score each question? DDD selects one answer per each question that best describes your reported need.

(1) What level of monitoring does the client typically require during awake hours?

Answers	Definitions	Score
Independent	Can be left unattended. Might occasionally show poor judgement, but does not require routine access to a support person.	0
Remote (e.g., a week or more)	Can be left unattended for extended periods of time, but requires access to a support person either via phone or someone who visits the person weekly or so.	1
Periodic (e.g., every couple of days)	Can be left unattended for a couple of days, but requires access to a support person who checks in every few days via telephone or in person.	2
Monitoring (e.g., half day, unstructured)	Can be left unattended for several hours at a time (2-4 hours) to engage in independent activities, but needs access to a support person daily for guidance or assistance.	3
Close Proximity (e.g., 1-2 hours, structured)	Can be left unattended for short periods of time (1-2 hours), provided that the environment is strictly structured and that a support person can respond quickly in an emergency situation.	4
Onsite (e.g., on property)	Cannot be left unattended. Requires a support person on the property at all times, at least during awake hours.	5
Line of Sight/Earshot (e.g., close observation)	Cannot be left unattended. Requires a support person within the room or within earshot of the client's location at all times during awake hours.	6

(2) What assistance does the client need to handle unfamiliar or unexpected situations?

Answers	Definitions
Can resolve independently	The client can generally handle unfamiliar or unexpected situations. The client shows generally good judgment and awareness of personal safety.
Can resolve with remote assistance	The client can handle unfamiliar or unexpected situations by calling or contacting someone remotely for assistance (e.g., by telephone or email). The support person does not need to be physically present.
Needs someone physically present to assist	When unfamiliar or unexpected situations occur, generally someone must be present or come to the client to help the client resolve the issue.
Needs full physical assistance	The client cannot generally participate in resolving such situations; someone else must resolve them.

(3) Is client able to summon help?

Answers	Definitions
Can call someone on telephone	Client can discern when help is needed and contact someone via telephone or other electronic means. This includes dialing 911, using speed dial to contact someone, email, radio, or dialing a phone number.
Can seek help outside the house, nearby	Client can discern when help is needed and can summon a remote caregiver, neighbor, or other person outside the house or nearby to assist when necessary.
Can seek help inside house	Client can discern when help is needed and can summon a caregiver or roommate within the house to assist when necessary.
Cannot summon help	Client is unable to summon help or discern a dangerous situation that would require help.

NEW SECTION

WAC 388-828-5080 How does DDD determine your adjusted protective supervision acuity score? DDD determines your adjusted protective supervision acuity score by

applying the following age-based score adjustments to your level of monitoring score for question number one in WAC 388-828-5060:

If you are:	Then your age-based score adjustment is:
18 years or older	Score is equal to your level of monitoring score
16-17 years of age	Subtract 1 from your level of monitoring score
12-15 years of age	Subtract 2 from your level of monitoring score
8-11 years of age	Subtract 3 from your level of monitoring score
5-7 years of age	Subtract 4 from your level of monitoring score
0-4 years of age	Subtract 5 from your level of monitoring score
If your adjusted level of monitoring score is a negative number, your adjusted protective supervision acuity score is zero.	

Example: If you are fifteen years old and "close proximity, (e.g., 1-2 hours, structured)" is identified as your level of monitoring score, your adjusted protective supervision acuity score is: Your close proximity score of four minus age-based score adjustment of two. For age twelve through fifteen, this equals an adjusted protective supervision score of two.

NEW SECTION

WAC 388-828-5100 How does DDD determine your protective supervision support level? DDD uses the following table in determining your protective supervision support level:

If your Adjusted Protective Supervision score is:	Then your Protective Supervision Support Level is:
5-6	High
3-4	Medium
1-2	Low
0	None

DDD Caregiver Status Acuity Scale

NEW SECTION

WAC 388-828-5120 What is the DDD caregiver status acuity scale? The DDD Caregiver Status Acuity Scale is an assessment of risks associated with your caregiver's ability to provide care.

NEW SECTION

WAC 388-828-5140 How is information in the DDD caregiver status acuity scale used by DDD? (1) Information obtained in the DDD Caregiver Status Acuity Scale is one of the factors used by DDD to determine the amount of waiver respite, if any, that you are authorized to receive.

(2) The DDD Caregiver Status Acuity Scale does not affect service determination for the Medicaid personal care or waiver personal care assessment; and

(3) The information is used for reporting purposes to the legislature and the department.

NEW SECTION

WAC 388-828-5160 When is a collateral contact an informal caregiver? A collateral contact is an informal caregiver when the person provides you supports without payment from DDD for a service.

NEW SECTION

WAC 388-828-5180 When is a collateral contact a formal caregiver? A collateral contact is a formal caregiver when the person receives payment from DDD to provide you a service.

NEW SECTION

WAC 388-828-5200 When is a collateral contact a backup caregiver? A collateral contact is only a backup caregiver when:

- (1) He or she has been identified as an informal caregiver; and
- (2) He or she is available to provide assistance as an informal caregiver when other caregivers are unavailable.

NEW SECTION

WAC 388-828-5220 Are you allowed to identify more than one person as a backup caregiver? There are no limitations regarding the number of persons you are allowed to identify as backup caregivers.

NEW SECTION

WAC 388-828-5240 Who is your primary caregiver? Your primary caregiver is the formal or informal caregiver who provides you with the most support.

NEW SECTION

WAC 388-828-5260 What questions are asked in the DDD caregiver status acuity scale and how are your caregiver's answers scored? The DDD Caregiver Status Acuity Scale consists of six questions that must be answered by your primary caregiver. Scores for each question are determined based on your primary caregiver's response for each question.

(1) Overall, how stressed do you feel in caring for the client?

Answers	Score
Not stressed	0
Somewhat stressed	4
Very stressed	9

(2) Other care giving for persons who are disabled, seriously ill, or under age 5?

Answers	Score
Client is the only person who requires direct care	0
Part-time responsibility for one or more additional persons	1
Full-time responsibility for one additional person	2
Full-time responsibility for two or more additional persons	4

(3) Factors that make it hard to be a caregiver for client?

Answers	Score
Decline in physical health	1
Decline in emotional health	1
Negative impact on employment	1
Getting less than 5 hours of uninterrupted sleep because of care giving	1
Health or safety impact	1
Other issues than impact care giving	1

(4) How much do these things impact your ability to care for the client?

Answers	Score
Little or no impact	0
Possible impact, no concrete evidence	1
Concrete evidence of reduced care	4
Unable	9

(5) Is the client creating significant stress on other household members?

Answers	Score
Stable and healthy	0
Clearly identifiable signs of stress	4
Serious risk of failure	9

(6) How long do you expect to continue providing care?

Answers	Score
2 or more years	0
6 months to 2 years	0
1 to 6 months	4
Less than 1 month	9

NEW SECTION

WAC 388-828-5280 Which caregiver risk factors determine the caregiver risk level? The following criteria are used to determine a caregiver's risk level:

If the following criteria are met:	Then your caregiver risk factor (s) are:
(1) You have a score of "less than 1 month" for question 6 ("How long do you expect to continue providing care?") in WAC 388-828-5260.	Immediate risk of loss of caregiver
(2) You have not identified any collateral contacts in the CARE system as having a contact role of "informal caregiver;" and (3) You have not identified any collateral contacts in the CARE system as having a contact role of "formal caregiver;" and (4) You have not identified any collateral contacts in the CARE system as having a contact role of "backup caregiver;" and (5) You do not have a paid provider, authorized by DDD, to provide supports for a DDD paid service; and (6) You have an adjusted protective supervision score of 3 or more in WAC 388-828-5080.	No caregiver, and needs one
(7) You have identified one of your collateral contacts in the CARE system as having a contact role of primary caregiver; and (8) Your primary caregiver is 70 years of age or older; and (9) Your primary caregiver lives with you in the same residence.	Aging caregiver

NEW SECTION

WAC 388-828-5300 How does DDD determine a caregiver risk level? (1) The following table reflects the criteria that are used to calculate the caregiver risk level score:

Your scores for the following questions in WAC 388-828-5240			Your Caregiver Risk Level
Your score for question 4	Your score for question 5	Your score for question 6	
0	0	0	None
0	0	4	Medium
0	0	9	Immediate
0	4	0	Medium
0	4	4	Medium
0	4	9	Immediate
0	9	0	High
0	9	4	High
0	9	9	Immediate
1	0	0	Low
1	0	4	Medium
1	0	9	Immediate
1	4	0	Medium
1	4	4	Medium
1	4	9	Immediate
1	9	0	High
1	9	4	High
1	9	9	Immediate
4	0	0	Medium
4	0	4	Medium
4	0	9	Immediate
4	4	0	Medium
4	4	4	Medium
4	4	9	Immediate
4	9	0	High
4	9	4	High
4	9	9	Immediate
9	0	0	High
9	0	4	High
9	0	9	Immediate

NEW SECTION

WAC 388-828-5360 How does DDD determine the risk level score of your backup caregiver not being able to provide the supports you need when you need them? The following table identifies the criteria that are used to calculate the risk level score of your backup caregiver not being able to provide the supports you need when you need them:

If the availability of your back caregiver is:	Then your risk level score is:
(1) Your backup caregivers are available routinely or upon request as evidenced by a score of 0 to 2 for question 1 of the backup caregiver subscale; and (2) You have a person identified as a backup caregiver that does not live with you evidenced by the "Lives with client" checkbox not being selected as contact details information for him or her.	1 (Not at risk)
(3) Your backup caregivers are available upon an emergency only basis evidenced by a score of 4 for question 1 of the backup caregiver subscale; and (4) "Lives with client" has been selected for all of the persons you have identified as your backup caregivers.	2 (Some risk)
(5) You have no other caregiver available evidenced by a score of 9 for question 1 of the backup caregiver subscale.	3 (High risk)

Your scores for the following questions in WAC 388-828-5240			Your Caregiver Risk Level
Your score for question 4	Your score for question 5	Your score for question 6	
9	4	0	High
9	4	4	High
9	4	9	Immediate
9	9	0	High
9	9	4	High
9	9	9	Immediate

(2) If your maximum scores for questions four, five, and six are four or less and you have an "Aging Caregiver" risk factor in WAC 388-828-5280, your caregiver risk level is medium.

(3) If your caregiver risk factor is "No caregiver, and needs one" in WAC 388-828-5280, your caregiver risk level is immediate regardless of your scores for questions four, five, and six.

NEW SECTION

WAC 388-828-5320 How does DDD determine the availability of a backup caregiver? DDD's determination of availability of a back up caregiver is based on the responses of you and your respondent(s) to the following question:

(1) Under what conditions are other caregivers available?

Answers available for selection	Score
Routinely provides care	0
Upon request	2
Emergency only	4
No other caregiver available	9

NEW SECTION

WAC 388-828-5340 How does DDD determine whether a backup caregiver lives with you? You or your respondent identifies that your backup caregiver(s) lives with you.

DDD Activities of Daily Living (ADL) Acuity Scale

NEW SECTION

WAC 388-828-5380 What is the DDD activities of daily living (ADL) acuity scale? The DDD Activities of Daily Living Acuity Scale is an algorithm that determines your ADL support needs level.

(1) The DDD Activities of Daily Living Acuity Scale does not affect service determination for the Medicaid personal care or waiver personal care assessments; and

(2) The information is used for reporting purposes to the legislature and the department.

NEW SECTION

WAC 388-828-5400 What does the activities of daily living (ADL) acuity scale measure? The DDD ADL acuity scale measures:

(1) Your ADL support needs level from the Support Assessment for Children if you are age birth through fifteen years old; or

(2) Your ADL support needs level from the SIS Assessment if you are age sixteen or older.

NEW SECTION

WAC 388-828-5420 How does DDD determine your ADL support needs score if you are age birth through fifteen? If you are a child age birth through fifteen, your ADL support needs score is the total of your acuity scores for each of the following ADL questions in the Support Assessment for Children:

ADL questions from the Support Assessment for Children in WAC 388-828-3040	
Question #	Text of ADL Questions:
1	Dress and Groom self
2	Toilet self
3	Eat at age level
4	Move around

Example:

SIS ADL Questions	Text of SIS ADL Questions	If your "Frequency of Support" score is:	And your "Type of Support" score is:	Then your adjusted "Type of Support" score is:
A1	Using the toilet	3	3	3
A4	Eating food	1	2	0
A6	Dressing	3	3	3
A7	Bathing and taking care of personal hygiene and grooming needs	1	2	0
E1	Taking medications	3	2	2

NEW SECTION

WAC 388-828-5440 How does DDD use your ADL support needs score for the support assessment for children? (1) DDD uses your ADL support needs score and the following table to determine your ADL support needs level for the Support Assessment for Children:

If your ADL support needs score is:	Then your ADL support need level is:	Value
11 to 16	High	3
7 to 10	Medium	2
2 to 6	Low	1
0 or 1	None	0

(2) If your acuity score is four for any of the ADL questions in WAC 388-828-3040, your ADL support needs level is determined to be high.

NEW SECTION

WAC 388-828-5460 How does DDD determine your ADL support needs score if you are age sixteen or older?

(1) If you are age sixteen or older, your ADL support needs score is the total adjusted "Type of Support" scores from the following SIS questions:

ADL questions from the SIS assessment in WAC 388-828-4200 and WAC 388-828-4280	
Question #	Text of ADL questions:
A1	Using the toilet
A4	Eating food
A6	Dressing
A7	Bathing and taking care of personal hygiene and grooming needs
E1	Taking medications
E4	Ambulating and moving about

(2) If your "Frequency of Support" score for a SIS ADL question is zero or one, adjust your "Type of Support" score for that question to zero.

(3) If your "Frequency of Support" score for a SIS ADL support question is two, three, or four, no adjustment is needed to your "Type of Support" score.

SIS ADL Questions	Text of SIS ADL Questions	If your "Frequency of Support" score is:	And your "Type of Support" score is:	Then your adjusted "Type of Support" score is:
E4	Ambulating and moving about	0	0	0
Your SIS ADL support needs score:				8

NEW SECTION

WAC 388-828-5480 How does DDD determine your ADL support needs level for the SIS assessment? (1) DDD uses your ADL support needs score and the following table to determine your ADL support needs level for the SIS Assessment if you are age sixteen or older:

If the sum of your adjusted ADL support needs score for the SIS is:	Then your ADL support needs level for the SIS is:	Value
16 to 24	High	3
10 to 15	Medium	2
2 to 9	Low	1
0 or 1	None	0

(2) If you have a "Type of Support" score of four for any of the questions listed in WAC 388-828-5460, your ADL support needs level for the SIS Assessment is determined to be high.

DDD Behavioral Acuity Scale

NEW SECTION

WAC 388-828-5500 What is the DDD behavioral acuity scale? The DDD Behavioral Acuity scale is an assessment of your behavioral support needs based on your scores from the SIS Exceptional Behavior scale.

NEW SECTION

WAC 388-828-5520 How is information in the DDD behavioral acuity scale used by DDD? (1) Information obtained in the DDD Behavioral Acuity Scale is one of the factors used by DDD to determine the amount of waiver respite, if any, that you are authorized to receive.

(2) The DDD Behavioral Acuity Scale does not affect service determination for the Medicaid personal care or waiver personal care assessment.

If the characteristics of your most prominent behavior are:	Then your score for severity is:
Your behavior may be uncooperative, inconvenient, repetitive, and/or require time intensive support. However, your behavior is not considered aggressive or self-injurious.	Minor incidents
Your behavior, if allowed to continue over time, may result in life-threatening harm for yourself and/or others.	Potentially dangerous
Your behavior without immediate intervention will result in life-threatening harm for yourself and/or others.	Life threatening

(3) The information is used for reporting purposes to the legislature and the department.

NEW SECTION

WAC 388-828-5540 How does DDD determine if you have a prominent behavior? You are determined to have a prominent behavior when a question in WAC 388-828-4380 has a support score of one or two.

NEW SECTION

WAC 388-828-5560 Do all prominent behaviors get scored? If you have two or more prominent behaviors, DDD will ask you and your respondent(s) for input and must select only one behavior to be scored as your most prominent behavior.

NEW SECTION

WAC 388-828-5580 How does DDD determine the frequency of your most prominent behavior? If you have a prominent behavior, DDD asks you and your respondent(s) to identify the frequency of occurrence of your most prominent behavior using the following table:

If the frequency of occurrence of your most prominent behavior is:	Then your score for frequency is:
Less than once per month	Rare
1 to 3 times per month	Occasional
1 to 4 times per week	Occasional
1 to 3 times daily	Frequent
4 or more times daily	Frequent

NEW SECTION

WAC 388-828-5600 How does DDD determine the severity of your most prominent behavior? If you have a prominent behavior, DDD asks you and your respondent(s) to identify the severity of your most prominent behavior using the following table:

NEW SECTION

WAC 388-828-5620 How does DDD determine the type of caregiver assistance you receive to help you keep your most prominent behavior under control? DDD asks you and your respondent(s) to identify the type of caregiver assistance you receive to help you keep your most prominent behavior under control using the following table:

If the caregiver assistance provided to support your most prominent behavior is:	Then your score for caregiver assistance is:
Your respondent reports that you do not require any assistance to keep your most prominent behavior under control.	No supervision, Oversight
Your respondent reports that you may at times require supervision and verbal redirection to keep your most prominent behavior under control.	Verbal redirection
Your respondent reports that you require occasional physical guidance of limbs and/or caregiver intervention to keep your most prominent behavior under control.	Occasional physical guiding or intervention
Your respondent reports that you require in-sight supervision at all times and may require 1 to 2 person physical restraint or removal from the area to keep your most prominent behavior under control.	In-Sight Supervision -Physical restraint

NEW SECTION

WAC 388-828-5640 How does DDD determine your behavioral acuity level? DDD uses your frequency, severity, and caregiver assistance scores to determine your behavioral acuity level using the following table:

If your score for frequency is:	And your score for severity is:	And your score for caregiver assistance is:	Then your behavioral acuity level is:
Rare	Minor	None	Low
		Verbal redirection	Low
		Physical guiding or selection	Low
		Physical restraint	Low
	Potentially Dangerous	None	Low
		Verbal redirection	Low
		Physical guiding or selection	Medium
		Physical restraint	High
	Life-Threatening	None	Medium
		Verbal redirection	Medium
		Physical guiding or selection	High
		Physical restraint	High
Occasional	Minor	None	Low
		Verbal redirection	Low
		Physical guiding or selection	Low
		Physical restraint	Medium
	Potentially Dangerous	None	Medium
		Verbal redirection	Medium
		Physical guiding or selection	Medium
		Physical restraint	High
	Life Threatening	None	Medium
		Verbal redirection	Medium
		Physical guiding or selection	High
		Physical restraint	High

If your score for frequency is:	And your score for severity is:	And your score for caregiver assistance is:	Then your behavioral acuity level is:
Frequent	Minor	None	Low
		Verbal redirection	Low
		Physical guiding or selection	Medium
		Physical restraint	Medium
	Potentially Dangerous	None	Medium
		Verbal redirection	Medium
		Physical guiding or selection	High
		Physical restraint	High
	Life-Threatening	None	High
		Verbal redirection	High
		Physical guiding or selection	High
		Physical restraint	High

DDD Medical Acuity Scale

NEW SECTION

WAC 388-828-5660 What is the DDD medical acuity scale? The DDD Medical Acuity Scale is an algorithm that determines your medical support needs level.

(1) The DDD Medical Acuity Scale does not affect service determination for the Medicaid personal care or waiver personal care assessments; and

NEW SECTION

WAC 388-828-5700 How does DDD determine your medical acuity level? DDD uses your SIS support scores to questions in the Exceptional Medical Support Needs Scale per WAC 388-828-4360 and the following table to determine your medical acuity level:

If you meet the following criteria:	Then your medical acuity level is:	Value
(1) If you have a score of 2 on questions 1, 4, and 7;	High	3
(2) If you have a score of 2 on any two of the following questions: 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, or 17;	High	3
(3) If your total exceptional medical support needs score is 8 or higher;	High	3
(4) If you have a score of 2 on any of the following questions: 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, or 17 and do not meet the criteria for a high medical acuity level;	Medium	2
(5) If your total exceptional medical support needs score is 6 or 7 and you do not meet the criteria for a high medical acuity level;	Medium	2
(6) If your total exceptional medical support needs score is 5 or less, but greater than zero, and you do not have a score of 2 on any questions excluding number 15;	Low	1
(7) If your total exceptional medical support needs score equals zero.	None	0

DDD Interpersonal Support Acuity Scale

NEW SECTION

WAC 388-828-5720 What is the DDD interpersonal support acuity scale? The DDD Interpersonal Support Acuity Scale is an algorithm that measures your ability to interact with others in a variety of settings and determines your interpersonal support needs level.

(2) The information is used for reporting purposes to the legislature and the department.

NEW SECTION

WAC 388-828-5680 What is the purpose of the DDD medical acuity scale? The purpose of the DDD Medical Acuity scale is to determine your medical acuity level.

ity Scale is an algorithm that measures your ability to interact with others in a variety of settings and determines your interpersonal support needs level.

(1) The DDD Interpersonal Support Acuity Scale does not affect service determination for the Medicaid personal care or waiver Personal Care assessments; and

(2) The information is used for reporting purposes to the legislature and the department.

(2) Your interpersonal support acuity level from the SIS Assessment if you are age sixteen or older.

NEW SECTION

WAC 388-828-5740 What does the DDD interpersonal support acuity scale determine? The DDD Interpersonal Support Acuity Scale determines:

(1) Your interpersonal support acuity level from the Support Assessment for Children if you are age birth through fifteen; or

NEW SECTION

WAC 388-828-5760 How does DDD determine your interpersonal support needs score if you are age birth through fifteen? If you are a child age birth through fifteen, your interpersonal support needs score is the total of your acuity scores for each of the following questions in the Support Assessment for Children:

Interpersonal support needs questions from the Support Assessment for Children in WAC 388-828-3040	
Question #	Text of Questions:
5	Communicate: What support does the child need to communicate with others of same age?
11	Have relationships with family members: What support does the child need to make the kind of relationships with family members expected of non disabled children of the same age?
13	Play with others: What supports are needed for the child to develop age-level skills in playing with others?
17	Effectively relate to other students/peers: What support does the person need to most effectively relate to fellow students and/or peers?
18	Have behaviors which promote being included: What support is needed for this person to have behaviors which promote being included?

NEW SECTION

WAC 388-828-5780 What does the DDD interpersonal support needs score determine if you are age birth through fifteen? If you are age birth through fifteen, DDD uses your interpersonal support needs score and the following table to determine your interpersonal support needs level:

If your interpersonal support needs score is:	Then your interpersonal support needs level is:	Value
(1) Your interpersonal support needs score is 10 or more.	High	3
(2) Your interpersonal support needs score is a 4, 5, 6, 7, 8, or 9; or (3) You have an acuity score of 3 or 4 for one of the interpersonal support needs questions listed in WAC 388-828-3040.	Medium	2
(4) Your interpersonal support needs score is 1, 2, or 3; and (5) You do not have an acuity score of 3 or 4 for one of the interpersonal support needs questions listed in WAC 388-828-3040.	Low	1
(6) Your interpersonal support needs score is zero.	None	0

NEW SECTION

WAC 388-828-5800 How does DDD determine your interpersonal support needs score if you are age sixteen or older? If you are age sixteen or older, your interpersonal support needs score is determined by adding your raw scores to the following SIS questions:

Interpersonal support needs questions from the SIS assessment	
Question #	Text of interpersonal support needs questions:
B7	Interacting with community members

Interpersonal support needs questions from the SIS assessment	
C1	Interacting with others in learning activities
D3	Interacting with co-workers
D4	Interacting with supervisors/coaches
D8	Seeking information and assistance from an employer
F1	Socializing within the household
F3	Socializing outside the household

Interpersonal support needs questions from the SIS assessment	
F5	Communicating with others about personal needs
F6	Using appropriate social skills

NEW SECTION

WAC 388-828-5820 How does DDD use your interpersonal support needs score if you are age sixteen or older? If you are age sixteen or older, DDD uses your interpersonal support needs score and the following table to determine your interpersonal support needs level:

If your interpersonal support needs score is:	Then your interpersonal support needs level is:	Value
(1) 56 or more	High	3
(2) At least 20; and (3) Less than 56	Medium	2
(4) 3 or 4 for both "Type of Support" and "Frequency of Support" for one of the interpersonal support needs questions	Medium	2
(5) At least 1; and (6) Less than 20; and (7) You do not have a score of 3 or 4 for both "Type of Support" and "Frequency of Support" for one of the interpersonal support needs questions	Low	1
(8) Zero	None	0

DDD Mobility Acuity Scale

(2) Your mobility acuity level from the SIS Assessment if you are age sixteen or older.

NEW SECTION

WAC 388-828-5840 What is the DDD mobility acuity scale? The DDD Mobility Acuity Scale is an algorithm that measures your ability to ambulate and move around.

(1) The DDD Mobility Acuity Scale does not affect service determination for the Medicaid personal care or waiver personal care assessments; and

(2) The information is used for reporting purposes to the legislature and the department.

NEW SECTION

WAC 388-828-5880 How does DDD determine your mobility acuity level if you are age birth through fifteen? If you are age birth through fifteen, your mobility acuity level is determined by your acuity score to question four of the ICF/MR Level of Care Assessment in WAC 388-828-3040 using the following table:

NEW SECTION

WAC 388-828-5860 What does the DDD mobility acuity scale determine? The DDD Mobility Acuity Scale determines:

(1) Your mobility acuity level from the Support Assessment for Children if you are age birth through fifteen; or

If your acuity score for question 4 is:	Then your mobility acuity level is:
4	High
3	Medium
1 or 2	Low
0	None

NEW SECTION

WAC 388-828-5900 How does DDD determine your mobility acuity level if you are age sixteen or older? If you are age sixteen or older, your mobility acuity level is determined by your scores to question E4 "Ambulating and moving about" in WAC 388-828-4280 using the following table:

If you score for "Frequency of Support" is:	And your score for "Type of Support" is:	Then your Mobility Acuity Level is:	Value
3 or 4	4	High	3
3 or 4	3	Medium	2
If your raw score for question E4 or 5 or more and you do not meet the criteria for a high or medium mobility acuity level		Low	1
If your raw score for question E4 is 4 or less		None	0

Respite Assessment

(2) Companion home services per chapter 388-821 WAC.

NEW SECTION

WAC 388-828-5920 What is the respite assessment?

The respite assessment is an algorithm in the DDD Assessment that determines the number of hours of respite care, if any, that your provider may receive per year if DDD has authorized you to receive Basic, Basic Plus, or Core waiver services per chapter 388-845 WAC.

NEW SECTION

WAC 388-828-5940 Are there any exceptions when the respite assessment is not used to determine the number of hours for waiver respite services? The respite assessment is not used to determine waiver respite when you are receiving any of the following:

(1) Voluntary Placement Program services per chapter 388-826 WAC; or

NEW SECTION

WAC 388-828-5960 What is the purpose of the respite assessment? The purpose of the respite assessment is to determine your respite assessment level using your scores from:

- (1) The Protective Supervision Acuity Scale;
- (2) The DDD Caregiver Status Acuity Scale; and
- (3) The DDD Behavioral Acuity Scale.

NEW SECTION

WAC 388-828-5980 How does DDD determine your respite assessment level? (1) DDD determines your respite assessment level using the following table:

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2
0	Low	1	None	1
0	Low	1	Low	1
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1
0	High	1	Medium	2
0	High	1	High	2
0	High	2 or 3	None	2

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1
1	Low	2 or 3	Low	1
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2
2 or 3	Immediate	1	High	3
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1	Low	2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3
4	Medium	2 or 3	Medium	3
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4
4	Immediate	2 or 3	High	4
5	None	1	None	2
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2
5	High	1	Medium	3
5	High	1	High	4
5	High	2 or 3	None	3
5	High	2 or 3	Low	3
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3
6	Medium	1	Medium	3
6	Medium	1	High	4
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4
6	High	2 or 3	Medium	5
6	High	2 or 3	High	5
6	Immediate	1	None	3
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) DDD adds one level to your respite assessment level when your respite assessment level is determined to be a one, two, three, or four and you have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the DDD Caregiver Status Acuity Scale. See WAC 388-828-5260.

If your respite assessment level is:	Then the maximum number of hours you may receive for respite care each year is:
2	240
3	336
4	432
5	528

NEW SECTION

WAC 388-828-6000 How does DDD determine the maximum number of hours you may receive for respite care? The maximum number of hours you may receive per year is determined by using the following table:

If your respite assessment level is:	Then the maximum number of hours you may receive for respite care each year is:
1	240

Programs and Services Component

NEW SECTION

WAC 388-828-6020 What is the purpose of the programs and services component? The purpose of the Programs and Services component is to document:

- (1) DDD services you are currently receiving;

(2) DDD services you have been approved to receive; and

(3) If you currently meet the ICF/MR Level of Care requirements for continued DDD HCBS waiver eligibility or for potential DDD HCBS waiver services if resources become available.

Service Level Assessment Module

NEW SECTION

WAC 388-828-7000 What is the purpose of the service level assessment module? The purpose of the Service Level Assessment module is to determine a service level and the number of hours you are eligible to receive for Medicaid or Waiver Personal Care services per chapter 388-106 WAC.

NEW SECTION

WAC 388-828-7020 What components contained in the service level assessment module determine a service level and/or number of hours? The Service Level Assessment module contains two components that are used to determine a service level and/or number of hours for the following:

(1) The CARE Assessment for Medicaid or waiver personal care services, as defined in chapter 388-106 WAC; and

(2) The DDD Seizure Acuity Scale as defined in WAC 388-828-7040 through WAC 388-828-7080.

DDD Seizure Acuity Scale

NEW SECTION

WAC 388-828-7040 What is the DDD seizure acuity scale? (1) The DDD Seizure Acuity Scale is an assessment of your seizure support needs.

(2) The DDD Seizure Acuity Scale does not affect service determination for the Medicaid personal care or waiver personal care assessments.

(3) The information is used for reporting purposes to the legislature and the department.

NEW SECTION

WAC 388-828-7060 What does the DDD seizure acuity scale measure? The DDD Seizure Acuity Scale is used to measure your seizure acuity level.

NEW SECTION

WAC 388-828-7080 How does DDD determine your seizure acuity level? DDD uses criteria in the following table to determine your seizure acuity level:

If you meet the following criteria:	Then your seizure acuity level is:
(1) You received medical attention for your seizures, on two or more occasions. (2) Medical attention includes: (a) Visits to a primary care physician; (b) Visits to an emergency room; (c) Calls to 911 that result in paramedics having to provide care, treatment, or stabilization services.	High
(3) You have convulsive seizures (Tonic-clonic or atonic) and meet the following conditions: (a) You have a seizure at least once every three months; and (b) Your seizures last at least five minutes.	High
(4) You have convulsive seizures (Tonic-clonic or atonic) and meet the following conditions: (a) You have a seizure at least once every three months; and (b) Your seizures last less than five minutes.	Medium
(5) You report a history of having seizures and you do not meet the requirements for a high or medium seizure acuity level.	Low
(6) You report that you do not have a history of seizures.	None

Individual Support Plan Module

NEW SECTION

WAC 388-828-8000 What is the purpose of the individual support plan (ISP) module? The purpose of the individual support plan module is to create a written plan that includes:

(1) Your acuity scores generated from the Support Assessment;

(2) Referral information;

(3) The SSP, if any, you are approved to receive in lieu of a DDD paid service; and

(4) DDD paid services you are authorized to receive:

(a) If you are enrolled in a DDD waiver, the ISP must address all the health and welfare needs identified in your ICF/MR Level of Care assessment and the supports used to meet your assessed needs; or

(b) If you are not enrolled in a DDD waiver, DDD is only required to address the DDD paid services you are approved to receive.

NEW SECTION

WAC 388-828-8020 What components contained in the individual support plan module determines a service level and/or number of hours? The foster care rate assessment, as defined in chapter 388-826 WAC, is the only component in the Individual Support Plan module that determines a service level and/or number of hours.

NEW SECTION

WAC 388-828-8040 How does DDD determine which health and welfare needs must be addressed in your individual support plan if you are age birth through fifteen? If you are age birth through fifteen and are receiving DDD HCBS waiver services or reside in a state-only residential setting, DDD uses the following tables to determine the health and welfare needs that must be addressed in your Individual Support Plan:

(1) Activities from the Support Needs Assessment for Children:

#	Questions in the Support Needs Assessment for Children:	DDD must address in your ISP if you have an acuity score of:	Health and Welfare Category
1	Dress and groom self	2 or more	Home Living
2	Toilet self	2 or more	Home Living
3	Eat at age level	3 or more	Home Living
4	Move around	3 or more	Home Living
5	Communicate	2 or more	Home Living
7	Make choices and take responsibility	2 or more	Protection and Advocacy
8	Explore environment	3 or more	Community Living
9	Meet therapy health needs	1 or more	Medical Supports
10	Help family continue to meet child's needs	1 or more	Protection and Advocacy
15	Identify and respond safely to emergencies	1 or more	Health and Safety
16	Practice age-level safety measures	2 or more	Protection and Advocacy
17	Effectively relate to other students/peers	3 or more	Employment
18	Have behaviors which promote being included	3 or more	Behavior Supports

(2) Medical Supports from the SIS Exceptional Medical Support Needs Scale

#	Questions in the Exceptional Medical Support Needs Scale	DDD must address in your ISP if you have an acuity score of:	Health and Welfare Category
1	Inhalation or oxygen therapy	1 or more	Medical Supports
2	Postural drainage	1 or more	Medical Supports
3	Chest PT	1 or more	Medical Supports
4	Suctioning	1 or more	Medical Supports
5	Oral Stimulation or Jaw Repositioning	1 or more	Medical Supports
6	Tube feeding (e.g., nasogastric)	1 or more	Medical Supports
7	Parenteral feeding (e.g., IV)	1 or more	Medical Supports
8	Turning or positioning	1 or more	Medical Supports
9	Dressing of open wound(s)	1 or more	Medical Supports
10	Protection from infectious diseases due to immune system impairment	1 or more	Medical Supports
11	Seizure management	1 or more	Medical Supports
12	Dialysis	1 or more	Medical Supports
13	Ostomy care	1 or more	Medical Supports
14	Lifting and/or transferring	1 or more	Medical Supports
15	Therapy services	1 or more	Medical Supports
16	Diabetes management	1 or more	Medical Supports
17	Other(s)	1 or more	Medical Supports

(3) Behavioral Supports from the SIS Exceptional Behavior Support Needs Scale

#	Questions in the Exceptional Behavior Support Needs Scale:	DDD must address in your ISP if you have an acuity score of:	Health and Welfare Category
1	Prevention of assaults or injuries to others	1 or more	Behavioral Supports
2	Prevention of property destruction (e.g., fire setting, breaking furniture)	1 or more	Behavioral Supports
3	Prevention of stealing	1 or more	Behavioral Supports
4	Prevention of self-injury	1 or more	Behavioral Supports
5	Prevention of pica (ingestion of inedible substances)	1 or more	Behavioral Supports
6	Prevention of suicide attempts	1 or more	Behavioral Supports
7	Prevention of sexual aggression	1 or more	Behavioral Supports
8	Prevention of non-aggressive but inappropriate behavior (e.g., exposes self in public, exhibitionism, inappropriate touching or gesturing)	1 or more	Behavioral Supports
9	Prevention of tantrums or emotional outbursts	1 or more	Behavioral Supports
10	Prevention of wandering	1 or more	Behavioral Supports
11	Prevention of substance abuse	1 or more	Behavioral Supports
12	Maintenance of mental health treatments	1 or more	Behavioral Supports
13	Managing attention-seeking behavior	1 or more	Behavioral Supports
14	Managing uncooperative behavior	1 or more	Behavioral Supports
15	Managing agitated/over-reactive behavior	1 or more	Behavioral Supports
16	Managing obsessive/repetitive behavior	1 or more	Behavioral Supports
17	Prevention of other serious behavior problem(s)	1 or more	Behavioral Supports

(4) Caregiver from the SIS Exceptional Behavior Support Needs Scale

#	Question in the DDD Caregiver Status Acuity Scale:	DDD must address in your ISP if you have a score:	Health and Welfare Category
6	How long do you think you expect to continue providing care?	1 to 6 months or less than 1 month	DDD Caregiver Status

NEW SECTION

WAC 388-828-8060 How does DDD determine which health and welfare needs must be addressed in your individual support plan if you are age sixteen or older? (1) If you are age sixteen or older and receiving DDD HCBS waiver services or reside in a state-only residential setting, DDD uses the following table to determine the health and welfare needs that must be addressed in your Individual Support Plan:

#	SIS Activity	DDD must address in the ISP if your Type of Support score is:	Health and Welfare Category
A1	Using the toilet	3 or more	Home Living
A2	Taking care of clothes (includes laundering)	3 or more	
A3	Preparing food	3 or more	
A4	Eating food	3 or more	
A5	Housekeeping and cleaning	3 or more	

#	SIS Activity	DDD must address in the ISP if your Type of Support score is:	Health and Welfare Category
A6	Dressing	3 or more	
A7	Bathing and taking care of personal hygiene and grooming needs	3 or more	
A8	Operating home appliances	3 or more	
A9	Using currently prescribed equipment or treatment	3 or more	
B1	Getting from place to place throughout the community (transportation)	2 or more	Community Living
B2	Participating in recreation/leisure activities in the community settings	2 or more	
B3	Using public services in the community	2 or more	
B4	Going to visit friends and family	4	
B6	Shopping and purchasing goods and services	2 or more	
B7	Interacting with community members	4	
B8	Accessing public buildings and settings	2 or more	
D3	Interacting with co-workers	3 or more	Employment
D4	Interacting with supervisors and or coaches	3 or more	
E1	Taking medications	2 or more	Health and Safety
E2	Avoiding health and safety hazards	3 or more	
E3	Obtaining health care services	3 or more	
E4	Ambulating and moving about	3 or more	
E6	Maintaining a nutritious diet	3 or more	
E7	Maintaining physical health and fitness	3 or more	
F2	Participating in recreation/leisure activities with others	2 or more	Social Activities
F4	Making and keeping friends	4	
F6	Using appropriate social skills	4	
G2	Managing money and personal finances	2 or more	Protection and Advocacy
G3	Protecting self from exploitation	2 or more	
G7	Making choices and decisions	2 or more	

(2) If you have a support score of one or more for any of the questions in the SIS Exceptional Medical Support Needs Scale, DDD must address your support need using the medical supports category.

(3) If you have a support score of one or more for any of the questions in the SIS Exceptional Behavior Support Needs Scale, DDD must address your support need using the behavior supports category.

WSR 07-04-066
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed February 1, 2007, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-014.

Title of Rule and Other Identifying Information: **Note:** The DSHS division of child support (DCS) has adopted emergency rules under WSR 07-02-070, effective January 1,

2007, so that we would have rules in effect while going through the regular rule-making process.

This filing amends sections of chapter 388-14A WAC to bring division of child support rules into compliance with chapter 26.21A RCW, which is effective January 1, 2007. There are eleven new rules and nine amended rules in this filing.

Amending WAC 388-14A-2105 Basic confidentiality rules for the division of child support, 388-14A-3304 The division of child support may serve((s)) a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-5300 How does the division of child support recover a support payment which has already been distributed?, 388-14A-6100 The division of child support accepts oral requests for hearing or conference board, 388-14A-7100 The division of child support may register an ((A#)) order from another state ((may be registered in Washington)) for enforcement or modification, 388-14A-7110 The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state and 388-14A-7200 DCS can serve notices in other states under the Uniform Interstate Family Support Act; and new WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-7125 What happens at a hearing on a notice of support debt and registration?, 388-14A-7135 What is the effect of confirmation of a registered order on the finality of the support debt calculation?, 388-14A-7305 How do I ask DCS to do a determination of controlling order?, 388-14A-7315 When might DCS deny a request for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties of its determination of the controlling order?, 388-14A-7335 What happens if someone objects to DCS' proposed determination of controlling order?, 388-14A-7345 What is the effect of a determination of controlling order on the finality of the debt calculation?, 388-14A-7400 What can I do if I want to contest an interstate order to withhold income served on my employer?, and 388-14A-7500 What can I do if I am concerned about the release of my personal information in an interstate referral?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 28, 2007.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 27, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 23, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature has adopted the updated Uniform Interstate Family Support Act (UIFSA) as chapter 26.21A RCW, effective January 1, 2007. DCS anticipates that new and amended rules will be required in order to allow the Washington child support program to comply with UIFSA under our state plan under Title IV-D of the federal Social Security Act.

Reasons Supporting Proposal: Clarify procedures, conform with new statute.

Statutory Authority for Adoption: RCW 34.05.220(2), 43.20A.550, 74.04.055, 74.08.090, 74.20.040, 74.20A.310.

Statute Being Implemented: Chapter 26.21A 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, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

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

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

January 30, 2007

Jim Schnellman, Chief

Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 02-07-091, filed 3/19/02, effective 4/19/02)

WAC 388-14A-2105 Basic confidentiality rules for the division of child support. (1) Under RCW 26.23.120, all information and records, concerning persons who owe a support obligation or for whom the division of child support (DCS) provides support enforcement services, are private and confidential.

(2) DCS discloses information and records only to a person or entity listed in this section or in RCW 26.23.120, and only for a specific purpose allowed by state or federal law. See WAC 388-14A-7500 regarding disclosure of personal information in the context of referrals under the Uniform Interstate Family Support Act (UIFSA).

(3) DCS may disclose information to:

(a) The person who is the subject of the information or records, unless the information or records are exempt under RCW 42.17.310;

(b) Local, state, and federal government agencies for support enforcement and related purposes;

(c) A party to a judicial proceeding or a hearing under chapter 34.05 RCW, if the superior court judge or administrative law judge (ALJ) enters an order to disclose. The judge or presiding officer must base the order on a written finding that the need for the information outweighs any reason for maintaining privacy and confidentiality;

(d) A party under contract with DCS, including a federally recognized Indian tribe, if disclosure is for support enforcement and related purposes;

(e) A person or entity, including a federally recognized Indian tribe, when disclosure is necessary to the administration of the child support program or the performance of DCS functions and duties under state and federal law;

(f) A person, representative, or entity if the person who is the subject of the information and records consents, in writing, to disclosure;

(g) The office of administrative hearings or the office of appeals for administration of the hearing process under chapter 34.05 RCW. The ALJ or review judge must:

(i) Not include the address of either party in an administrative order, or disclose a party's address to the other party;

(ii) State in support orders that the address is known by the Washington state support registry; and

(iii) Inform the parties they may obtain the address by submitting a request for disclosure to DCS under WAC 388-14A-2110(2).

(4) DCS may publish information about a noncustodial parent (NCP) for locate and enforcement purposes.

(5) WAC 388-14A-2114(1) sets out the rules for disclosure of address, employment or other information regarding the custodial parent (CP) or the children in response to a public disclosure request.

(6) WAC 388-14A-2114(2) sets out the rules for disclosure of address, employment or other information regarding the NCP in response to a public disclosure request.

(7) DCS may disclose the Social Security Number of a dependent child to the noncustodial parent (NCP) to enable the NCP to claim the dependency exemption as authorized by the Internal Revenue Service.

(8) DCS may disclose financial records of an individual obtained from a financial institution only for the purpose of, and to the extent necessary, to establish, modify, or enforce a child support obligation of that individual.

(9) Except as provided elsewhere in chapter 388-14A WAC, chapter 388-01 WAC governs the process of requesting and disclosing information and records.

(10) DCS must take timely action on requests for disclosure. DCS must respond in writing within five working days of receipt of the request.

(11) If a child is receiving foster care services, the parent(s) must contact their local community services office for disclosure of the child's address information.

(12) The rules of confidentiality and penalties for misuse of information and reports that apply to a IV-D agency employee, also apply to a person who receives information under this section.

(13) Nothing in these rules:

(a) Prevents DCS from disclosing information and records when such disclosure is necessary to the performance

of its duties and functions as provided by state and federal law;

(b) Requires DCS to disclose information and records obtained from a confidential source.

(14) DCS cannot provide copies of the confidential information form contained in court orders. You must go to court to get access to the confidential information form. DCS may disclose information contained within the confidential information form if disclosure is authorized under RCW 26.23.120, chapter 388-01 WAC, or chapter 388-14A WAC.

(15) DCS may provide a Support Order Summary to the parties to an administrative support order under WAC 388-14A-2116.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-3304 The division of child support may serve((s)) a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support. (1) The division of child support (DCS) may serve a notice of support debt and demand for payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the children in the case.

(c) When there are multiple current support orders for the same obligor and children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) A notice of support debt and demand for payment served in another state becomes final according to WAC 388-14A-7200.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt and demand for payment on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt and demand for payment; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection (9) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection (8) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

~~((14) A notice of support debt that does not include interest does not relieve the NCP of any interest that may have accrued or may accrue under the support order covered by the notice.~~

~~(15) A notice of support debt that does include interest deals only the amount of debt, including interest, that is due and owing for the indicated time periods. Such a notice does not relieve the NCP of any interest that may have accrued or may accrue for any other time periods.)~~

NEW SECTION

WAC 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment? Once the division of child support has served a notice of support debt and demand for payment, either party may disagree with the notice.

(1) If either party objects to the enforcement of a non-Washington support order, that party may request that DCS register that order under Chapter 26.21A RCW. DCS then serves a notice of support debt and registration as provided in WAC 388-14A-7110.

(2) If the noncustodial parent (NCP) objects to the amount of current support or the amount of support debt stated in the notice, the NCP may request a conference board under WAC 388-14A-6400.

(a) The custodial parent (CP) may participate in the conference board under this section.

(b) The CP may choose to convert the proceeding to an administrative hearing. The NCP may participate in a hearing held under this section.

(3) If the custodial parent objects to the amount of current support or the amount of support debt stated in the notice, the CP may request an administrative hearing. The NCP may participate in a hearing held under this section.

(4) See WAC 388-14A-3304 for a more full description of the hearing process on the notice of support debt and demand for payment.

NEW SECTION

WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears? (1) After service of a notice of support debt and demand for payment as provided in WAC 388-14A-3304, the final administrative order determines the support debt as of the date of the order, and:

(a) The debt determination is not a final determination under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) Any party may request that a tribunal determine any amounts owed as interest on the support debt.

(2) The final administrative order comes about by:

(a) Operation of law if nobody objects to the notice;

(b) Agreed settlement or consent order under WAC 388-14A-3600;

(c) Final conference board decision under WAC 388-14A-6400;

(d) Final administrative order entered after hearing or a party's failure to appear for hearing.

NEW SECTION

WAC 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children? When more than one current child support order exists for the same obligor and children, the division of child support (DCS) may proceed as follows:

(1) Using the criteria listed in RCW 26.21A.130, DCS decides which child support order it should enforce and

serves a notice of support debt and demand for payment under WAC 388-14A-3304.

(2) If DCS decides that a determination of controlling order under chapter 26.21A RCW is required, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7100.

(3) Upon request, DCS may do a determination of controlling order (DCO).

(a) See WAC 388-14A-7305 for how you can ask for a DCO.

(b) See WAC 388-14A-7315 for how DCS decides whether or not to do a DCO.

(4) If DCS does a DCO and decides that a Washington order is the controlling order, DCS refers the case to superior court.

(5) If DCS does a DCO and decides that a non-Washington order is the controlling order, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7325.

AMENDATORY SECTION (Amending WSR 02-06-098, filed 3/4/02, effective 4/4/02)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may request a hearing to prospectively modify the NCP's obligation under a support establishment notice. The request must be in writing and must state:

- (a) Any circumstances that have changed; and
- (b) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

(4) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of ~~((RCW 26.21.580))~~ RCW 26.21A.550.

(5) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(6) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(7) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

- (a) Dismiss the petition; or
- (b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(8) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or

any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

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 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-5300 How does the division of child support recover a support payment which has already been distributed? (1) The division of child support (DCS) may serve a notice to recover a support payment on the person who received the payment when DCS:

- (a) Distributed the money in error;
- (b) Distributed the money based on a check that is later dishonored;
- (c) Is required to refund or return the money to the person or entity that made the payment; or
- (d) Distributed money under a support order that was later modified so as to create an overpayment.

(2) DCS serves a notice to recover a support payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In the notice, DCS must identify the support payment DCS seeks to recover.

(4) DCS may take action to enforce the notice to recover a support payment without further notice once the notice becomes final.

(a) A notice to recover a support payment becomes final unless the person who received the payment requests a hearing under subsection (5) of this section within twenty days of service of the notice to recover a support payment in Washington. The effective date of a hearing request is the date DCS receives the request.

(b) A notice to recover a support payment may be served in another state to recover a payment disbursed by DCS under ~~((RCW 26.21.385))~~ RCW 26.21A.290. A notice to recover a support payment served in another state becomes final according to WAC 388-14A-7200.

(5) A hearing on a notice to recover a support payment is for the limited purpose of resolving the existence and amount of the debt DCS is entitled to recover.

(6) A person who files a late request for a hearing on a notice to recover a support payment must show good cause for being late.

(7) In nonassistance cases and payment services only cases, DCS may recover a support payment under a final administrative order on a notice to recover a support payment by retaining ten percent of current support and one hundred percent of amounts collected on arrears in addition to any other remedy authorized by law.

(8) If a public assistance recipient receives a support payment directly from a noncustodial parent (NCP) and fails to remit it to DCS as required, DCS recovers the money as retained support under WAC 388-14A-5500.

(9) DCS may enforce the notice to recover a support payment as provided in subsection (7), or may act according to RCW 74.20A.270 as deemed appropriate.

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

WAC 388-14A-6100 The division of child support accepts oral requests for hearing or conference board. (1) Except for the instances listed in subsections (8) and (9), the division of child support (DCS) accepts either a written or an oral request for hearing or conference board, even though other sections of this chapter or the relevant statutes may provide that objections and hearing requests should be in writing.

(2) The subject matter of the objection determines whether the matter is set as a conference board or hearing, unless there is a specific request for an administrative hearing under chapter 34.05 RCW.

(3) DCS processes oral and written requests for hearing in the same manner.

(4) An oral request for hearing is complete if it contains enough information to identify the person making the request, the DCS action, and the case or cases involved in the hearing request.

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

(6) When making an oral request, you do not need to specify whether you want a hearing under chapter 34.05 RCW or a conference board under WAC 388-14A-6400.

(7) You can make an oral request for hearing or conference board on behalf of another person, if you have written authorization to act on their behalf. The effective date of an oral request for hearing or conference board made on behalf of another person is the later of the date of the complete oral request for hearing or the date that DCS receives the written authorization.

(8) There are two types of hearing requests which must be in writing:

(a) A petition for prospective modification under WAC 388-14A-3925; and

(b) A petition for reimbursement for day care expenses under WAC 388-14A-4300.

(9) You must also make the following requests in writing:

(a) A request for a determination of controlling order under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, as described in WAC 388-14A-7305; and

(b) An objection to the determination of controlling order contained in a notice of support debt and registration issued by DCS under WAC 388-14A-7325. WAC 388-14A-7335 describes how to make this objection.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7100 ((Am)) The division of child support may register an order from another state ((may be registered in Washington)) for enforcement or modification. (1) A support enforcement agency, or a party to a child support order or an income-withholding order for support

issued by a tribunal of another state, may register the order in this state for enforcement pursuant to chapter 26.21A RCW.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW ((26.21.490)) 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; ~~((and))~~

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the non-registering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

~~(3) ((A hearing under this section is for the limited purpose of determining if the nonregistering party can prove one or more of the defenses listed in RCW 26.21.540(1)).~~

~~(a) If the contesting party presents evidence establishing a full or partial defense under RCW 26.21.540(1), the presiding officer may:~~

~~(i) Stay enforcement of the registered order;~~

~~(ii) Continue the proceeding to allow the parties to gather additional relevant evidence; or~~

~~(iii) Issue other appropriate orders.~~

~~(b) DCS may enforce an uncontested portion of the registered order by all remedies available under the law of this state.~~

~~(c) If the contesting party does not establish a defense under RCW 26.21.540(1) to the validity or enforcement of the order, the presiding officer must issue an order confirming the registered order.~~

~~(d) The custodial parent (CP) or payee of the order may participate as a party to any hearing under this section.~~

~~(4) Except as provided below in subsections (5) and (6) of this section, confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Confirmation may occur:~~

~~(a) By operation of law upon failure to contest registration; or~~

~~(b) By order of the administrative law judge (ALJ).~~

~~(5) Confirmation of a registered order that does not include interest does not relieve the NCP of any interest that may have accrued or may accrue under the confirmed order.~~

~~(a) If interest is later assessed, the NCP or CP may not dispute the confirmed amount of the support debt.~~

~~(b) The NCP or CP may dispute the amount of interest due and owing on that confirmed amount by requesting a conference board under WAC 388-14A-6400.~~

~~(6) Confirmation of a registered order that does include interest confirms only the amount of debt, including interest, that is due and owing for the indicated time periods. Such confirmation does not relieve the NCP of any interest that may have accrued or may accrue for any other time period.~~

~~(7)) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state may register the order in this state according to RCW ((26.21.560)) 26.21A.540 through ((26.21.580)) 26.21A.550.~~

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may

be modified only if the requirements of RCW ((26.21.580)) 26.21A.550 are met.

~~((8)) (4) Interpretation of the registered order is governed by RCW ((26.21.510)) 26.21A.515.~~

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7110 The division of child support may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state. (1) The division of child support (DCS) may accept an interstate request to assess and collect interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; or

(iv) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter ((26.21)) 26.21A RCW.

(b) The party requesting that DCS assess and collect interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to assess and collect interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to assess and collect interest on the foreign order. See WAC 388-14A-7100 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to assess and collect interest on the out of state order. See WAC 388-14A-7100 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC ((388-14A-7100(3))) 388-14A-7125 and 388-14A-7115.

(a) WAC ((388-14A-7100(4))) 388-14A-7135 describes the procedures for confirmation of the registered order.

(b) WAC ((388-14A-7100(4))) 388-14A-7135 describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

NEW SECTION

WAC 388-14A-7125 What happens at a hearing on a notice of support debt and registration? A hearing under this section is for the limited purpose of determining if the nonregistering party can prove one or more of the defenses listed in RCW 26.21A.530(1).

(1) If the contesting party presents evidence establishing a full or partial defense under RCW 26.21A.530(1), the presiding officer may:

- (a) Stay enforcement of the registered order;
- (b) Continue the proceeding to allow the parties to gather additional relevant evidence; or
- (c) Issue other appropriate orders.

(2) DCS may enforce an uncontested portion of the registered order by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under RCW 26.21A.530(1) to the validity or enforcement of the order, the presiding officer must issue an order confirming the registered order.

(4) The custodial parent (CP) or payee of the order may participate as a party to any hearing under this section.

NEW SECTION

WAC 388-14A-7135 What is the effect of confirmation of a registered order on the finality of the support debt calculation? (1) Except as provided below in subsections (2) and (3) of this section, confirmation of a registered order precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. Confirmation may occur:

(a) By operation of law upon failure to contest registration; or

(b) By order of the administrative law judge (ALJ).

(2) Confirmation of a registered order that does not include interest does not relieve the noncustodial parent (NCP) of any interest that may have accrued or may accrue under the confirmed order.

(a) If interest is later assessed, the NCP or the custodial parent (CP) may not dispute the confirmed amount of the support debt.

(b) The NCP or CP may dispute the amount of interest due and owing on that confirmed amount by requesting a conference board under WAC 388-14A-6400.

(3) Confirmation of a registered order that does include interest confirms only the amount of debt, including interest, that is due and owing for the indicated time periods. Such confirmation does not relieve the NCP of any interest that may have accrued or may accrue for any other time period.

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

WAC 388-14A-7200 DCS can serve notices in other states under the Uniform Interstate Family Support Act.

(1) Except as specified in WAC 388-14A-3105, where grounds for personal jurisdiction exist under (~~RCW 26.21-075~~) RCW 26.21A.100 or other Washington law, the division of child support (DCS) may serve the following legal

actions in another state by certified mail, return receipt requested or by personal service, under chapter (~~26.21~~) 26.21A RCW:

(a) A notice and finding of financial responsibility under WAC 388-14A-3115; and

(b) A notice and finding of parental responsibility under WAC 388-14A-3120;

(c) A notice of paternity test costs under WAC 388-14A-8300; or

(d) An affidavit of birth costs under WAC 388-14A-3555.

(2) A notice and finding of financial responsibility, a notice of paternity test costs, or an affidavit of birth costs becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the noncustodial parent (NCP), within sixty days of service in another state:

(a) Contacts DCS and signs an agreed settlement or consent order; or

(b) Files a written request for a hearing under:

(i) WAC 388-14A-3115 for a notice and finding of financial responsibility;

(ii) WAC 388-14A-3555 for an affidavit of birth costs; or

(iii) WAC 388-14A-8300 for a notice of paternity test costs.

(3) The effective date of a hearing request is the date DCS receives the hearing request.

(4) A notice and finding of parental responsibility becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within sixty days of service in another state:

(a) Contacts DCS and signs an agreed settlement or consent order;

(b) Files a written request for a hearing under WAC 388-14A-3120 with DCS; or

(c) Files a written request for paternity testing under WAC 388-14A-8300 to determine if he is the natural father of the dependent child named in the notice and cooperates in the testing. A request for a hearing or paternity testing is filed on the date the request is received by DCS.

(5) If the results of paternity tests requested under subsection (4) of this section do not exclude the NCP as the natural father of the dependent child, the notice and finding of parental responsibility becomes final and subject to immediate wage withholding without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within sixty days of service of the paternity test costs in another state:

(a) Contacts DCS and signs an agreed settlement or consent order; or

(b) Files a written request for a hearing under WAC 388-14A-3120.

(6) Administrative law judges and parties must conduct administrative hearings on notices served in another state under this section under the special rules of evidence and procedure in chapter 26.21A RCW and according to chapter 34.05 RCW.

NEW SECTION

WAC 388-14A-7305 How do I ask DCS to do a determination of controlling order? (1) When there are multiple current support orders covering the same obligor and the same children, a party to a support order may request that the division of child support (DCS) make a determination of controlling order under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

(2) A request for a determination of controlling order may be made at any time, unless there has already been a determination of controlling order for the same obligor and children.

(3) DCS can provide a form which contains all the required elements for a request for determination of controlling order. A request for a determination of controlling order:

- (a) Must be in writing;
- (b) Must contain copies of any child support orders known to the requesting party. DCS waives this requirement if DCS has a true copy of the order on file; and
- (c) State the reason the requesting party thinks DCS is enforcing the wrong order.

(4) A request for determination of controlling order does not constitute a petition for modification of a support order.

NEW SECTION

WAC 388-14A-7315 When might DCS deny a request for a determination of controlling order? (1) The division of child support (DCS) may deny a request for determination of controlling order made by a party to a child support order or another state's IV-D agency for the following reasons:

- (a) There is only one support order for the obligor and the children;
- (b) There is no current support owing under any existing support order for the obligor and the children; or
- (c) There has already been a determination of controlling order performed for the obligor and the children.

(2) The denial of a request for determination of controlling order does not:

- (a) Stop the party or other state's IV-D agency from bringing an action in superior court.
- (b) Give rise to a right to administrative hearing.

NEW SECTION

WAC 388-14A-7325 How does DCS notify the parties of its determination of the controlling order? (1) When the division of child support (DCS) decides that a determination of controlling order is required, DCS reviews the multiple child support orders for the same obligor and children to determine which order should be enforced.

(a) If DCS decides that the order that should be enforced is a Washington order, we immediately refer the matter to the superior court for a determination of controlling order proceeding under chapter 26.21A RCW.

(b) If we decide that the order that should be enforced is an order which was not entered in the state of Washington, DCS follows the procedures set out in subsections (2) through (4) of this section.

(2) DCS serves a notice of support debt and registration (NOSDR) as provided in WAC 388-14A-7100. DCS serves the NOSDR on the obligor, the obligee, and on all identified interested parties. The NOSDR includes a determination of controlling order.

(3) DCS serves the notice on the non-requesting party by certified mail, return receipt requested, or by personal service.

(4) DCS serves the notice on the requesting party and other interested parties by first class mail to the last known address.

NEW SECTION

WAC 388-14A-7335 What happens if someone objects to DCS' proposed determination of controlling order? (1) If any party objects to the proposed determination of controlling order issued under WAC 388-14A-7325, that objection must be in writing and signed under penalty of perjury. The division of child support (DCS) provides an objection form with the notice. The objection must contain:

(a) The reason the party objects to the determination of controlling order. Examples of reasons to object include, but are not limited to:

(i) There is another order that was not considered in making the determination;

(ii) The alleged controlling order has been vacated, suspended or modified by a later order, which is attached to the objection;

(iii) The issuing tribunal lacked personal jurisdiction over the non-petitioning party;

(iv) The order was obtained by fraud; or

(v) Any other legal defense available under chapter 26.21A RCW.

(b) A copy of the order which the party believes should be the controlling order, if that order was not included with the notice.

(c) A statement of facts in support of the party's objection.

(2) DCS refers the objection to the prosecuting attorney or attorney general to bring an action for determination of controlling order under RCW 26.21A.130 in the superior court.

NEW SECTION

WAC 388-14A-7345 What is the effect of a determination of controlling order on the finality of the debt calculation? As provided in RCW 26.21A.130, the final order in a proceeding for determination of controlling order operates as a final determination of the total amount of consolidated arrears and accrued interest, if any, under all of the support orders.

NEW SECTION

WAC 388-14A-7400 What can I do if I want to contest an interstate order to withhold income served on my employer? (1) RCW 26.21A.425 provides that a noncustodial parent (NCP) may contest the validity or enforcement of

an income-withholding order issued in another state and received directly by an employer in this state.

(2) Acting as an administrative tribunal under chapter 26.21A RCW, the division of child support (DCS) does not have the authority to quash income-withholding orders.

(3) An NCP who seeks to contest an income-withholding order as described in subsection (1) must seek relief in the superior court under RCW 26.18.140.

NEW SECTION

WAC 388-14A-7500 What can I do if I am concerned about the release of my personal information in an interstate referral? (1) When the division of child support (DCS) refers a case to another state, DCS must provide personal information regarding the parties to that other state. DCS notifies the party residing in Washington that we are preparing to refer your case and that we must release your personal information.

(2) If you believe that it would be dangerous for DCS to release your personal information to the other state, you may make a request for nondisclosure of your personal information under RCW 26.21A.255.

(3) The way DCS handles your request for nondisclosure depends on what version of the Uniform Interstate Family Support Act (UIFSA) has been adopted by the state where DCS is referring your case.

(a) The state may have enacted a version of UIFSA which is similar to the version enacted by the state of Washington as chapter 26.21A RCW (known as "UIFSA 2001"); or

(b) The state may have enacted a version of UIFSA which is similar to the version which was formerly enacted by the state of Washington as chapter 26.21 RCW (known as "UIFSA 1996").

(4) If DCS is making a referral to another state which has enacted UIFSA 2001:

(a) DCS must disclose your personal information to the other state.

(b) DCS sends to the other state a declaration for nondisclosure of information which you have signed under penalty of perjury.

(c) The other state must seal your personal information and may not disclose that information to the other party or to the public unless a tribunal orders disclosure of the information in the interest of justice, after a hearing in which the tribunal considers your (or your child's) health, safety and liberty.

(5) If DCS is making a referral to another state which has enacted UIFSA 1996:

(a) DCS holds a conference board under WAC 388-14A-6400.

(b) If the conference board finds that your (or your child's) health, safety or liberty would be unreasonably put at risk by the disclosure of the information, the conference board issues a non-disclosure finding.

(c) DCS does not disclose your personal information to the other state, and instead provides the other state with the non-disclosure finding.

WSR 07-05-017
PROPOSED RULES
GAMBLING COMMISSION
[Filed February 12, 2007, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-11-109.

Title of Rule and Other Identifying Information: New chapter 230-07 WAC, rules relating to charitable and non-profit organizations.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on April 13, 2007, at 9:30 a.m.

Date of Intended Adoption: April 13, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by April 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett, Executive Assistant, by April 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This filing is to provide notification that rules regarding charitable and nonprofit organizations are under review and are now being rewritten in plain English. Substantial changes made to the rules are noted below.

WAC 230-07-080 Qualification reviews for Groups III, IV and V, 230-07-045 Obtaining a waiver for significant progress requirements and 230-07-050 Defining "excessive reserves": In several of the rules the director or director's designee approves or takes an action. We have reevaluated the rules with these director delegations with Director Day and made policy decisions about which of them require the director to become involved and which may be delegated to commission staff.

WAC 230-07-125 Record-keeping requirements for lower volume charitable or nonprofit organizations, [230-07-140] Minimum accounting records for Class D and above bingo licensees and licensees with combined activities over \$500,000, 230-07-020 Making "significant progress," 230-07-145 Reporting annual progress, 230-07-155 Reporting annual activity for raffles, amusement games, Class A, B, or C bingo, or combination licenses, and 230-07-160 Reporting annual activity for agricultural fairs.

We discovered as we were rewriting the chapter that RCW 9.46.0209 requires, "An organization must demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal." Therefore, staff will begin realigning licensees' renewal periods to fit with their fiscal years, so that they will continue to report on their fiscal year, but it will match our statutory requirement that the data record the twelve months preceding licensing or renewal.

WAC 230-07-025 Additional requirements for "significant progress" for Groups IV and V: We propose removing the definition of "functional expenses" from this rule because the definition is in the next rule and creates a redundancy.

WAC 230-07-045 Obtaining a waiver for significant progress requirements: We are seeking this change so that an administrative law judge (ALJ) would conduct the hearing, not the director.

WAC 230-07-050 Defining "excessive reserves": The current rule, in subsection (1), says "cash equivalents *or* other assets." We believe that the intent of the rule was to say "and other assets" because the rule is asking for a "total amount" of assets. This change will clarify the definition of excessive reserves to make it easier for licensees to understand the rule and alleviate the possible confusion related to language use. This will make it easier for organizations to determine if they have excessive reserves and ultimately if they are in compliance with reporting requirements.

WAC 230-07-060 Independent management structure required: We propose clearly stating the underlying assumption that part of licensees maintaining an independent management structure is supervising and operating gambling activities according to gambling laws and our rules.

WAC 230-07-070 Defining "direct relatives": We propose adding a very concise definition for the phrase "direct relatives" because some ambiguity exists in the current rule. The current rule, written in 1993 and last revised in 2000, states that conflicts of interest must be avoided. A presumption of a conflict of interest exists when officers "...are directly or indirectly responsible for supervision of, or have decision-making authority over transactions that may result in direct or indirect financial or personal benefit to: Their direct relatives, including spouses, parents, children, siblings, *and similar relationships*, whether by blood, adoption, or marriage..." The phrase "and similar relationships" can be construed in a number of different ways. We propose adding the definition to limit the ambiguity.

WAC 230-07-125 Record-keeping requirements for lower volume charitable or nonprofit licensees and 230-07-130 Additional record-keeping requirements for charitable or nonprofit licensees: In these rules, we propose removing the phrase "unless we release them from this requirement" because in practice, we do not release licensees from the requirement to maintain the records. Neither do licensees ask to be released from the requirement.

WAC 230-07-140 Minimum accounting practices for Class D and above bingo licensees and licensees with combined activities over \$500,000: We propose making several changes to this rule:

(1) "Calendar year" has been changed to fiscal year to match the other references in the chapter;

(2) To reduce redundancy, we removed "instructions for activity reports"; "double entry"; and "Record all income when earned; and record all expenses when incurred," as well as "A listing of all liabilities" and "A complete general ledger system if licensees have substantial assets or liabilities," and "bank statements, related deposit slips, and cancelled checks or facsimiles of cancelled checks." Each of these is a basic

tenet of GAAP which we are requiring licensees to follow for minimum accounting requirements; and

(3) Recording expenses allocated to various functions (subsection (7)) has been removed because the concept and process are covered elsewhere.

The final change is the only change that could be called substantive because we changed the rule to remove inconsistencies between the two dollar limits that appear in the current rule: In the title and introductory section, the rule cites \$500,000 as the dollar amount licensees must exceed in order to be required to perform certain accounting procedures, but further down in the rule, it names \$300,000 as the limit.

WAC 230-07-145 Reporting annual progress: We propose removing a large number of the "laundry list" of items to be included on the annual progress report because what is required is listed on a form licensees must complete.

We have changed the wording of other existing rules to align the forms we give licensees with the wording in the rules. For this particular rule, items that have been removed are in the current licensing operations division form.

A second change we propose is to remove subsection (18) which states that we "may request licensees in Group II to submit financial statements and other information required by this rule in order to evaluate the organization's qualification." We do not request those documents; instead, we use other means to evaluate an organization's qualifications.

Finally, we changed subsection (9) to add phrase "direct relatives" rather than use the list in the current rule. We propose this change to add consistency between rules. It does, however, increase the number of people licensees must report.

WAC 230-07-150 Financial statements required for Groups III, IV, and V: We propose requiring charitable or nonprofit licensees to use an *independent* certified public accountant, not just a *licensed* public accountant to prepare their financial statements. Without this change, a licensee could have an in-house accountant who is also a licensed CPA prepare the records rather than an independent CPA. Many licensees are already using independent CPAs; we're codifying what is the current practice.

WAC 230-07-155 Reporting annual activity for raffles, amusement games, Class A, B, or C bingo, or combination licenses: We propose removing a large number of the "laundry list" of items to be included on the annual progress report because what is required is listed on a form licensees must complete.

Proposed repeal of WAC 230-46-100 Playing limited social card games without a license: We propose repealing this rule because during the recodification of the statute, our statutory authority to allow this unlicensed activity was omitted. The law only allows charitable or nonprofit organizations that have a Class H liquor license to conduct card games without a separate card game license.

Reasons Supporting Proposal: To make our rules manual more user friendly. To make rules easier to find and understand.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

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: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

February 14 [12], 2007
Susan Arland
Rules Coordinator

Chapter 230-07 WAC

CHARITABLE AND NONPROFIT RULES

NEW SECTION

WAC 230-07-001 Defining "charitable or nonprofit licensee." In this section of the rules, "charitable or nonprofit licensees" means the same as a bona fide charitable or nonprofit organization as defined in RCW 9.46.0209.

NEW SECTION

WAC 230-07-005 "Licensees," "licensee," "organizations," and "organization" defined. (1) In this section of the rules, "licensee" and "licensees" means those charitable or nonprofit organizations which we require to be licensed to conduct gambling activities.

(2) In this chapter, "organization" and "organizations" means:

- (a) Licensees; and
- (b) All bona fide charitable or nonprofit organizations conducting unlicensed gambling activities authorized by chapter 9.46 RCW.

NEW SECTION

WAC 230-07-010 Use of gambling proceeds. (1) Except qualified agricultural fairs, charitable or nonprofit organizations must use all net income from gambling activities remaining after paying necessary expenses of operating the gambling activities exclusively for the lawful purpose(s) of the organization stated on the organization's license application.

(2) Licensees may conduct a gambling activity for the charitable benefit of specific person(s) whom the licensee has listed as recipient(s) of the proceeds, or a specified portion of the proceeds, if licensees obtain approval from us before they conduct the activity.

NEW SECTION

WAC 230-07-015 Regulatory group assignments. (1) We assign charitable or nonprofit licensees to regulatory groups based on the annual gross gambling receipts for their combined licensed activities.

(2) Licensees must comply with requirements applicable to the regulatory group to which we have assigned them. The regulatory groups are:

(a) Group I	Combined annual gross receipts up to three hundred thousand dollars.
(b) Group II	Combined annual gross receipts up to one million dollars.
(c) Group III	Combined annual gross receipts up to three million dollars.
(d) Group IV	Combined annual gross receipts up to five million dollars.
(e) Group V	Combined annual gross receipts over five million dollars.

NEW SECTION

WAC 230-07-020 Making "significant progress." Charitable or nonprofit licensees in Groups IV and V must make "significant progress" toward their stated purpose. They have made "significant progress" when they have:

- (1) Complied with all requirements set forth in their bylaws and articles of incorporation; and
- (2) Actively engaged in providing services to the public or their members during the fiscal year under review, and the services directly relate to the stated purposes of the organization; and
- (3) Held elections to select officers at least once in the previous two years; and
- (4) Held a general membership meeting to conduct the business of the organization at least once in the previous two years; and
- (5) Used a substantial portion of the licensees' "available resources" for providing program services during the fiscal year under review. For purposes of this section, "available resources":
 - (a) Include the income generated by or from:
 - (i) The net of all activities used to raise funds, including net gambling income; and
 - (ii) Grants, gifts, and contributions from private sources; and
 - (b) Does not include:
 - (i) Funds generated in periods other than the fiscal year under review; or
 - (ii) Funds that are raised or contributed from outside the organization for purposes of purchasing land or capital assets or to endow future operations when those funds are specifically identified by the board or contributors as restricted and separately recorded in the organization's records; or
 - (iii) Net income from the sale of assets; or
 - (iv) Fees paid by members or the public to receive services or to participate in specific activities. (Example: Fees to attend a swimming lesson or event.) These fees must be

classified as a reduction to both program service and supporting service expenses on a pro rata basis and as a reduction to resources available for providing services in the fiscal year. (Example: In the chart below, licensee X has revenue of five

thousand dollars. They must calculate the pro rata reduction by adjusting the total by the percentages of support services, program services expenses, and functional expenses.)

Revenue					
Fees paid by public					\$5,000
Calculation:					
Expenses	Unadjusted Amount	% of Total	Pro Rata Reduction Fees Paid by Public (\$5,000)	% of Total	Adjusted Amount
Support Service Expense	\$35,000	32%	(\$1,591)	32%	\$33,409
Program Service Expense	\$75,000	68%	(\$3,409)	68%	\$71,591
Functional Expenses	\$110,000	100%	(\$5,000)	100%	\$105,000

NEW SECTION

WAC 230-07-025 Additional requirements for "significant progress" for Groups IV and V. In addition to meeting the significant progress requirements for Groups I, II, and III, Group IV and V charitable or nonprofit licensees must also prove they:

(1) Expended at least sixty percent of net gambling income earned in the licensee's most recently completed fiscal year on "functional expenses" to operate the organization's programs; and

(2) Used no more than thirty-five percent of total functional expenses to provide supporting services. If licensees used more than fifty percent of total program services expenses to provide program services through indirect methods (those which are external to the organization), such as grants, contributions, and/or scholarships, then supporting services expenses must not exceed twenty percent of functional expenses.

NEW SECTION

WAC 230-07-030 Defining "functional expenses." "Functional expenses" means those expenses a charitable or nonprofit licensee incurs toward accomplishing its stated purpose(s). Functional expenses include both "program services" and "supporting services."

NEW SECTION

WAC 230-07-035 Defining "program service expenses." (1) "Program service expenses" means those expenses relating to providing care, support, or assistance to individuals, or sponsoring or conducting activities that directly relate to the licensee's stated purpose(s).

(2) We consider "program service expenses" services the licensee provided:

- (a) Directly through programs to the public or the licensee's members; or
- (b) Indirectly through:
 - (i) Contributions to individuals or to other service-providing organizations; or

- (ii) Funding scholarships; or
- (iii) Sponsoring activities directly related to any organizational purposes.

(3) We consider soliciting new members or volunteers, or announcements and publications intended to educate the public about specific services or programs to be program service expenses.

(4) Expenses allocated to more than one service must be divided out according to their function. Licensees must document the methods of allocation and make them available for our review.

NEW SECTION

WAC 230-07-040 Defining "supporting service expenses." (1) "Supporting service expenses" means those expenses relating to activities that are essential to the general operation of the licensee's programs, but which are not directly identifiable to a specific program. Supporting service expenses typically include:

- (a) Management; and
 - (b) General overhead; and
 - (c) Any expenses related to soliciting contributions.
- (2) We consider the following supporting service expenses:
- (a) Wages and benefits for persons involved in the general operation of the organization, such as:
 - (i) Executive directors and other management; or
 - (ii) Support personnel like secretaries, receptionists, and bookkeepers; and
 - (b) Expenses related to:
 - (i) Providing an administrative office, including rent, depreciation, interest, utilities, taxes, insurance, and supplies; and
 - (ii) General management functions of the organization such as planning and budgeting, recruiting and training staff, and purchasing and distributing materials; and
 - (iii) Scheduling and conducting board, committee, and membership meetings; and
 - (iv) Publicizing the general organization; and

(v) Outside supporting services such as accounting, audit, and legal; and

(vi) Soliciting contributions or grants; and

(vii) Any net loss from nongambling fund-raising activities.

(3) Supporting service expenses do not include items which are unusual and infrequent in nature, for example, repairs from a fire.

(4) Expenses allocated to more than one service must be divided out according to their function. Licensees must document the methods of allocation and make them available for our review.

NEW SECTION

WAC 230-07-045 Obtaining a waiver for significant progress requirements. (1) If a charitable or nonprofit licensee is unable to demonstrate that it has made significant progress, the licensee may request, in writing, a waiver for all, or a portion, of the requirements.

(2) In the waiver request, the organization's board must:

(a) Acknowledge that it is aware of the circumstances; and

(b) Show it has taken steps to correct the situation which prevented compliance; and

(c) Show it has approved a plan that addresses delivery of program services in the future; and

(d) Show that the organization expended at least twenty-five percent of its net gambling income to provide program services in the period under review. We may consider the purchase of nondepreciable assets for program purposes as part of this percentage.

(3) When deciding to approve or deny a waiver, we consider whether the licensee:

(a) Had a temporary inability to comply due to unusual circumstances; and

(b) Is reserving funds to start or expand specific programs in the future; and

(c) Used a substantial amount of capital assets that are not subject to depreciation or amortization to provide program services, for example, fully depreciated building or equipment; fully amortized leasehold improvements; assets

which are not normally depreciated, such as land used for athletic fields, riding areas, or parks; and

(d) Conducted a substantial portion of its services through volunteers.

(4) If we deny the waiver, the licensee may request a brief adjudicative hearing before an administrative law judge under the provisions of Title 230 WAC and chapter 34.05 RCW.

NEW SECTION

WAC 230-07-050 Defining "excessive reserves." (1) "Excessive reserves" means the total amount of the licensee's cash, cash equivalents, and other assets that would not normally be associated with providing programs or fund-raising activities is greater than the sum of:

(a) The licensee's current liabilities, which means debts due within one year; plus

(b) Total functional expenses during the most recently completed fiscal year; plus

(c) The average net income or loss from combined gambling and retail sales conducted in conjunction with gambling activities for a three-month period. This average is calculated by dividing annual net gambling and retail sales income or loss by four.

(2) However, we may approve the exclusion of funds reserved to start or expand specific programs from the computation of excessive reserves.

NEW SECTION

WAC 230-07-055 Prorating expenses when gambling funds are not kept separate. When charitable or nonprofit organizations do not keep gambling income separate from all other income of the organization, the amount of net gambling income required to provide functional expenses in the fiscal year under review must be the pro rata portion of net gambling income compared to the total net revenue from all sources. (Example: In the chart below, Organization X has revenue of five thousand dollars. They must calculate the pro rata reduction by adjusting the total by the percentages of support services, program services, and functional expenses.)

Revenue					
Fees paid by public					\$5,000
Calculation:					
Expenses	Unadjusted Amount	% of Total	Pro Rata Reduction Fees Paid by Public (\$5,000)	% of Total	Adjusted Amount
Support Service Expense	\$35,000	32%	(\$1,591)	32%	\$33,409
Program Service Expense	\$75,000	68%	(\$3,409)	68%	\$71,591
Functional Expenses	\$110,000	100%	(\$5,000)	100%	\$105,000

NEW SECTION

WAC 230-07-060 Independent management structure required. (1) Charitable or nonprofit organizations and their officers or board of directors have an affirmative responsibility to conduct gambling activities according to the legislative intent in chapter 9.46 RCW.

(2) Organizations must develop and maintain an independent management control system that ensures they:

(a) Create an operating environment that makes it possible to implement the policies of the officers or board of directors; and

(b) Supervise and operate gambling activities according to gambling laws and our rules; and

(c) Protect all assets of the organization from misuse or embezzlement; and

(d) Use gambling proceeds solely to advance the purposes of their organization.

NEW SECTION

WAC 230-07-065 Group III, IV, and V management control system. Charitable or nonprofit licensees assigned to Groups III, IV, and V must develop and implement a management control system that:

(1) Is overseen by an independent group of officers or board of directors who have been elected by a process in which all full and regular members have a single vote; and

(2) Includes written policies which set the responsibilities of and establish the scope of authority delegated to officers, board of directors, and employees; and

(3) Includes affirmative management and accounting controls to ensure that all funds and other assets directly or indirectly obtained with gambling proceeds are protected from misuse, are dedicated solely to the purposes of the organization, and do not inure to the private use of any person. For purposes of this section, we do not consider the following uses of gambling proceeds inurement:

(a) Providing program services to members or the public; or

(b) Costs for necessary expenses, including salaries or wages for services to perform the purposes of the organization. Salaries or wages paid to members, officers, board of directors, or their direct relatives, are not inurement if they are necessary, reasonable, and an independent management system makes the decision to pay them; and

(4) Includes a planning process to set goals for uses of gambling proceeds and allows the officers or board of directors to monitor progress toward those goals. Organizations reserving funds in endowments or trust funds must have a formal business plan or budget outlining uses of those funds; and

(5) Includes a system of internal accounting controls designed to reduce errors, minimize the risk of embezzlement, and safeguard assets. The licensee's officers or board of directors must implement procedures to monitor established controls for compliance. The internal accounting control system must include at least:

(a) Management approval for expenditures; and

(b) Access to assets is restricted to those individuals management authorizes; and

(c) Recording procedures for all transactions in accordance with generally accepted accounting principles (GAAP). Licensees must record transactions with enough detail to maintain accountability for assets; and

(d) Periodic comparison of recorded assets to physical assets and reconciliation of all differences. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records.

(6) Is documented and available for our review.

NEW SECTION

WAC 230-07-070 Defining "direct relatives." "Direct relative" means spouses, parents, grandparents, uncles, aunts, children, siblings, nieces, or nephews, whether by blood, adoption, or marriage.

NEW SECTION

WAC 230-07-075 Conflicts of interest. (1) Charitable or nonprofit organizations have an independent operating environment when their officers or board members and supervisory level employees have completely separated their personal interests from the interests of the organization.

(2) If individual officers or board members acknowledge potential conflicts of interest and abstain from voting on issues that directly or indirectly affect their personal interest, the organization is operating independently.

(3) The governing board of the organization must review any potential conflicts of interest involving supervisory level employees. They must record all discussions or balloting regarding potential conflicts of interest in the official meeting minutes.

(4) We will presume organizations lack an independent operating environment if the governing board fails to approve and document in the official meeting minutes any of the following by the officers, board members, or supervisory level employees:

(a) Receiving, directly or indirectly, financial or personal benefit from the organization or share in gambling proceeds of the organization; or

(b) Supervising, directly or indirectly, or having decision-making authority over transactions that may result in direct or indirect financial or personal benefit to:

(i) Their direct relatives; or

(ii) Persons with whom they maintain a common household; or

(iii) Persons with whom they have a business relationship; or

(c) Allowing others, directly or, through lack of action, indirectly, to receive or share in the gambling proceeds of the organization.

NEW SECTION

WAC 230-07-080 Qualification reviews for Groups III, IV and V. (1) We may review charitable or nonprofit licensees assigned to Group III and may prepare a summary of

the organization's qualifications for the commissioners' review.

(2) We will review licensees assigned to Group IV and V and prepare a summary of the organization's qualifications for the commissioners' review at a public meeting every three years. At least one representative from the organization must attend the meeting when staff presents their qualification review.

NEW SECTION

WAC 230-07-085 Compensating gambling management and operations personnel. (1) Charitable or nonprofit licensees must not base compensation for any employee taking part in the management or operation of the gambling activities on a percentage of the receipts or income derived from the operation of the gambling activity.

(2) Licensees must pay employees taking part in the management or operation of gambling activity a wage that is reasonable under the prevailing local wage scale for comparable employment. Wages greater than the local prevailing wage create a presumption of a violation.

NEW SECTION

WAC 230-07-090 Keeping and depositing all gambling funds separate from other funds. Charitable or nonprofit licensees must protect all funds generated from gambling activities and keep these funds separate from their general funds.

(1) Licensees must:

(a) Keep a separate gambling receipts account(s) in a recognized Washington state bank, mutual savings bank, or credit union; and

(b) Deposit only gambling receipts into that account. Licensees may deposit receipts from nongambling activities operated in conjunction with bingo games into the gambling receipts account if the licensee keeps detailed receipting records of the nongambling receipts; and

(c) Deposit all gambling receipts first into the account before spending or transferring them into other accounts, except for prize pay outs; and

(d) Deposit funds received from commercial amusement game operators operating amusement games on their premises in the licensee's gambling receipts account no later than the second banking day after they receive the receipts; and

(e) Make all deposits of net gambling receipts from each activity separately from all other deposits, and keep the validated deposit receipt as a part of their records. Deposit receipts are a part of the applicable daily or monthly records and licensees must make them available for our inspection; and

(f) Deposit all net gambling receipts which they are holding, pending pay out:

(i) From bingo, no later than the second banking day after they receive them. Licensees may withhold bingo receipts from deposits for "jar," "pig," or other special game prizes if the total of all such prize funds does not exceed two hundred dollars, enter the amount withheld each session in the bingo daily record, and record the reconciliation of the

special game fund on the bingo daily record. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records; and

(ii) From raffles (Class E and above) and amusement games (Class D and above), at least once each week; and

(iii) From punch board and pull-tabs, including cost recovery for merchandise prizes awarded, no later than two banking days after they remove the board or series from play; and

(g) Record the Washington state identification number assigned to the punch board or pull-tab series and the amount of net gambling receipts on the deposit slip/receipt. Licensees may record the number and the receipts on a separate record if they record the bank validation number and maintain the record with the deposit slip/receipt; and

(2) These requirements do not apply to organizations who:

(a) Conduct only one or more of the following activities:

(i) Raffles under the provisions of RCW 9.46.0315;

(ii) Bingo, raffles, or amusement games under the provisions of RCW 9.46.0321;

(iii) Class A, B, or C bingo game;

(iv) Class A, B, C, or D raffle; or

(v) Class A, B, or C amusement game; and

(b) Do not have any other license(s) from us.

NEW SECTION

WAC 230-07-095 Fund-raising events and members only raffles exempt from deposit requirements. Bona fide charitable or nonprofit organizations that conduct only fund-raising events or members only raffles and have no other gambling licenses are exempt from having a separate gambling receipts account, but they must:

(1) Make no expenditures, other than for prizes, until the receipts have been deposited;

(2) Deposit all net gambling receipts within two banking days; and

(3) Keep the validated deposit receipt with their gambling records.

NEW SECTION

WAC 230-07-100 Special banking exemption for Point Roberts Peninsula. Charitable or nonprofit licensees that conduct activities on Point Roberts Peninsula, Washington, may deposit funds in British Columbia branches of Canadian banks. Licensees must provide us and their Canadian bank a written release for us to have unrestricted access to the licensee's Canadian bank records and the Canadian bank must provide written confirmation of its intent to honor the licensee's release.

NEW SECTION

WAC 230-07-105 Safeguarding prize inventory. (1) Charitable or nonprofit organizations must safeguard and prevent misuse or misappropriation of all assets, including

items purchased, or donated, to use as prizes for gambling activities.

(2) Licensees must maintain an inventory control record for each item purchased or donated to use as prizes for gambling activities in the format we require.

NEW SECTION

WAC 230-07-110 Supervision requirements. Charitable or nonprofit organizations must closely supervise all persons involved with the conduct of gambling activities to ensure that they follow all gambling laws and rules.

NEW SECTION

WAC 230-07-115 Duties of charitable or nonprofit gambling managers. Charitable or nonprofit gambling managers must:

(1) Be knowledgeable of the laws and rules that relate to the operation of the gambling activities and the restrictions on the use of funds made from gambling activities for which they are responsible; and

(2) Supervise the gambling activity, including all secondary activities, such as retail sales, conducted along with gambling activities; and

(3) Ensure:

(a) The business premises are maintained in a safe condition and persons participating in the activity are reasonably protected from physical harm; and

(b) Fair and equal participation by players in gambling activities; and

(c) All records are completed and correct; and

(d) All funds are disbursed or invested according to the directions of the officers or governing board and are used solely to further the charitable or nonprofit purpose(s) of the organization; and

(4) Protect:

(a) The public from fraud; and

(b) The organization from players or workers committing illegal acts; and

(c) All gambling assets of the organization from misuse or theft; and

(5) Safeguard funds or other assets made from gambling and secondary activities for which he or she is responsible until directly deposited in the organization's bank account.

NEW SECTION

WAC 230-07-120 Notifying us of changes in responsibilities of charitable or nonprofit gambling managers.

(1) A charitable or nonprofit organization must notify us in writing when a gambling manager:

(a) Has been assigned primary responsibility for operating any gambling activity or disbursing funds; or

(b) Has terminated employment or responsibilities.

(2) Individuals required to be licensed under WAC 230-03-235 must immediately submit a license application.

(3) Licensees assigning gambling managers who do not require a license under WAC 230-03-145(4) must notify us in writing within ten days of changes in responsibilities by submitting:

(a) The full name and date of birth of the gambling manager; and

(b) The date the gambling manager was assigned new responsibilities or the date employment or responsibilities terminated; and

(c) A full description of the change in duties or responsibilities; and

(d) The highest ranking elected officer or the individual assigned the responsibility of supervising the gambling manager must sign the notification.

RECORDKEEPING FOR LOWER VOLUME LICENSEES

NEW SECTION

WAC 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations. (1) Organizations operating without a license under RCW 9.46.0315 or 9.46.0321 and lower volume charitable or nonprofit licensees must keep a set of permanent monthly records of the gambling activities. Lower volume licensees include:

(a) Fund-raising events;

(b) Bingo (Classes A, B, and C);

(c) Raffles (Classes A, B, C, and D);

(d) Amusement games (Classes A, B, C, and D); and

(e) Card games (Classes A, B, and C).

(2) The monthly records must include, at least:

(a) The gross receipts from each activity;

(b) The total amount of cash prizes actually paid out;

(c) The total of the cost to the licensee of all merchandise prizes actually paid out for each activity;

(d) A summary of all expenses related to each of the activities; and

(e) The net income received from the activity, the purpose(s) for which the net income was raised, and the amount paid to each recipient.

(3) Licensees must keep these records for three years from the end of the license year for which the record was created.

(4) Organizations operating under RCW 9.46.0315 or 9.46.0321 must maintain their records for one year.

RECORDKEEPING AND ACCOUNTING STANDARDS

NEW SECTION

WAC 230-07-130 Additional recordkeeping for charitable or nonprofit licensees. (1) Charitable or nonprofit licensees, except agricultural fairs, must maintain records which clearly show how the licensee used or disbursed the funds from each licensed activity. These records must provide an audit trail satisfactory for us to verify that the funds were used for the licensees' stated purpose(s). These records must include, at least, canceled checks for the disbursements.

(2) Charitable or nonprofit licensees must keep these records for three years from the end of the license year for which the record was created.

NEW SECTION

WAC 230-07-135 Recording gifts. Charitable or nonprofit licensees must keep a written record for each gift which they have given to customers with an actual cost over one hundred dollars. Authorized "gifts" are defined in WAC 230-06-035. The record must include:

- (1) How they selected the recipients;
- (2) The number of gifts; and
- (3) The total cost of each gift.

NEW SECTION

WAC 230-07-140 Minimum accounting records for Class D and above bingo licensees and licensees with combined activities over five hundred thousand dollars. Class D and above bingo licensees and licensees who are authorized for more than five hundred thousand dollars gross gambling receipts from combined gambling activities during any fiscal year must keep accounting records necessary to document all receipts, costs, and disbursements, including, at least, those related to gambling activities.

Requirements for accounting records

For these accounting records, licensees must:

- (1) Conform to generally accepted accounting principles (GAAP) except as modified by other commission rules; and
- (2) Include, at least:
 - (a) A cash disbursements journal and/or check register;
 - (b) A cash receipts and/or sales journal;
 - (c) A list of all assets the licensee paid for;
 - (d) A listing of all liabilities;
 - (e) A complete general ledger system; and
 - (f) A list of all donated items valued at more than two hundred fifty dollars; and

Donated items

- (3) Document donated items. Licensees must:
 - (a) Use the fair market value at the time of donation;
 - (b) Add items to the list no later than thirty days after receiving them;
 - (c) Remove items when they no longer have legal ownership; and
 - (d) Not remove an item from the list, even if it has become obsolete or completely depreciated, until management has completed and documented appropriate review. A depreciation schedule for all capitalized items is sufficient; and
 - (e) Add items to the list when they convert items from gambling merchandise prize inventory to licensee use. This list must include, at least:
 - (i) A description of the item;
 - (ii) The date purchased, acquired by donation, or converted from the gambling prize pool;
 - (iii) The cost at the time of purchase or, if donated, the fair market value at the time received; and

- (iv) The date and method of disposition of the item; and

Method of accounting

- (4) Use the accrual method of accounting; and
- (5) The cash, modified cash, or tax basis accounting methods may be used only if that method accurately represents the licensee's financial position, the results of operations, and the licensee does not have substantial liabilities or expenses, such as depreciation or amortization expenses, which require a current outlay of cash; and

Expenditures for nongambling activities

- (6) Sufficiently document all expenditures relating to nongambling activities in order to provide a satisfactory audit trail and to allow us to verify that the funds were used for the licensee's stated purpose(s); and

Expenditures for gambling activities

- (7) Sufficiently document all of the licensee's expenditures relating to gambling activities. Canceled checks and bank statements are not sufficient documentation for expenditures without additional support. Licensees must provide additional support for expenditures, including:

- (a) Invoices or other supporting documents from commercial vendors or service agencies with at least:
 - (i) The name of the person or entity selling the goods or providing the services;
 - (ii) A complete description of goods or services purchased;
 - (iii) The amount of each product sold or services provided;
 - (iv) The price of each unit;
 - (v) The total dollar amount billed; and
 - (vi) The date of the transaction.
- (b) Documentation, in the form of checks and other written records of disbursements in excess of twenty-five dollars made directly to individuals who do not furnish normal, business type, invoices or statements. The written records must indicate at least:

- (i) The name of the person receiving the payment;
- (ii) The amount;
- (iii) The date; and
- (iv) The purpose; and
- (8) Document allocated expenditures that relate to more than one function to the various functions. Licensees must document their methods of allocation and make them available for our review; and

Capitalizing assets

- (9) Include a capitalization policy based on materiality and expected life of operating assets. To determine a minimum level for capitalizing assets, licensees must:
 - (a) Capitalize and depreciate, or amortize over the useful life of the asset, any assets of more than two thousand dollars that have a useful life of more than one year; and
 - (b) Capitalize and depreciate, or amortize over sixty months, beginning with the first month that bingo games are conducted, preoperating start up costs related to bingo games of more than six thousand dollars; and

(c) Amortize, over a period not longer than the life of the lease, any leasehold improvements related to gambling activities that are more than six thousand dollars. Licensees may extend the amortization period to include any lease option periods if the licensee's management states a reasonable expectation that they will use the lease option; and

(d) Charge all unamortized leasehold improvements as an expense of the gambling activities in the year that the lease expires.

REQUIRED ANNUAL REPORTS

NEW SECTION

WAC 230-07-145 Reporting annual progress. Charitable or nonprofit licensees must report annually their progress toward meeting their stated purpose in the format we prescribe. This report must explain the type and scope of activities which licensees conducted during their last annual fiscal accounting period. In addition, the report must include, at least:

(1) A brief history of the licensed organization, including its stated charitable or nonprofit purpose(s);

(2) A written statement setting out their goals for meeting their stated charitable or nonprofit purpose(s) in the future;

(3) The number of full and regular members;

(4) A list of contributions, scholarships, grants, or sponsorships made during the period. This list must include:

(a) The name of each organization or individual receiving a contribution from the licensee. The licensee may use the phrase "individual contribution" in place of the recipient. If the recipient is not named in the report, the licensee must maintain records to verify and identify the recipient of each individual contribution; and

(b) Whether funds awarded were from gambling income or other funds; and

(5) Gross income from all nongambling activities and the source of the income;

(6) The revenue and expenses for any nongambling sales activities, presented separately, when conducted primarily in conjunction with gambling activities;

(7) Total expenses for both charitable or nonprofit services;

(8) The percentage or extent to which the licensee used net gambling income for charitable as distinguished from nonprofit purposes; and

(9) The details of any loans, contracts, or other business transactions with related parties that accumulatively exceed one thousand dollars during the period. "Related parties" means officers, board members, key employees, or members of the licensed organization, including direct relatives of each.

NEW SECTION

WAC 230-07-150 Financial statements required for Groups III, IV, and V. (1) In addition to information required in WAC 230-07-028, charitable or nonprofit licensees in Groups III, IV, and V must also submit complete finan-

cial statements prepared in accordance with generally accepted accounting principles (GAAP).

(2) Licensees in Groups IV and V must have the financial statements prepared by an independent certified public accountant.

(3) The statements and all required disclosures or footnotes no later than one hundred twenty days following the end of the licensee's fiscal year.

(4) The financial statements must include:

(a) A statement of financial position;

(b) A statement of activities. This statement may be presented in a consolidated form if licensees provide the details of each component as supplemental information. Licensees must present revenue and expenses for each activity separately as follows:

(i) Each gambling activity; and

(ii) Retail sales conducted in conjunction with gambling activities;

(c) A statement of cash flows;

(d) A statement of functional expenses;

(e) In addition to all disclosures required by GAAP, the financial statements must disclose the following:

(i) Loans to or from officers, board members, and employees: We will not consider employee salary advances of five hundred dollars or less as loans. Details of all terms, including interest rates and payment schedules, must be disclosed;

(ii) All civil penalties, fines, bribes, or embezzlements incurred or discovered during the period; and

(iii) An explanation of any adjustments made to prior period capital accounts or net asset balances;

(f) An explanation of material differences between amounts reported on gambling activity reports and the financial statements.

(5) We may require additional information to ensure completeness of the information reported.

(6) We may grant an organization additional time to submit the information required if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

NEW SECTION

WAC 230-07-155 Reporting annual activity for raffles, amusement games, Class A, B, or C bingo, or combination licenses. (1) Raffle, amusement game, Class A, B, or C bingo, or combination licensees must submit an annual report of all their activities in the format we require.

(2) We must receive the completed report in our office postmarked no later than thirty days following the expiration of their license(s).

(3) The highest ranking officer or his/her designee must sign the report.

(4) If the licensee has someone else prepare the report, then the preparer must include his/her name and phone number on the report.

(5) Licensees that operate retail sales activities in conjunction with bingo games must report the net income from those retail sales activities.

NEW SECTION

WAC 230-07-160 Reporting annual activity for agricultural fairs. (1) Charitable or nonprofit licensees who operate bingo, raffles, and/or amusement games only at agricultural fairs and other special properties and permittees as defined in WAC 230-03-015 who operate bingo under another's license at agricultural fairs and other special properties must submit an annual report of all their activities in the format we require.

(2) We must receive the completed report in our office postmarked no later than thirty days following the expiration of the license year.

(3) Permittees operating under another's license must provide the licensee with all information about the permitted operation that is needed by the licensee to complete the annual activity report not less than ten days before the time that we require the licensee to file his or her report.

(4) The highest ranking officer or his or her designee must sign the report. If the licensee has someone else prepare the report, then the preparer must include his or her name and phone number on the report.

tion bingo game card requirements, 230-10-225 Player selection bingo game restrictions, 230-10-280 Drawings for prizes, good neighbor prizes, and second element of chance prizes as part of bingo games, 230-10-290 Controlling entry guarantee tickets, 230-10-305 Gift certificates as bingo prizes, 230-10-320 Redeeming gift certificates, 230-10-335 Daily bingo records, 230-10-350 Recording bingo winners, 230-10-395 Cash register method of receipting for bingo income, 230-10-405 Retaining cash register receipts for cash register method of receipting for bingo income, 230-10-420 Ticket method of receipting bingo income and 230-10-440 Combination receipting method for bingo income requirements: We are suggesting a substantive change to bingo game records requirements: Several rules state that bingo licensees have to keep various records as a part of their daily bingo records for one year. Others require two year retention for certain records. Still others require three years as a minimum time to retain other records.

In the interest of consistency, we have made most of the records a part of the daily bingo records. The daily bingo records are retained for two years. This change will allow organizations to maintain a single set of records for a consistent amount of time.

WAC 230-10-100 Hours for bingo games, 230-10-280 Drawings for prizes, good neighbor prizes, and second element of chance prizes as part of bingo games, 230-10-460 Shared bingo facilities and 230-10-470 Sharing management and accounting for shared bingo facilities: In four of the bingo rules, the director approves an action. We have reevaluated the rules with these director approvals with Director Day and made policy decisions about which of them require the director to become involved and which may be delegated to commission staff.

WAC 230-10-010 Defining "bingo game": We propose to add a definition of "bingo game" to the other definitions about bingo. In this instance, we wish to clearly label what a bingo game is because so many rules use that phrase as opposed to "bingo session" when explaining compliance. We're clearly delineating the differences between sessions and games.

WAC 230-10-027 Renting bingo game equipment: We propose including this rule in the bingo rules chapter so that it clarifies the rules about renting bingo equipment. Formerly, it was included in an amusement game rule about renting equipment.

The rule used to state, "A bona fide charitable or nonprofit organization licensee, or any of its regular members, may rent or otherwise obtain equipment used by the organization to conduct bingo or amusement games from any person...". We removed the phrase "regular members" because regular members aren't usually allowed to rent equipment - the bingo manager for licensees or the president or some other officer of unlicensed organizations usually rents the equipment in the organization's name. We also clarified "any person" by stating "other charitable or nonprofit organizations, licensees, or tribal governments in Washington state" to make consistent with other rules about who may rent equipment and from whom. It is a substantive change which

WSR 07-05-018
PROPOSED RULES
GAMBLING COMMISSION
[Filed February 12, 2007, 1:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-110.

Title of Rule and Other Identifying Information: New chapter 230-10 WAC, rules relating to bingo games.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on April 13, 2007, at 9:30 a.m.

Date of Intended Adoption: April 13, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by April 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett, Executive Assistant, by April 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This filing is to provide notification that rules regarding bingo games are under review and are now being rewritten in plain English. Substantial changes made to the rules are noted below.

WAC 230-10-050 Electronically generated bingo cards additional requirements, 230-10-215 Player selection bingo game requirements, 230-10-220 Player selec-

reflects changes in regulation that have occurred since this rule was originally passed.

We also clarified the prohibition against basing the rental or lease payment on bingo income or profit by adding that the rental price must not be based on "gross receipts," either.

WAC 230-10-030 Bingo card definitions: We propose including some new subsections in this definition rule. In order to maintain consistency with other sections and chapters of the rules, we are changing the definition about how cards should be numbered from "consecutively" to "sequentially." Sequentially is the more correct definition of how cards should be numbered.

We also wish to add the definition of "number" which includes numbers and symbols to eliminate the repetition of "number or symbol" throughout the rules.

Lastly, in subsection (4), we changed "the process of cutting and/or assembling master sheets" to "the process of cutting or assembling master sheets" to broaden the definition to include all phases of the collating process.

WAC 230-10-040 Disposable bingo cards additional requirements: We suggest relocating a requirement that disposable bingo cards "have an identification and inspection stamp from us that we sold to the licensed manufacturer or to the operator and that was attached to the series by the licensed manufacturer, the operator, or us" from a manufacturer and distributor rule concerning identification and inspection stamps to the bingo section. This change will allow organizations using disposable bingo cards to understand and comply with the requirements about I.D. stamps more readily.

The change also combines a requirement for bingo equipment with the disposable bingo card requirements and eliminates a redundancy of having the same requirement in two places within the rules.

Proposed repealer WAC 230-20-246 Manner of conducting bingo: We are suggesting repealing this section of the rules because the requirements are covered in the RCW prohibiting cheating.

WAC 230-10-075 Licensed gambling manager required: The current rule is about gambling managers being on site at bingo operations. However, lower volume organizations like those named in the exceptions are not required to have a bingo manager.

We believe that the exception for special property bingo was inadvertently left out when it was written or missed when exceptions for lower volume charitable or nonprofit organizations were added to the rule.

Special property bingo is usually held by small charitable or nonprofit organizations and we issue a permit for them to move their bingo game twice a year to a different location (the "special property"). The change makes our handling of exceptions to record-keeping and management requirements for lower volume organizations consistent.

WAC 230-10-080 Supervision required for bingo workers: In this proposed change, we added chapter 9.46 RCW to the gambling rules which workers and supervisors are required to follow. This has always been implied, but here we are making it explicit.

WAC 230-10-175 Defining electronic bingo dauber: The current rule offers an exception to the definition which

states that "player-owned devices, which are not directly interfaced with or connected to equipment used to conduct bingo games or the electronic data base in which electronically generated bingo cards are stored in any manner, are not 'electronic bingo card daubers' for purposes of this title."

We propose removing this exception because there aren't any player-owned devices used now and we can't envision any player-owned devices that we would allow to be used in bingo games because of the dangers they might present to game integrity.

Should, in the future, a manufacturer or individual wish to introduce a new form of electronic dauber, they would have the ability to ask for a rule change to expand this definition.

WAC 230-10-185 Electronic bingo card daubers restrictions: We are suggesting removing the portion of this section stating, "Electronic bingo card marking devices or daubers are deemed to provide a player a material advantage unless operated in accordance with subsection (2) of this section" because it is covered in the RCW prohibiting cheating.

WAC 230-10-220 Player selection bingo game card requirements: We are suggesting a substantive change to the player selection bingo game card requirements. Player selection cards are NCR paper cards on which players may write their own choice of bingo numbers and, leaving the original card with the bingo operator for verification, play those numbers during the bingo game.

The rule used to state that player selection cards produced by unlicensed manufacturers had to have invoices which recorded the beginning number of the cards sold. We have added the requirement that the invoice also include the ending number of the cards sold. This change will allow for a clear audit trail should licensees or agents have to audit the player selection bingo game cards.

WAC 230-10-240 Three number speed bingo authorized: We are suggesting a substantive change to the authorization of three number speed bingo. Three number speed bingo is a game where players are given a card with three numbers and they purchase three chips to play on that card. As numbers are called, players cover their matching numbers with chips. When someone bingos, the other players' chips that are not covering numbers on their cards are awarded to the winner as the prize.

The current rule states in subsection (1) that three number speed bingo uses "special cards with less than twenty-five spaces" and in subsection (3) that it uses "cards that have three spaces imprinted with numbers that correspond to the numbers on the balls utilized for play." This leads to confusion about how many squares should be on the card.

In the new rules, we twice define the number of spaces allowed on the bingo card as three.

By changing the authorization rule, we are getting rid of a contradiction within the existing rule and choosing to give clearer directions regarding the number of spaces on three number speed bingo cards.

WAC 230-10-265 Banking services for three number speed bingo: We are suggesting a substantive change to this rule regarding three number speed bingo. The current rule requires that operators of three number speed bingo sell chips to anyone who asks for them. We have removed that require-

ment because we feel that it contradicts the bingo operator's right to refuse service to anyone. We are, instead, emphasizing what we believe was the real intent of the rule: That the bingo operator redeem all chips sold for the same amount for which they sold the chips.

WAC 230-10-275 Exceptions to other bingo rules for three number speed bingo: We are suggesting a substantive change to this rule regarding three number speed bingo: The current rule requires that operators have a "fully functional" audio system during three number speed bingo. We are changing the rule to require that they actually use the audio system during three number speed bingo.

We believe that the intent of the current rule was that operators use the audio system, so we are making that explicit.

Proposed Repealer WAC 230-20-247 Keno bingo—Definitions and requirements: Though licensees asked for this game to be added to the rules several years ago, no one has ever operated the game and stakeholders informed us that they were unlikely to ever offer the game, so we removed the rules because of lack of use.

Reasons Supporting Proposal: To make our rules manual more user friendly. To make rules easier to find and understand.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

February 14 [12], 2007

Susan Arland
Rules Coordinator

Chapter 230-10 WAC

BINGO RULES

BINGO DEFINITIONS AND EQUIPMENT REQUIREMENTS

NEW SECTION

WAC 230-10-001 Defining "licensees," "licensee," "organizations," "organization," "operators" and "operator." (1) In this section of the rules, "licensee" and "licensees" means those charitable or nonprofit organizations

which we require to be licensed to conduct gambling activities.

(2) In this section of the rules, "organization" and "organizations" means:

(a) Licensees; and

(b) All bona fide charitable or nonprofit organizations conducting unlicensed gambling activities authorized by chapter 9.46 RCW.

(3) In this section of the rules, "operator" and "operators" mean licensees, organizations, and individuals.

NEW SECTION

WAC 230-10-005 Agricultural fair bingo game licensees must only allow a permittee to operate bingo under their license. An agricultural fair licensed for the operation of bingo must not allow any person to conduct bingo under the fair's license unless that person has applied for and received an agricultural fair bingo permit from us.

NEW SECTION

WAC 230-10-010 Defining "bingo game." "Bingo game" means a game using bingo cards where bingo balls are drawn to determine a winner. All bingo games must have a winner determined by the matching of numbers on a bingo card with numbers on the balls called by the operator.

NEW SECTION

WAC 230-10-015 Defining "bingo session." "Bingo session" means a continuous series of bingo games with no breaks except for short intermissions.

NEW SECTION

WAC 230-10-020 Defining "bingo occasion." "Bingo occasion" means a period of time beginning when the first number in the first bingo session is called and ending when the last winning number on the final winning bingo card of the last bingo session has been verified. This is also known as a "bingo day."

NEW SECTION

WAC 230-10-025 Defining "bingo equipment." (1) "Bingo equipment" means all equipment for use in bingo games for which consideration is charged to play and prizes are awarded to winners. Bingo equipment includes, at least:

(a) Bingo ball mixers that use air flow (blowers) or other mechanical means to mix balls and allow balls to be randomly drawn; and

(b) Electronic flashboards that interface with the mixing and selection devices; and

(c) Bingo cards; and

(d) Electronic bingo card daubers, including the software and equipment connected with them; and

(e) Any other device commonly used in the direct operation of the game.

(2) Bingo equipment does not mean general purpose equipment, such as:

- (a) Tables, chairs, or card stands; or
- (b) Audio or video equipment used only to communicate progress of the game to players; or
- (c) Computer or cash register equipment used to record sales or store records; or
- (d) General supplies, such as glue sticks, daubers, and other items for resale to players; or
- (e) Bingo games manufactured and sold for recreational purposes.

NEW SECTION

WAC 230-10-030 Bingo card definitions. For purposes of this title:

- (1) "Card" means a unique group and configuration of numbers printed on paper, cardboard, or other material used in bingo games. This is also called a "face."
- (2) "Card number" means the number the manufacturer assigns to identify a single card or face. The "card number" is also called a "face" or "perm" number.
- (3) "Number" means numeral or symbol printed on the card.
- (4) "Collate" means the process of cutting or assembling master sheets or precut sheets of cards from one or more sets of cards into packets or books for marketing purposes. "Collate" is also called "finish" or "finishing."
- (5) "Collation" means a group of packets or books of cards assembled from more than one set of cards.
- (6) "Cut" means the layout or orientation of cards or sheets of cards divided from a master sheet of cards. A "cut" may be either square, horizontal, or vertical.
- (7) "Disposable bingo card" means a nonreusable paper bingo card manufactured by a licensed manufacturer.
- (8) "Duplicate cards" means two or more cards that are imprinted with the same numbers.
- (9) "On" means the number of cards imprinted on a sheet. (Example: "Three on.")
- (10) "Pack" means a group of cards or sheets of cards collated into a book and each page or sheet is intended to play a separate bingo game, including "on-the-way" games, within a session. This is also called a "packet."
- (11) "Product line" means a specific type of card identifiable by unique features or characteristics when compared to other types of cards the manufacturer markets. A "product line" includes all series and all cards within each series the manufacturer identifies.
- (12) "Sequentially numbered" means a numbering system normally beginning with the number one, increased by one for each individual unit added to the group, and ending with a number identical to the total number of units assigned to that group.
- (13) "Serial number" means a number the manufacturer assigns for identification and tracking purposes to a set of cards. The same number must not identify another set of cards from the same product line, color, border pattern, and series in less than 999,999 occurrences or twelve months, whichever occurs first. If the product line is used as a determining factor for assignment of a serial number, the difference between various product lines must be readily identifiable by observation.

(14) "Series" of cards means a specific group of cards that a manufacturer assigns sequential card numbers. The first and last card numbers in a series typically identify the group of cards. (Example: The "1 to 9000 series.")

(15) "Set" of cards means a specific group of cards from the same product line, which are the same color, border pattern, and imprinted with the same serial number. A "set" of cards may include more than one series of cards.

(16) "Sheet number" means the number the manufacturer assigns to identify an arrangement of more than one card that results from dividing master sheets of cards to help marketing.

(17) "Skip" means the standard spread or difference between card or sheet numbers at different page levels in packs or packets.

(18) "Subset" means a portion of a set of cards or collation of packets that a licensed distributor divides to help marketing.

(19) "Up" means the number of pages or sheets collated into each packet or book of cards. (Example: "Eight up.")

NEW SECTION

WAC 230-10-035 Bingo card requirements. Bingo cards must:

- (1) Be preprinted cards manufactured by a licensed manufacturer or electronically generated cards produced by the operator using a printer interfaced with an electronic data base system; and
- (2) Not have the same serial number, color/border pattern, and card number as any disposable bingo cards on the premises. This includes player selection, keno, and speed bingo cards; and
- (3) Have twenty-five spaces imprinted with numbers one of which may be a free space, arranged in five even columns headed with the letters B, I, N, G, and O, unless they are player selection or speed bingo cards.

NEW SECTION

WAC 230-10-040 Disposable bingo cards—Additional requirements. (1) Disposable bingo cards must:

- (a) Meet all bingo card requirements; and
 - (b) Be imprinted with a unique set and configuration of numbers on each card; and
 - (c) Not duplicate cards within a specific product line; and
 - (d) Include a control system in each set which:
 - (i) Identifies that specific set and each specific card within that set; and
 - (ii) Allows tracking of the transfer of cards from the point of manufacture to the operator; and
 - (iii) Facilitates sale by the operator to the player; and
 - (e) Have an identification and inspection stamp from us sold to the licensed manufacturer or to the operator and attached to the series by the licensed manufacturer, the operator, or us.
- (2) Bingo licensees using the combination receipting method may divide sets or collations of cards into no more than ten subgroups. Licensees must follow disposable bingo card inventory control requirements for each subgroup.

NEW SECTION

WAC 230-10-045 Disposable bingo card inventory control. Bingo licensees must control and account for all disposable bingo cards they purchase or otherwise obtain.

(1) All licensees must keep:

(a) All purchase invoices, or photocopies of the invoices, for received disposable bingo cards on the bingo premises; and

(b) All manufacturer packing records as part of the inventory control record.

(2) Class D and above licensees must prepare an inventory control record in the format we require immediately after purchase of disposable bingo cards or before the next bingo session. We may approve alternative formats, such as electronically generated forms, if the licensee requests it in writing.

NEW SECTION

WAC 230-10-050 Electronically generated bingo cards—Additional requirements. (1) "Electronically generated bingo cards" means bingo cards for which a licensed manufacturer has predetermined the numbers and the sequence of arrangement and stored them electronically for computer access. Electronically generated bingo cards must:

(a) Meet the requirements for bingo cards; and

(b) Be printed by the licensed bingo operator, during the bingo session on a printer interfaced with the computer; and

(c) If printed before the time of sale, be sold sequentially at each individual sales point, beginning with the lowest card, sheet, or transaction number; and

(d) Have a master verification system that provides a facsimile of each card. The master verification system must display the exact numbers and the location or configuration of numbers on the card.

(2) The bingo licensee must keep cards or sheets of cards not issued sequentially during a session as a part of their daily bingo records.

NEW SECTION

WAC 230-10-055 Bingo cards required for Class F and above bingo games. Class F and above bingo licensees must use disposable bingo cards, electronically generated bingo cards, player selection bingo cards, or three number speed bingo cards.

NEW SECTION

WAC 230-10-060 Bingo ball requirements. Bingo balls must be:

(1) A set of seventy-five balls bearing the numbers one through seventy-five and the letters B, I, N, G, or O, though the letters B, I, N, G, O need not appear if the operator is playing three number speed or hidden face bingo games; and

(2) Available for inspection by the players before a bingo session begins to determine that all are present; and

(3) The same weight as each of the other balls and free from any defects; and

(4) Distinguishable from all other sets of balls in play.

NEW SECTION

WAC 230-10-065 Bingo ball mixer required for Class D and above bingo games. Class D and above bingo licensees must use a machine that mixes balls and selects balls using air flow (a blower). The blower must:

(1) Allow players full view of the mixing action of the balls; and

(2) Not allow changes to the random placement of the balls in the exit tube of the blower except when it is shut off.

NEW SECTION

WAC 230-10-070 Bingo flashboard requirements for Class D and above bingo games. (1) Class D and above bingo licensees must use flashboards to display numbers. The flashboards must be visible to all players and clearly indicate all numbers that have been called; and

(2) If a flashboard malfunctions, licensees must repair it before using it in any other bingo occasion.

OPERATING BINGO GAMESNEW SECTION

WAC 230-10-075 Licensed bingo manager required. A licensed bingo manager must be on the premises and supervising bingo operation during all hours bingo games are conducted, except bingo games conducted:

(1) Under RCW 9.46.0321; or

(2) At a qualified agricultural fair; or

(3) Under a Class A, B, or C bingo license; or

(4) At a special bingo property we authorize.

NEW SECTION

WAC 230-10-080 Supervision required for bingo workers. Bingo licensees must closely supervise all persons involved in the conduct of gambling activities to ensure that they follow chapter 9.46 RCW and Title 230 WAC.

NEW SECTION

WAC 230-10-085 Members or employees only to work bingo. (1) Bingo licensees must not allow anyone except full and regular members or employees of the organization to take part in managing or operating bingo games.

(2) Licensees may allow:

(a) Persons other than the primary bingo manager to participate in bingo games for another bingo licensee. We do not consider a licensed assistant gambling manager to be a manager for this section; or

(b) Primary managers to manage or operate bingo for more than one Class A, B, or C licensee as long as the managers do not receive payment for services from more than one licensee; or

(c) A person to manage or take part in operating a shared bingo operation according to WAC 230-10-470.

(3) Qualified agricultural fairs licensed to operate bingo are not required to meet these management or operation restrictions.

NEW SECTION

WAC 230-10-090 Workers not playing in Class D and above bingo games. (1) Class D and above bingo licensees must not allow persons who participate in operating or managing their bingo games to play in any of their bingo games.

(2) Persons who work without compensation for Class D and above licensees may play bingo, but they must not play during bingo sessions they are operating or managing.

NEW SECTION

WAC 230-10-095 Compensation limits for bingo employees. (1) Bingo licensees must not compensate employees who manage, operate, or otherwise work at bingo games more than what is reasonable under the local prevailing wage scale or local salary scale for a similar position.

(2) Organizations operating unlicensed bingo games must not pay wages to anyone operating or managing bingo activities.

NEW SECTION

WAC 230-10-100 Hours for bingo games. (1) Bingo licensees must not allow the use of their premises for bingo games between the hours of 2:00 a.m. and 6:00 a.m. unless we approve different hours or they are operating at an authorized agricultural fair or under RCW 9.46.0321.

(2) Licensees may request, in writing, different hours of operation. Once the request is received, we will consult with the local law enforcement agency having jurisdiction over the licensee's business and with other state agencies involved in regulation of the business. We may allow licensees to adjust closing hours, but licensees must:

(a) Observe a four-hour period of closure at the end of each business day before beginning the next period of operation; and

(b) Comply with any other terms and conditions we require.

(3) We may deny the request for extended hours or revoke hours already approved if:

(a) Any local law enforcement agency or state agency objects in writing; or

(b) We determine that the licensee has violated any provisions of chapter 9.46 RCW, any other commission rule, or any of the terms set forth in subsection (1) of this section.

(4) The licensee must submit all objections to revocations of operating hours in writing.

(5) We allow the licensee an opportunity for a brief adjudicative proceeding (BAP) before denying or revoking the licensee's authorization for extended bingo hours. An administrative law judge hears the BAP, under the provisions of Title 230 WAC and chapter 34.05 RCW.

NEW SECTION

WAC 230-10-105 Posting bingo rules. (1) Bingo licensees must inform players by prominently posting:

(a) All costs to play; and

(b) All prizes available, including any extra cost or conditions of ownership related to prizes, the minimum amount of an individual prize, the prize pool, or the portion of a prize pool available for each bingo game before the players purchase a bingo card; and

(c) The licensee's cost or the retail value of all noncash prizes greater than five hundred dollars. If licensees use the retail value, they must explain that the amount is "retail value" or "manufacturer's suggested retail price" (MSRP); and

(d) All rules concerning winning the prizes (the house rules). If a bingo is determined to be valid, the licensee must pay a prize which is equal to the prize posted for that game. If the bingo is valid, we will resolve disputes in favor of the player; and

(e) Any unforeseen event that might change the cost to play or prizes available; and

(f) If duplicate cards are in play.

(2) Licensees must inform players in broadcast or published advertisements or other distributed printed information if there are any possible events which might change game schedules, prizes awarded, or cost to play. Advertised bingo prizes and game formats may be changed in case of inclement weather, natural disaster, or other unforeseen emergencies if the licensee informs players before they purchase cards.

(3) If players may still participate in the game after the winner of any one of the prizes offered has been determined, licensees must remove the prize won from any display and list of prizes posted on the premises. During a bingo session, licensees may use the public address system and prominent display of the game name or number to inform players of prizes already won.

NEW SECTION

WAC 230-10-110 Changing prize amounts in bingo games. (1) The bingo manager may increase the minimum prize before the start of a game.

(2) During the game, the bingo manager may increase the minimum prize through one or more of the following plans:

(a) Games using standard bingo equipment and cards, but determining a winner by:

(i) The number of numbers called; or

(ii) The specific number called; or

(iii) The specific letter called; or

(iv) The specific position of winning combinations on the card; or

(v) The specific position of the card on the sheet of cards;

or

(vi) Odd or even numbers; or

(vii) The number of numbers matched within a specific number of calls; or

(b) Preprinted games on disposable cards that determine a win by calling a specific number during a game; or

(c) Second element of chance games explained in WAC 230-10-280.

NEW SECTION

WAC 230-10-115 Selling bingo cards. (1) Operators must sell bingo cards before they select the first number for a specific game:

(a) If operators sell cards after the start of the game, they must ensure that the late sale does not allow any player an advantage over another player; and

(b) Bingo hard cards purchased or exchanged after the first number is selected for a specific game may only be used during later games; and

(c) Operators must not allow players to select specific bingo cards after the first number is selected for a specific game.

(2) Operators must sell all cards for a specific prize for the same price. The cards sold for a specific prize must be distinctive and easy to tell apart from all other bingo cards in play.

(3) Operators may sell similar cards used to participate for the same prize at a volume discount if they record each separate discount price with an identification code or cash register key that provides for an audit trail.

NEW SECTION

WAC 230-10-120 Duplicate bingo cards not sold for Class D or above bingo games. (1) Class D or above bingo licensees must not sell duplicate cards in bingo games. Licensees using cards from multiple manufacturers may result in duplicate cards because the majority of cards in the "1 to 9000 series" are duplicate, regardless of the manufacturer.

(2) Licensees must:

(a) Inform players of limits on prizes if duplicate cards win because Braille cards are in play; and

(b) Not be held responsible for duplicate cards caused by Braille cards in play.

NEW SECTION

WAC 230-10-125 Duplicate bingo cards pay out and documentation for Class D or above bingo games. (1) If Class D or above bingo licensees inadvertently sell duplicate bingo cards, they must:

(a) Pay all winners with duplicate cards the entire prize amount that would be due if there were no duplicate cards; or

(b) Compute and pay all winners with duplicate cards using the following guidelines:

(i) **If the game provides a bonus for a single winner and all winners have duplicate cards**, then the licensee must pay all winners the bonus; or

(ii) **If the game results in multiple winners and some of the players have duplicate cards**, then the licensee must calculate the split of the prize pool by counting all duplicate card winners as one. All winners will be paid according to the calculated prize split; or

(iii) **If the prize pool contains noncash or merchandise prizes**, then the licensee may use the cost or retail value of the merchandise, whichever is posted in the game schedule, to calculate the amount added to the prize pool to make the split. Manufacturers are not responsible for reimbursement to this noncash or merchandise prize pool; or

(iv) **If the prize is more than one thousand dollars**, then the licensee must increase the total prize pool by no more than fifty percent or five thousand dollars, whichever is less. We authorize this limitation only once within a twelve-month period; and

(2) Licensees may deduct increases to prize pools caused by card manufacturers from prize pay outs when calculating cash flow.

(3) Licensees must document details of circumstances that resulted in duplicate cards being sold and maintain that documentation as a part of the daily bingo record for the session.

(4) Licensees must notify us within forty-eight hours after discovery of a duplicate card sale if:

(a) Manufacturer printing, packaging, or collation errors caused the duplication. Licensees must request reimbursement from the manufacturer responsible for duplicate card errors; or

(b) The licensee did not pay any winning player with a duplicate card the entire prize amount.

NEW SECTION

WAC 230-10-130 Reserve only Braille bingo cards.

(1) Operators must not reserve any bingo cards, except Braille cards or other cards used by people with visual impairments.

(2) Operators may inspect, and reject, any personal Braille cards.

NEW SECTION

WAC 230-10-135 Bingo cards sold on premises only.

All sales of bingo cards must take place on the premises during or immediately before the bingo session for which the player is buying the card.

NEW SECTION

WAC 230-10-140 Drawing, calling, and posting bingo numbers. (1) Except for linked bingo prize games, operators must draw bingo balls on the premises and in the presence of players.

(2) After drawing a ball, the caller must immediately display the number of the ball to players.

(3) Operators must call the number before another ball is drawn. After it is called, the operator must light the number on the flashboard(s), if they have one.

(4) If the number on the ball is not applicable to the game being played, operators may choose not to call the number.

NEW SECTION

WAC 230-10-145 Determining bingo winners. (1) A bingo game ends when a player achieves a specific pattern on a bingo card or when the bingo operator has called a specific number of bingo balls.

(2) Operators must use a separate drawing process for each game, except for:

(a) Interim or "on-the-way" games, including "instant winner" games in which players win by matching a predeter-

mined number, the number of balls called, or a predetermined pattern within an established number of calls; or

(b) Games in which cards are sold for different prices and players win a different prize depending on the price they paid to play; or

(c) Bonus games played at the same time as other bingo games where the player wins by calling a valid bingo that includes a predetermined number.

NEW SECTION

WAC 230-10-150 Multiple bingo winners. If more than one player wins a designated prize pool at the same time, the operator must divide the prize pool equally among the multiple winners.

NEW SECTION

WAC 230-10-155 Verifying bingo winners. When a player declares a winning bingo, the operator must:

(1) Have a bingo worker and at least one neutral player inspect the card or electronic dauber; or

(2) Have a bingo worker verify the card or electronic dauber by entering the bingo card number into an electronic verifier which will broadcast the winning card onto video screens for all players to view. Any player may request to see the actual winning card and the operator must allow the player to do so; or

(3) If the game is an "instant winner" and pays a prize of no more than fifty dollars, no neutral player needs to verify the card if the operator keeps an audit trail which identifies the winning combination called.

NEW SECTION

WAC 230-10-160 Shutting off the bingo ball blower. When a player declares a winning bingo, operators must draw the next ball out of the blower before shutting the blower off. If the bingo is not valid, the operator must call the next ball.

NEW SECTION

WAC 230-10-165 Awarding bingo prizes. After licensees validate a winning bingo, they must:

(1) Require the prize winner to provide proof that they have purchased the winning bingo card. The licensee must review the winner's bingo card purchase receipt and determine that the player properly purchased all cards played, including the winning card; and

(2) Require proof of identification necessary to establish the prize winner's identity before paying any prize. The winner must provide proof to the licensee that all information this rule requires is true and accurate. Licensees may withhold prizes until the winner provides adequate identification; and

(3) Award the prize and record it on a prize receipt. Licensees must record the complete address and tax payer identification number of each winner for prizes valued at \$1,200 or more.

NEW SECTION

WAC 230-10-170 Prizes paid for and available before bingo game starts. (1) Bingo operators must:

(a) Have paid for all merchandise prizes in full before offering the prizes in a bingo game; and

(b) Have the prizes available before starting the game; and

(c) Award the prizes before the end of the related bingo session, except for the main linked bingo prize and linked bonus prizes, which must be paid within forty-eight hours.

(2) Operators may enter into contracts to purchase merchandise immediately if it is awarded as a prize. The contract may be revocable if:

(a) Winners have an option to receive a cash prize; or

(b) The prize is no longer being offered.

RULES FOR ELECTRONIC BINGO CARD DAUBERS

NEW SECTION

WAC 230-10-175 Defining "electronic bingo card daubers." "Electronic bingo card daubers" means electronic equipment players use to identify bingo cards that contain numbers that a player inputs.

NEW SECTION

WAC 230-10-180 Electronic bingo card daubers requirements. Electronic bingo card daubers must:

(1) Be manufactured by licensed manufacturers; and

(2) Be sold, leased, and serviced by licensed distributors or manufacturers. Operators may perform routine maintenance on devices; and

(3) Have an identification and inspection stamp from us sold to the licensed manufacturer or the operator and attached by the licensed manufacturer, the operator, or us; and

(4) Be unable to modify the computer program which operates the dauber units or the electronic data base which stores the bingo cards; and

(5) Store preprinted bingo cards a player purchases. The electronic images of cards stored in daubers are for player convenience only and are not bingo cards for purposes of this title; and

(6) Use cards that meet all requirements of bingo cards and electronic bingo cards; and

(7) Allow players to input the numbers called; and

(8) Compare input numbers to bingo cards stored in an electronic data base; and

(9) Identify to the player those stored bingo cards that contain the input numbers.

NEW SECTION

WAC 230-10-185 Electronic bingo card daubers restrictions. (1) Electronic bingo card daubers must not allow a player to play more than sixty-six cards on the dauber at one time; and

(2) Players must:

(a) Input each number the operator calls into the memory of the dauber separately. Automatic or global marking of numbers is prohibited; and

(b) Call the bingo without using the dauber or the associated system; and

(c) Identify the winning card and display the card to the operator; and

(d) Not play more than one dauber at any point in time. However, a player may play one dauber and an unlimited number of bingo cards at the same time.

NEW SECTION

WAC 230-10-190 Discount marketing for electronic bingo card daubers. (1) Bingo licensees may use a single discount level for each type of card sold on electronic bingo card daubers, if they:

(a) Have a minimum purchase requirement; and

(b) Apply the discount to all additional cards bought; and

(c) Do not use an "All you can play" discount.

(2) If a licensee offers volume discount marketing for bingo cards, players must not use electronic bingo daubers.

NEW SECTION

WAC 230-10-195 Leasing electronic bingo card daubers. If a bingo licensee leases electronic bingo daubers from a manufacturer, the lease must not be based on, in whole or in part, the bingo card sales or the rental income from the daubers. However, manufacturers may base fees on the number of cards placed on a dauber for player selection games.

NEW SECTION

WAC 230-10-200 Reserving and assigning electronic bingo card daubers. (1) Bingo operators using electronic bingo card daubers must reserve at least one dauber for players with disabilities that restrict their ability to mark cards. The disabilities must be consistent with definitions in the Americans with Disabilities Act (ADA). If there are no requests for use of this dauber fifteen minutes before the scheduled start of the session, operators may allow any player to use the dauber.

(2) If operators use a drawing to assign daubers to players, they must ensure that the players know the method of drawing and have an equal chance to win.

NEW SECTION

WAC 230-10-205 Electronic bingo card dauber fees. (1) Bingo operators may charge either no fee or a flat fee for players to use electronic bingo card daubers.

(2) Operators must not:

(a) Charge a rental fee to players with disabilities that restrict their ability to mark cards if the disabilities are consistent with the ADA; or

(b) Make players with disabilities comply with minimum purchase requirements for daubers. However, players with disabilities must comply with any minimum purchase required of all other players.

(3) Operators must report rental fees for daubers as bingo receipts.

PLAYER SELECTION BINGO GAMES

NEW SECTION

WAC 230-10-210 Player selection bingo games authorized. Bingo licensees may offer player selection bingo games. "Player selection bingo game" means a bingo game where players select their own numbers. Licensees must use bingo cards with controls that provide an audit trail adequate to determine all winning combinations are valid.

NEW SECTION

WAC 230-10-215 Player selection bingo game requirements. If bingo licensees offer player selection games, they must use:

(1) Two-part disposable cards and then they must:

(a) Use the disposable card method of receipting for income; and

(b) Establish and prominently post house rules setting out conditions for adding to, deleting from, or changing a card before it is separated from the copy. A worker authorized by the bingo manager must verify all changes to the card; and

(c) Ensure that players mark their numbers on each card in a distinct, clear, and legible manner before separating the duplicate and the original. Licensees must not allow anyone to alter the copies after the duplicate and original cards are separated; and

(d) Place all original cards in lockboxes to ensure no one places cards in the lockbox after the first bingo ball is called; and

(e) Ensure the player retains and plays the duplicate copy; or

(2) Electronically generated cards and then they must:

(a) Use the electronically generated bingo card method of receipting for income; and

(b) Ensure that players do not mark or deface the card in any manner that prevents reading of the bingo numbers or any of the data imprinted on the card; and

(3) Keep all winning cards and any duplicate copies as part of the daily bingo records.

NEW SECTION

WAC 230-10-220 Player selection bingo game card requirements. Bingo cards used in player selection bingo games:

(1) Must be printed on two-part, self-duplicating paper to include an original and a duplicate copy. The duplicate copy must be given to the player and the operator retains the original as a part of the daily bingo records; and

(2) Must include a control system in each set which:

(a) Identifies that specific set; and

(b) Numbers each sheet of cards within a set sequentially; and

(c) Allows tracking of the transfer of cards from the point of manufacture to the operator and from the operator to the player; and

(3) May be produced by unlicensed manufacturers if:

(a) The primary activity of the manufacturer is producing nongambling products; and

(b) The cards meet the general bingo cards requirements; and

(c) The licensee assumes responsibility for complying with all requirements for player selection cards; and

(d) The invoice transferring these cards includes the beginning and ending card number in addition to meeting all other sales invoice requirements; and

(4) If electronically generated cards, may be single copy cards if all information from the cards is either printed on a continuous transaction journal retained in the card generating device or stored on the computer hard drive in a data base and printed out at the end of each session.

NEW SECTION

WAC 230-10-225 Player selection bingo game restrictions. (1) Bingo licensees offering player selection bingo games must not pay as winners incomplete cards, altered cards that were not verified per WAC 230-10-155, or cards where all required information is not displayed and legible. Incomplete, incorrect, altered, and unreadable cards are the players' responsibility and operators must not allow refunds.

(2) Bingo managers may make a one-for-one exchange when errors are discovered before the start of the game or before the player selection card is separated. In this case, the operator must mark "VOID" on the original card, initial next to the player's initials, and keep the voided card as part of the daily bingo records.

HIDDEN FACE BINGO GAMES

NEW SECTION

WAC 230-10-230 Hidden face bingo games authorized. Bingo licensees may offer hidden face bingo games. "Hidden face bingo game" means a bingo game that uses cards that prevent the numbers printed on the card from being viewed or known before the player opens the card.

NEW SECTION

WAC 230-10-235 Hidden face bingo game requirements. (1) Hidden face bingo cards must meet the requirements for disposable bingo cards and each card or sheet of cards must:

(a) Be printed, folded, and sealed in a manner that prohibits anyone from viewing or knowing the numbers, configuration of numbers on the card, or the card number before the player opens it; and

(b) Have a separate numbering system that is randomly distributed when compared to the card number imprinted in the "free" space. Manufacturers must use procedures that mix cards or sheets of cards so that:

(i) No consistent relationship exists between the "card numbers" and separate numbering system within a set or subset; and

(ii) No patterns or consistent relationships exist in the location of a specific card number between subsets from different sets; and

(iii) The serial number and the additional card or sheet number must be imprinted on the outside of the cards or sheets of cards and visible for recording without opening the card or sheet of cards; and

(iv) Each set of cards must contain at least six thousand unique faces or patterns of numbers.

(2) Licensees must:

(a) Use the disposable bingo card receipting method for sales of hidden face bingo cards; and

(b) Meet all inventory requirements for disposable bingo cards and disposable bingo card receipting; and

(c) Comply with rules about sequentially issuing bingo cards to ensure that duplicate cards are not sold during a game. Licensees must sell each complete set or subset of cards before they issue any cards from a different set or subset. Licensees may sell cards from more than one set during a game if care is taken to ensure that no duplicate cards are sold; and

(d) Complete all play during a single session and only use cards that are sold during that session; and

(e) Select and call a new set of numbers for each game or set of games (example: "On-the-way" games); and

(f) Have a separate display board, visible to the players, for displaying numbers called. The numbers must be displayed until the game is completed. Licensees may use alternative displays if the numbers are displayed on the electronic flashboard during all number selection periods; and

(g) Document and prominently post the requirements for a completed game; and

(h) Award prizes with these restrictions:

(i) "Instant winner" prizes may not exceed twenty-five percent of the total prize pool or two hundred fifty dollars, whichever is less; and

(ii) In addition to other requirements for awarding prizes, the winner must sign the winning card on the back to verify a winner of two hundred fifty dollars or more. If the licensee is using a two-part card, they must record a neutral player's name and complete address on the back of the original card to verify the winning card was paid.

(3) Players who have paid to participate in the game must be present when the numbers are selected.

THREE NUMBER SPEED BINGO GAMES

NEW SECTION

WAC 230-10-240 Three number speed bingo authorized. Bingo licensees may offer three number speed bingo games. "Three number speed bingo" means a bingo game where:

(1) Operators use a reduced number of balls and special bingo cards with three spaces; and

(2) Bingo numbers are called rapidly; and

(3) The price to play includes an ante, retained by the operator, and a wager that begins at three units and decreases by one for each number covered on a player's card; and

(4) An "ante" is the fee retained by the licensee which allows a patron to play three number speed bingo; and

(5) A "wager" is the total dollar value of chips used to cover the numbers on a player's card; and

(6) Players compete against all other players for a pool of prizes that varies according to the numbers covered by other players during the game.

NEW SECTION

WAC 230-10-245 Three number speed bingo restrictions. (1) Bingo licensees offering three number speed bingo must:

(a) Make the price to play no more than seven dollars per card, per game, including the ante and wagers; and

(b) Collect the same price to play for each card; and

(c) Licensees who charge a flat fee per session must determine the per game fee by dividing the fee per session by the minimum number of games to be played; and

(d) Not retain any part of players' wagers; and

(e) Pay to the winner(s) all wagers not covering a called number on a player's card. If there is more than one winner, licensees must equally split wagers among all winners. Licensees may develop a formula for splitting odd numbers of chips between winners; and

(f) Count only the ante as gross gambling receipts; and

(2) Licensees may contribute to accrued prize funds or progressive jackpots on three number speed bingo games, if they:

(a) Meet all requirements for accrued prize fund games as explained in the bingo records packet; and

(b) Fund the prize fund or jackpot solely from the ante.

NEW SECTION

WAC 230-10-250 Operating three number speed bingo. To play three number speed bingo:

(1) Bingo licensees must use:

(a) Special bingo cards that have three spaces imprinted with numbers that correspond to the numbers on the balls; and

(b) Thirty numbered balls, with numbers one through seventy-five available for use; and

(2) Licensees may charge a set amount for each card for the entire session or an amount per card for each game; and

(3) Each player pays the bingo licensee one ticket for each speed bingo card played for each game; and

(4) When the licensee charges a per session fee, the player's ticket and cash register receipt must remain visible and on the table at all times during the game; and

(5) Each player's beginning wager is three chips for each card played during any single game. A player must have three chips for each card being played before beginning the game; and

(6) During the game, players place a wagering chip on each number on their cards that matches a called number. Once a wagering chip covers a valid number, the player keeps it and the game winner(s) may no longer win it. Play-

ers must leave all chips on the number on the card until the licensee collects all losing wagers. The bingo worker collecting wagers must verify that covered numbers are valid; and

(7) The first player to cover all three numbers on any card is the winner; and

(8) After the winning card is verified, bingo workers collect all unprotected chips from all players and pay them to the winner.

NEW SECTION

WAC 230-10-255 Wagers and prizes required in chips for three number speed bingo. In three number speed bingo, wagers must be made and prizes paid in chips only.

NEW SECTION

WAC 230-10-260 Chip standards for three number speed bingo. (1) Bingo licensees must supply all chips used in three number speed bingo games. All chips must be conventional size and design, and include safeguards that maximize the integrity of the bingo games.

(2) The licensee must supply chips that:

(a) A licensed manufacturer produced; and

(b) A licensed manufacturer or distributor sold to the licensee; and

(c) Display the licensee's name or logo; and

(d) Clearly indicate the value of the chip.

NEW SECTION

WAC 230-10-265 Banking services for three number speed bingo. (1) Bingo licensees must redeem all chips for the amount for which they were sold.

(2) Licensees must collect the money taken in on chips sold and antes collected and keep these funds separate from all other money they receive.

NEW SECTION

WAC 230-10-270 Ticket sales and receipting for three number speed bingo income. (1) Bingo licensees must:

(a) Use the ticket method of receipting for bingo income; and

(b) Account for all tickets sold for per session fees using the combination receipting method; and

(2) All tickets sold and collected must be canceled by stamping the calendar date on the ticket at the time of sale or permanently defacing the tickets when collected; and

(3) Licensees must reconcile tickets sold and collected from players to cash for each session.

NEW SECTION

WAC 230-10-275 Exceptions to other bingo rules for three number speed bingo. The following rules do not apply to three number speed bingo:

(1) Prize disclosure before players pay to play. Licensees must still disclose the per card cost to play and the amount required to wager on a single card; and

- (2) Number of balls used to conduct the game; and
- (3) Number of spaces required on each bingo card; and
- (4) Requirements that Class F and above licensees use disposable bingo cards; and
- (5) Requirements to account for all income at the time it is received; and
- (6) Requirements of WAC 230-10-145 about drawing and physically displaying bingo numbers. However, licensees offering three number speed bingo must display the number on a flashboard and use the audio system to announce the number; and
- (7) Recordkeeping for prizes awarded.

OTHER GAMES AUTHORIZED AT BINGO GAMES

NEW SECTION

WAC 230-10-280 Drawings for prizes, good neighbor prizes, and second element of chance prizes as part of bingo games. Bingo licensees may award prizes to winners of other activities authorized by this section when they conduct these activities as part of a bingo session. All players paying to play must compete equally and licensees must treat all prizes awarded as bingo game prizes for minimum cash flow reporting requirements.

Drawings

- (1) Licensees may award prizes by:
 - (a) Drawing tickets randomly; or
 - (b) Using other random selection methods involving the ticket numbering system, if they are using the ticketing method of receipting for bingo income; or
 - (c) Using bingo cards in place of the tickets, if they are using the disposable bingo card method of receipting.
- (2) Licensees must prominently post for players all rules regarding drawings, including, at least:
 - (a) Requirements to qualify for the drawing; and
 - (b) Time and date of the drawing; and
 - (c) Whether a player must be present to win.
- (3) Licensees must:
 - (a) Award tickets for drawings only to players who bought cards to play bingo and:
 - (i) Pay an amount not more than one dollar per ticket. If a licensee elects to charge for entry in drawings, the licensee must not combine the drawing with other means of entry; or
 - (ii) Are winners of a bingo game during the bingo occasion; or
 - (iii) Are "good neighbor" winners; or
 - (iv) Meet other criteria we approve; and
 - (b) Not collect tickets for drawings for longer than thirty days.
- (4) Licensees must record the gross gambling receipts, prizes, and expenses and report these totals as bingo activities.
- (5) Licensees must not require the player to be present to win at a drawing held at a different session for which the tickets were purchased.

"Good neighbor" prizes

- (6) Licensees may award prizes based on the seating location of a player or players with regards to a bingo winner. Before awarding "good neighbor" prizes, licensees must:
 - (a) Prominently post all rules regarding drawings, including, at least:
 - (i) The amount each "good neighbor" or group of "good neighbors" wins; and
 - (ii) All requirements to qualify for a prize.
 - (b) Licensees must complete a record setting out:
 - (i) The criteria for awarding "good neighbor" prizes; and
 - (ii) The number of prizes awarded during each bingo session; and
 - (iii) All details required as part of the daily bingo records.

Second element of chance prizes

- (7) Licensees may award prizes using a second element of chance game if:
 - (a) Licensees prominently post and clearly explain to the players before they purchase a card to play all rules about play of the game. Licensees must disclose at least:
 - (i) The minimum odds of winning the highest prize; and
 - (ii) How they determine a winner; and
 - (iii) Any possibility or special requirement that might affect the outcome; and
 - (iv) The cash value of the highest prize available; and
 - (v) Any financial burden that the winner must bear, such as taxes or registration fees; and
 - (b) The second element of chance game does not involve the use of gambling devices; and
 - (c) The second element of chance game does not require the player to risk any portion of a prize already won; and
 - (d) Every possible outcome of the second element of chance game provides the player with an additional prize; and
 - (e) The player's minimum odds of winning the highest prize is equal to or greater than one winner out of one hundred twenty-five chances or the probability of winning the highest prize is .008 or greater; and
 - (f) Licensees maintain supporting records about the second element of chance game that provides for an audit trail.
- (8) Licensees must:
 - (a) Keep an inventory record in the format we require for all tickets on the premises for conducting drawings, "good neighbor," and second element of chance games; and
 - (b) Record the criteria for granting tickets, and the number of tickets awarded during each session in the daily bingo record for each session; and
 - (c) Maintain all winning tickets and other records as part of the daily bingo records.

RULES FOR ENTRY GUARANTEE TICKETS TO SPECIAL EVENT BINGO

NEW SECTION

WAC 230-10-285 Selling entry guarantee tickets for special event bingo. Bingo licensees may sell entry guaran-

tee tickets to players to reserve the right to play in special event bingo games if licensees:

- (1) Use entry guarantee tickets to document the sale. Entry guarantee tickets must be preprinted with, at least:
 - (a) The name of the sponsoring organization; and
 - (b) The time, date, and location of the event; and
 - (c) The specific entry guarantee ticket number; and
 - (d) The total number of entries available for the event; and
 - (e) The cost of the entry; and
 - (f) Any conditions or events that might prevent the buyer from redeeming the entry ticket, affect the refund, or cancel the event; and
- (2) Sell the tickets sequentially beginning with the lowest numbered ticket; and
- (3) Use the ticket receipting method to record all income from these entry guarantee tickets; and
- (4) Sell the entry guarantee tickets no more than sixty days before the event; and
- (5) Record the name, mailing address, and phone number of each person buying an entry guarantee ticket; and
- (6) Limit the sales of entry tickets to the seating capacity of the licensed premises; and
- (7) Limit the cost of the entry guarantee ticket to no more than fifty percent of the minimum buy-in for the event.

NEW SECTION

WAC 230-10-290 Controlling entry guarantee tickets. Bingo licensees must:

- (1) Treat all unaccounted-for entry guarantee tickets as cash shortages in the amount of the redemption value; and
- (2) Maintain a record of all entry guarantee tickets sold; and
- (3) Redeem entry guarantee tickets on the licensed premises and only for bingo cards during the bingo session for which the player bought the entry guarantee ticket; and
- (4) Immediately cancel entry guarantee tickets redeemed for bingo cards using a hand stamp that prints "REDEEMED" on each ticket; and
- (5) Treat entry guarantee tickets redeemed as gross gambling receipts for bingo at the session where they are redeemed; and
- (6) Modify the cash reconciliation section of the daily bingo records to document the number and dollar value of entry guarantee tickets redeemed; and
- (7) Deposit gross receipts from the sale of entry guarantee tickets separately into the gambling account no later than two banking days after they are received; and
- (8) Keep the entry guarantee ticket numbers relating to the funds deposited as a part of the deposit record; and
- (9) After thirty days, consider all unredeemed entry guarantee tickets void and record them as contributions to the organization.

NEW SECTION

WAC 230-10-295 Canceling bingo special events with entry guarantee tickets. Bingo licensees may cancel the special event before the start of the scheduled bingo session. When an event is canceled, licensees must:

- (1) Refund the entire purchase price of the entry guarantee ticket(s) to the ticket buyer; and
- (2) Make all refunds by check payable to the buyer; and
- (3) Record the entry guarantee ticket number on the check; and
- (4) Mail the check to the customer no later than three days following cancellation of the special event.

NEW SECTION

WAC 230-10-300 Refunding entry guarantee tickets.

A customer may request a refund before the start of the special event bingo session. Bingo licensees must:

- (1) Require the person requesting the refund to sign the back of the ticket; and
- (2) Refund the entire purchase price of the ticket to the customer; and
- (3) Make all refunds by check payable to the customer; and
- (4) Record the entry guarantee ticket number on the check; and
- (5) Mail the check to the customer no later than thirty days following the event; and
- (6) Retain all refunded tickets as a part of the records for the event.

GIFT CERTIFICATES

NEW SECTION

WAC 230-10-305 Gift certificates as bingo prizes.

When issuing gift certificates as bingo prizes, bingo operators must:

- (1) Issue the gift certificates sequentially; and
- (2) Not exceed fifty dollars per bingo prize in value; and
- (3) Not issue gift certificates exclusively for punch boards or pull-tabs; and
- (4) Record the value of each gift certificate as a bingo prize in the daily bingo records under the session awarded; and
- (5) Keep the bingo prize receipt for the gift certificates as a part of the daily bingo records.

NEW SECTION

WAC 230-10-310 Selling gift certificates. When selling gift certificates, bingo operators must:

- (1) Issue the gift certificates sequentially; and
- (2) Ensure that the gift certificates are paid for in full at the time of purchase; and
- (3) Deposit all funds collected separately into the gambling account within five banking days; and
- (4) Include each gift certificate number with the deposit record.

NEW SECTION

WAC 230-10-315 Gift certificates requirements.

Bingo operator must purchase gift certificates from a commercial printer or licensed distributor.

(1) The gift certificates must have at least the following information printed on them:

- (a) A predetermined gift certificate number; and
- (b) A predetermined dollar value; and
- (c) The name of the organization issuing the gift certificate; and
- (d) Any conditions for the redemption of the gift certificate.

(2) Purchase invoices for the gift certificates, which must include, at least:

- (a) Name of the organization; and
- (b) Date the gift certificates were purchased; and
- (c) Beginning and ending numbers on the gift certificates.

NEW SECTION

WAC 230-10-320 Redeeming gift certificates. When redeeming gift certificates, bingo operators must:

- (1) Record the dollar value and total number of gift certificates redeemed in the cash reconciliation section of the daily bingo records; and
- (2) Keep redeemed gift certificates as part of that day's daily bingo records.

NEW SECTION

WAC 230-10-325 Reconcile gift certificates monthly. Bingo operators must reconcile gift certificates monthly. Operators must have a gift certificate inventory log, which includes, at least:

- (1) Each gift certificate number; and
- (2) Dollar value of each gift certificate; and
- (3) Date the gift certificate was sold or awarded as a bingo prize; and
- (4) Date the gift certificate was redeemed.

RECORDKEEPING FOR BINGO GAMES

NEW SECTION

WAC 230-10-330 Recordkeeping required for agricultural fairs, Class A, B, and C, and other organizations. Licensees must immediately account for all income from bingo games. Class A, B, and C bingo licensees, organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair must follow the recordkeeping requirements in WAC 230-07-125 or any of the receipting methods for bingo income required for Class D or above licensees.

NEW SECTION

WAC 230-10-335 Bingo daily records. Bingo licensees must prepare detailed records for each bingo session during that session in the format we require. Daily records must include, at least:

- (1) A copy of the schedule of games and prizes available for the session. Licensees must note any changes to the advertised and printed game and prize schedule that occur during a session and the bingo manager assigned primary

responsibility for supervising the session and another bingo worker on duty during the session must verify and sign the change. If licensees note the effective dates of each game schedule, they may maintain it separately and update it only when a change occurs; and

(2) An attendance record indicating the number of people participating; and

(3) All bingo numbers selected and called during any game that offers a prize greater than two hundred dollars. Licensees must record the numbers in the sequence selected. They may use a computer generated "call sheet" instead of a manual record if a printout of results is made; and

(4) The winning card number(s) for each individual prize awarded greater than two hundred dollars. If the game is played using disposable bingo cards, the winning card may be retained instead of the card numbers; and

(5) The gross gambling receipts collected for each separate type of sale, of any kind, for bingo games including, but not limited to, regular games, early bird games, blackout games, special games, or pick up games. Licensees using the combination receipting method for bingo income must reconcile the extended value of all disposable cards, packets of cards, and electronically generated cards sold to the amount of sales recorded per the cash register; and

(6) The amount paid out or accrued for prizes awarded for each bingo game. Each session record must contain at least the following regarding prizes awarded:

- (a) The game number; and
- (b) The dollar amount or the actual cost of each prize; and
- (c) A complete description of all noncash prizes; and
- (d) The consecutive number of the prize receipt issued for each prize; and
- (e) The duplicate copy of the prize receipt issued for all prizes awarded during the session or the merchandise prize receipt log; and

(f) The check number of all checks used to pay winners of bingo games. If the payment must be made by check, licensees must maintain the duplicate copy as a part of the session records; and

- (g) Full details of prizes accrued; and
- (7) The net gambling receipts from each bingo session; and

(8) The cash on hand at the beginning and the end of each session; and

(9) A reconciliation of cash on hand, net gambling receipts, and the bank deposit of net revenue for each session. Licensees must include a validated copy of the bank deposit receipt. Licensees must document all steps taken to reconcile overages or shortages of more than twenty dollars for any session.

NEW SECTION

WAC 230-10-340 Daily records review by gambling manager. The gambling manager assigned primary responsibility for supervising the bingo session(s) must review all session records for accuracy, determine that required information is provided, and confirm the required deposit amount(s). After this review, that gambling manager must

sign the record before leaving the premises on the day of the session.

NEW SECTION

WAC 230-10-345 Retaining daily records. Bingo licensees must keep daily records for two years. Licensees must keep the session summary for three years.

NEW SECTION

WAC 230-10-350 Recording bingo winners. Organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair, and Class A and B bingo licensees do not have to follow this rule if they meet the requirements for lower volume charitable or nonprofit organizations in WAC 230-07-125. All other bingo licensees must report all prize payments for bingo games and drawings for prizes, good neighbor prizes, and second element of chance prizes at bingo games and record payment on a prize receipt.

(1) Licensees must use prize receipts printed by a commercial printer. The receipts must:

(a) Be two-part, self-duplicating paper that provides for an original and a duplicate copy; and

(b) If the licensee is Class F or above, be imprinted with the name of the licensee and a consecutive ascending number that does not repeat in at least 100,000 occurrences; and

(c) If the licensee is Class E or below, the receipt is not required to be imprinted with the licensee's name and the consecutive ascending number may repeat in 1,000 occurrences; and

(d) Provide space for the licensee to record the information we require.

(2) Licensees may receipt merchandise prizes with a cost or fair market value of fifteen dollars or less on a single merchandise prize receipt log sheet. Licensees must:

(a) Maintain a separate merchandise prize receipt log for each session; and

(b) Retain the receipt log as a part of the bingo daily records.

(3) Operators must complete the prize receipt including, at least:

(a) Date; and

(b) Game number; and

(c) Complete name and address of the winner; and

(d) Dollar amount of the prize or the operator's cost, if noncash prize; and

(e) Full description of all noncash prizes; and

(f) Check number, if any portion of the prize is paid by check; and

(g) Initials of the bingo worker making the payout; and

(h) Initials of the cashier making the payment.

(4) Except for linked bingo prizes, licensees may omit an address for the winner if:

(a) The prize is greater than \$300; and

(b) The licensee pays by check or a combination of cash and check; and

(c) Checks are drawn on the licensee's gambling bank account; and

(d) Checks used are of a type that provides a duplicate copy. The copies must be kept as a part of the daily bingo records; and

(e) Checks are made payable only to the winner. Licensees may make checks for prizes won by players under age eighteen payable to the guardian or immediate family member accompanying the player; and

(f) Licensees note the game number and prize receipt number on the check; and

(g) The bank returns all original checks to the licensee. Licensees must have the original checks available for our inspection on demand; and

(h) The licensee does not cash or otherwise redeem prize checks.

(5) Licensees must record the complete name and address of the winner of linked bingo prizes.

(6) Licensees must:

(a) Issue prize receipts sequentially in an ascending order; and

(b) Void and retain with the daily records any prize receipts bearing a lower number than the highest number issued during a session; and

(c) Give the original of each prize receipt to the winner; and

(d) Keep a duplicate copy as a part of their records for not less than three years; and

(e) Account for and document all prize receipts purchased or otherwise obtained on a vendor's invoice; and

(f) Keep the vendor's invoice, or a photocopy of it, on the premises and have it available for our inspection. The purchase invoice must document, at least:

(i) Name of the vendor;

(ii) Name of the purchasing organization;

(iii) Date of purchase;

(iv) Number of receipts purchased; and

(v) The beginning and ending receipt number.

CASH FLOW REQUIREMENTS

NEW SECTION

WAC 230-10-355 Charitable or nonprofit organizations purpose and spending limits for bingo operations.

To ensure that bingo licensees meet the intent of RCW 9.46.010 and provide adequate funds to promote charitable and nonprofit programs, bingo licensees must not allow their bingo operation to award excessive prizes or pay excessive expenses. The governing board of the organization must specifically approve all capital expenditures for the bingo operation that exceed six thousand dollars.

NEW SECTION

WAC 230-10-360 Defining "bingo operation."

"Bingo operation" means bingo games and all associated activities conducted with bingo games at the premises, including punch boards, pull-tabs, other authorized drawings, snack bar, retail sales activities, and rental of the bingo premises.

NEW SECTION

WAC 230-10-365 Defining "adjusted cash flow from the bingo operations." "Adjusted cash flow from the bingo operation" means the combined gross income of the bingo operation minus all prizes and expenses, whether paid or accrued. Operators must not consider depreciation or amortization an expense of the bingo operation for the purposes of computing expenses.

NEW SECTION

WAC 230-10-370 Adjusted cash flow limits for bingo. For the purpose of this subsection, "gross receipts" means the combined gross gambling receipts from bingo, pull-tab, and punch board activities. Bingo licensees must ensure that the adjusted cash flow from the bingo operation available for its charitable or nonprofit programs during each license year is, at least:

Gross Receipts*	Adjusted Cash Flow
(1) Above \$1,500,000 up to \$2,500,000	Three percent of gross receipts over \$1,500,000
(2) Above \$2,500,000 up to \$3,500,000	\$30,000 plus four percent of gross receipts over \$2,500,000
(3) Above \$3,500,000 up to \$4,500,000	\$70,000 plus five percent of gross receipts over \$3,500,000
(4) Above \$4,500,000	\$120,000 plus six percent of gross receipts over \$4,500,000

*If the licensee does not operate for a full license year, we may pro rate the requirements based on full quarters operated.

NEW SECTION

WAC 230-10-375 Failing to maintain a positive cash flow. (1) Bingo licensees must measure adjusted cash flow quarterly to ensure that they maintain a positive cash flow and are not operating primarily for gambling purposes.

(2) If a licensee does not maintain a positive cash flow from the bingo operation during any two consecutive license year quarters, measured independently, the director summarily suspends the organization's bingo license.

(3) If a licensee fails to meet the adjusted cash flow requirements for any calendar year, we take administrative action to revoke the organization's bingo license.

NEW SECTION

WAC 230-10-380 Relief reduction for minimum annual adjusted cash flow. (1) If a bingo licensee fails to meet the minimum annual adjusted cash flow requirements for any license year and has maintained a positive cash flow, the director automatically grants relief, allowing a twenty-five percent reduction to the annual dollar amount of required adjusted cash flow for the year in which the licensee is out of compliance.

(2) No licensee granted relief is eligible to receive relief for any of the four license years following the license year for which the director granted the relief.

METHODS OF RECEIPTING BINGO INCOME

NEW SECTION

WAC 230-10-385 Receipting of bingo income required. Bingo licensees must account for all income from bingo games at the time they receive the income. Licensees must issue each player a receipt for the amount paid to play in each game or set of games at the time of payment. Players must keep this receipt to prove that they have properly purchased the number of cards they are playing.

(1) Class A, B, and C licensees, organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair may use the receipting method for bingo income in WAC 230-07-125 or any of the methods for receipting bingo income required for Class D or above licensees; and

(2) Class D and above licensees must use the receipting method for bingo income required for the bingo games they are offering:

- (a) The disposable bingo card receipting method; or
- (b) The cash register receipting method; or
- (c) The electronically generated receipting method; or
- (d) The ticket receipting method; or
- (e) The combination receipting method.

NEW SECTION

WAC 230-10-390 Disposable bingo card method for receipting bingo income required when disposable bingo cards used. Bingo licensees must use the disposable bingo card method to receipt for bingo income when disposable bingo cards are used. Licensees using the disposable bingo card method to receipt for bingo income must:

(1) Use bingo cards that meet all disposable bingo card requirements; and

- (2) Complete the inventory control record; and
- (3) Record for each set of cards or sheets intended for playing a single game, including on-the-way games:

- (a) Serial number; and
- (b) The color and/or border pattern; and
- (c) The value of each card or sheet; and
- (d) The lowest consecutive card or sheet number issued as a receipt; and

(f) Missing cards or sheets per the manufacturer's packing record; and

- (g) The number of cards returned and not issued; and
- (h) The number of cards issued as receipts; and
- (i) The total gross gambling receipts from all cards issued as receipts; and

(4) Record for each set or collation of packs or packets of cards sold and intended for playing a defined set of games:

- (a) The serial number of the top sheet or page of the packet; and
- (b) The color and/or border pattern of the top sheet or page of the packet; and
- (c) The lowest consecutive card, sheet, or packet number for the first packet issued as a receipt; and

(d) The card, sheet, or packet number of the last or highest packet issued as a receipt; and

(e) The number of packets issued as receipts; and

(f) The number of packets returned and not issued; and

(g) Missing packets per the manufacturer's packing record; and

(h) The value of each packet; and

(i) The total gross receipts from all packets issued as receipts; and

(5) Record each disposable card issued for each type of sale separately. When more than one card or sheet number appears on a sheet of cards, licensees must use the manufacturer's designated control system to determine the beginning and ending number sold. Each time the numbering of the sheets breaks in the set, licensees must make a separate entry in the records; and

(6) Sequentially issue each disposable card or sheet or packet of cards from the same set at each individual sales point. Licensees may sell these cards, sheets, or packets not issued during a session only at the next bingo session. Otherwise, licensees must retain these cards, sheets, or packets of cards for at least one year; and

(7) Return unsold cards issued to the operator for a linked bingo prize to the linked bingo prize provider. The linked bingo prize provider must store these cards six months or until we have examined and approved them for destruction, whichever is less. Unopened blocks of two hundred fifty cards may be reissued.

NEW SECTION

WAC 230-10-395 Cash register method of receipting for bingo income. Bingo licensees may use a cash register to record bingo income if the cash registers:

(1) Have separate keys to record each type of sale; and

(2) Store and compute a total for each type of sale recorded and is capable of providing the total on request; and

(3) Retain in the memory unit all transactions recorded during a session, regardless of whether or not the cash register power source is interrupted; and

(4) Record all transactions, customer receipt numbers, and control totals on the internal tape retained in the cash register. The licensee must keep the internal tape, showing these transactions, as part of the daily bingo records; and

(5) Assign and imprint on the customer receipt and internal tape a minimum four-digit consecutive number for every sales transaction processed. Only cash register service personnel may reset this numbering system and the numbering system must not return to zero at the conclusion of any period of use or power interruption. If licensees receive written approval from us before use, they may use cash registers that do not meet these requirements but have adequate alternative control features; and

(6) For Class D and above licensees, imprint a minimum three-digit consecutive number on the customer receipt and internal tape to note each time transactions are totaled or when a set of transactions are totaled and closed. If licensees receive written approval from us before use, they may use cash registers that do not meet these requirements but have adequate alternative control features.

NEW SECTION

WAC 230-10-400 Customer receipts for cash register method of receipting for bingo income. Bingo licensees must imprint at least the following on customer receipts:

(1) The date; and

(2) The name of the licensee operating the activity; and

(3) The separate amount of money paid to play each type of game; and

(4) The total amount of money paid; and

(5) The consecutive customer receipt number.

NEW SECTION

WAC 230-10-405 Retaining cash register receipts for cash register method of receipting for bingo income. (1) Bingo licensees must keep all cash register receipts for voids, overrings, returns, "no sales," and any other receipts not issued to a player as part of the daily bingo records.

(2) If a cash register is used to receipt activities other than bingo, licensees must keep the internal cash register tapes for not less than two years and have them available for our review on request.

NEW SECTION

WAC 230-10-410 Electronically generated bingo card method of receipting bingo income. Bingo licensees may use the electronically generated bingo card method of receipting to document bingo income if the sales transaction and issuing cards to players are completed at the same time. Otherwise, licensees must use the combination receipting method.

NEW SECTION

WAC 230-10-415 Electronically generated bingo card method of receipting for bingo income requirements. Bingo licensees using the electronically generated bingo card method of receipting to document bingo income must:

(1) Summarize and print all transactions recorded during a bingo session in a permanent record at the end of each session. This record must provide, at least:

(a) The beginning and ending card number; and

(b) The beginning and ending transaction number; and

(c) The total number of cards sold; and

(d) The total number of sales transactions; and

(e) The total dollar amount of sales for each type of sale; and

(f) The total dollar amount of sales; and

(g) The number and dollar amount of all voids, overrings, or sale returns;

(2) Imprint all electronically generated cards or sheets of cards with a control system that includes, at least:

(a) A card number assigned to each card. Each sheet of cards must be assigned a consecutive transaction number that does not repeat in less than 999,999 transactions; and

(b) The name of the licensee; and

(c) The time and date of the transaction; and

(d) The game number; and

(e) The amount paid for the opportunity to play each game; and

(f) The total amount paid; and

(g) The manufacturer assigned numbers and card number or, if printed for a player selection game, the numbers the player selected; and

(3) Use a computer to store bingo cards and interface with a printer. The computer must:

(a) Retain in memory a record of all transactions occurring during a session until the operator has totaled, printed, and cleared the transactions, regardless of whether the primary power source is interrupted; and

(b) Compute a total of all transactions occurring during the current session and print out the total on request; and

(c) Maintain and control the time and date of sale and transaction number in a manner that prohibits change or resetting except by the manufacturer or qualified service personnel. Licensees must retain a detailed record, supported by service documents for each service call involving a change of the time, date, or transaction number; and

(d) Secure the electronically stored bingo cards in a manner that prevents an operator or player from modifying them. Licensees must not exchange, transfer, refund, or modify the price of cards issued to a player in any way after completion of the sales transaction. Cards must be stored on erasable programmable read only memory (EPROM), compact disc read only memory (CDROM), write once read many disc drives (WORM), or other systems we approve.

NEW SECTION

WAC 230-10-420 Ticket method of receipting bingo income. Bingo licensees may use tickets to document receipts of bingo income. Tickets must be:

(1) Manufactured by a commercial printer and imprinted with:

(a) At least four digit numbers in a sequential series. Class F and above licensees must use tickets with numbers that do not repeat in at least 99,999 occurrences; and

(b) Each ticket on a roll must represent the same dollar value or amount of money; and

(c) Include the name of the licensee operating Class F and above bingo game; and

(2) If used by Class F or above licensees, purchased from a licensed distributor or manufacturer; and

(3) Issued sequentially from each roll, starting with the lowest numbered ticket; and

(4) Accounted for by the licensee. If purchased from a commercial business or licensed distributor, documentation must be on the sales invoice. This invoice, or a photocopy, shall be maintained on the premises and available for inspection. Document the following information on the sales invoice for each roll of tickets purchased:

(a) Name of distributor; and

(b) Name of purchasing licensee; and

(c) Date of purchase; and

(d) Number of rolls of tickets purchased; and

(e) The color, dollar value, total number of tickets, and beginning ticket number for each roll; and

(5) Recorded in the daily records in the format we require; and

(6) Retained by the licensee as a part of the bingo daily records for those not issued as receipts and that bears a number falling below the highest numbered ticket issued during that session and not be used to receipt for any type of income; and

(7) Not be the same color and imprinted with the same ticket number as any other ticket on the premises.

NEW SECTION

WAC 230-10-425 Ticket method of bingo receipting for bingo income restrictions. (1) All bingo licensees may use the ticket method of receipting bingo income for drawings and good neighbor prizes offered at their bingo games.

(2) Class E and below licensees may use the ticket method for games operated with hard cards and for bonus games.

(3) Class F and above licensees may use the ticket method for bonus games as a part of the combination receipting method.

NEW SECTION

WAC 230-10-430 Keeping an inventory record for the ticket method of bingo receipting. (1) Bingo licensees must keep an inventory record in the format we require for all tickets used for income receipting.

(2) Licensees must enter all ticket information on the inventory record in the format we require before the beginning of the next bingo occasion.

NEW SECTION

WAC 230-10-435 Combination receipting method of receipting bingo income. (1) Bingo licensees may use a receipting method that combines cash register receipting with another approved method of receipting bingo income.

(2) Class F and above licensees must use combination receipting for income from sales of:

(a) Disposable bingo card packets; and

(b) Disposable bingo card sheets from a set of bingo cards divided into subgroups; and

(c) Electronically generated bingo cards, if sales transactions and issuing of cards are not completed and documented at the same time; and

(d) Bonus games.

NEW SECTION

WAC 230-10-440 Combination receipting method for bingo income requirements. (1) Bingo licensees using the combination method of receipting for bingo income must follow all requirements for cash register receipting; and

(2) Licensees may sell similar cards used to play for the same prize at a volume discount, but they must record each separate discount price using a separate cash register or sales identification key to provide an audit trail; and

(3) If receipting for the sale of disposable bingo cards, licensees must:

(a) Follow all requirements for disposable bingo card receipting; and

(b) In addition to those requirements, record the following for each session where sets of cards are sold:

(i) The session number and date; and

(ii) The beginning and ending control numbers of the top page of the packets; and

(iii) Adjustments for any missing packets, compared to the manufacturer's packing record; and

(iv) The number of packets distributed to sales points and returned as unsold; and

(v) Total packets sold; and

(vi) The value of each packet; and

(vii) The extended value obtained by multiplying total packets issued times the value of each packet; and

(viii) The cumulative number of packets issued from the series to date; and

(c) Sequentially issue each disposable card or sheet or packet of cards from the same set at each individual sales point. If sets are divided into subgroups, then licensees must issue packets or sheets of cards within each subgroup sequentially from each subgroup. Licensees may sell these cards, sheets, or packets not issued during a session only at the next bingo session. Otherwise, licensees must retain these cards, sheets, or packets of cards for at least one year; and

(d) Record all required information in the inventory control record; and

(e) Carry forward the totals from the transaction record to the daily bingo summary and reconcile sales against the cash register record; and

(4) If receipting for electronically generated bingo cards, licensees must:

(a) Follow all requirements of electronically generated bingo card receipting; and

(b) Carry forward the totals from the transaction record to the daily bingo summary and reconcile sales against the cash register record; and

(5) If receipting for bonus games, licensees must:

(a) Follow all requirements of ticket receipting; and

(b) Sequentially issue tickets from each sales point. Licensees must retain tickets from each sales point with control numbers lower than the highest ticket issued at that sales point as a part of the daily bingo records; and

(c) Carry forward the totals from the transaction record to the daily bingo summary and reconcile sales against the cash register record.

LINKED BINGO GAMES AND PRIZES

NEW SECTION

WAC 230-10-445 Linked bingo games and prizes. A linked bingo prize provider must request and receive approval from us before allowing a bingo operator to participate in a game that offers a linked bingo prize. A bingo operator must not offer more than one linked bingo game per session or no more than three linked bingo games per day. The linked bingo prize provider must notify us within seven days when an operator stops participating in linked bingo prize games.

NEW SECTION

WAC 230-10-450 Controlling gambling equipment by linked bingo prize licensees. Linked bingo prize licensees must control all gambling equipment in their possession.

NEW SECTION

WAC 230-10-455 Operating linked bingo prize games. (1) Bingo licensees operating linked bingo prize games must ensure that all numbers selected for a linked bingo prize are selected on the premises of a licensee taking part in the linked bingo prize and in the presence of players paying to participate in the game; and

(2) The caller must display the number to all players immediately after drawing each ball; and

(3) When a player declares a winning bingo for the main or bonus prize, a licensed gambling manager, a neutral player, and the game caller must verify the winning card and disclose the winning combination to all players; and

(4) The blower must remain in operation until management removes all balls and records the order in which they were removed; and

(5) Operators may have up to forty-eight hours to award a main or bonus prize to the winner(s); and

(6) If a linked bingo prize provider distributes cards so that duplicate cards are in play, then the linked bingo prize provider is responsible for paying the increases to the prize pool under WAC 230-10-125; and

(7) The linked bingo prize provider must establish procedures for participating operators to follow that reduce the possibility of error; and

(8) Before beginning a linked bingo prize game, each operator must tell their players the serial numbers and sheet numbers for all cards sold at their premises; and

(9) Linked bingo prize providers must not restrict licensees from participating. However, a linked bingo prize provider may establish minimum card sales by an operator to entitle that operator to receive equipment to conduct the game without paying compensation; and

(10) Linked bingo prize providers may establish a consolation prize amount paid at each participating location. Participating licensees whose sales volume does not meet the minimum set out in subsection (9) of this section may pay a consolation prize that is less than this amount; and

(11) If hidden face bingo cards are used, linked bingo prize providers may, as part of the game rules, allow players to mark all odd or even numbers based on the calendar date; and

(12) Class A, B, or C bingo licensees participating in linked bingo prizes must maintain all records required for Class D bingo licensees for all their bingo operations; and

(13) All card sales must stop before the drawing of the first ball; and

(14) Licensees may not require a player to call bingo on the last number called; and

(15) For all linked bingo prize games, a winner must be determined at each premises which sells cards to participate in the game; and

(16) For funds contributed to accrued linked bingo prizes, licensees must modify each bingo game daily record to include, at least:

- (a) The amount of the contribution; and
- (b) The amount of any consolation prize the licensee paid for a linked bingo prize game; and
- (c) The name of the linked bingo prize provider to whom the contribution is made.

SHARING BINGO FACILITIES WITH OTHER CHARITABLE OR NONPROFIT ORGANIZATIONS

NEW SECTION

WAC 230-10-460 Shared bingo facilities. Multiple bingo licensees must enter into a written agreement before sharing a facility. Before operating in a shared facility, licensees must:

(1) Send us written notification of intent to share facilities at least thirty days before operating bingo in a shared facility. The notification must include, at least:

- (a) The name of all organizations sharing the facility; and
- (b) Names and signatures of the highest ranking officer for each organization involved; and
- (c) Copies of any written agreements between organizations; and
- (d) The method used to share expenses.

(2) Maintain management over their individual gambling activities.

(3) Be solely responsible for their individual records, inventory, management, equipment, and operation of the gambling activities for which they hold a license.

(4) Complete a separate quarterly activity report according to the gambling receipts and expenses it is responsible for under the terms of the written agreement between the licensees.

(5) Locate their head office or principal location in the same county where they operate bingo, or as otherwise defined in RCW 9.46.0205.

NEW SECTION

WAC 230-10-465 Sharing facilities and using the cash register system of receipting bingo income. Multiple bingo licensees sharing a facility may use a single cash register if the licensees maintain a log of, at least, the following:

- (1) Name of the organization using the register; and
- (2) Date; and
- (3) Beginning and ending transaction numbers; and
- (4) Beginning and ending time; and
- (5) Name and signature of the cashier at the end of use.

NEW SECTION

WAC 230-10-470 Sharing management and accounting for shared bingo facilities. Before operating under shared management and facilities, bingo licensees must meet the following requirements:

(1) No more than three bingo licensees may share a facility.

(2) Licensees must send us a written notification of the intent to share facilities at least thirty days before operating in a shared facility. The notification must include, at least:

- (a) The name of the lead organization and lead manager; and
- (b) Name of all organizations sharing the facility; and
- (c) Names and signatures of the highest ranking officer for each organization involved; and
- (d) Copies of any written agreements between organizations; and
- (e) The method for sharing the gross gambling receipts, net income, expenses, and prizes among the licensees.

Management

(3) All managers of the bingo operation must be full and regular members or employees of at least one of the participating organizations.

(4) Nonprofit gambling managers must not participate in the operation of bingo games at more than one bingo facility.

Accounting

(5) The lead organization must maintain the records clearly disclosing the amount of money the bingo operation received and expended. Expense records must make known the purposes for which the organization spent money.

(6) The lead organization must establish and maintain a separate bank account to which it will deposit all proceeds from the bingo operation and from which it will pay all of the expenses in connection with the bingo operation, including at least, all payments of prizes.

(7) Each licensee must keep records of gambling proceeds received from the bingo operation and the use of those proceeds towards the stated purpose of the organization.

(8) Each licensee must complete a separate quarterly activity report according to the percentage of gambling receipts and expenses it is responsible for under the terms of the written contract between the licensees.

SHARING BINGO FACILITIES WITH FOR-PROFIT BUSINESSES

NEW SECTION

WAC 230-10-475 Operating bingo in a for-profit business premises. (1) Bingo licensees may operate bingo in a for-profit business if the:

(a) Bingo portion is separate and apart from the for-profit business portion. A transparent or solid barrier not less than seven feet high with no more than two openings must separate the two portions. Each opening must be no more than six feet in width; or

(b) For-profit business is closed when bingo games are operated.

(2) When the sale, service, or consumption of liquor is permitted in the for-profit business, the liquor licensee or permittee is responsible for complying with liquor laws and regulations.

(3) Commercial stimulant pull-tab licensees must not sell pull-tabs in the bingo portion of the premises. Pull-tab players may take the pull-tabs into the bingo portion. Players

must select and purchase the pull-tabs and operators pay prizes in the for-profit business portion.

(4) The owner, manager, or any employee of the for-profit business must not be an officer of the organization or participate in the operation of the bingo games on those premises.

WSR 07-05-021
WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL
 (By the Code Reviser's Office)
 [Filed February 13, 2007, 8:33 a.m.]

WAC 51-50-0503, 51-50-1205 and 51-50-480202, proposed by the building code council in WSR 06-16-113 appearing in issue 06-16 of the State Register, which was distributed on August 16, 2006, 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 07-05-022
WITHDRAWAL OF PROPOSED RULES
BUILDING CODE COUNCIL
 (By the Code Reviser's Office)
 [Filed February 13, 2007, 8:34 a.m.]

WAC 51-51-0310 and 51-51-0703, proposed by the building code council in WSR 06-16-112 appearing in issue 06-16 of the State Register, which was distributed on August 16, 2006, 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 07-05-023
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed February 13, 2007, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-02-078.

Title of Rule and Other Identifying Information: WAC 220-95-100 Sea urchin license reduction program and 220-95-110 Sea cucumber license reduction program. The legislature has set up a self-funded industry license buy-back program, which will increase the maximum bid amount paid to encourage further license sales to the department. This in turn will reduce overcapitalization and will allow for license retirements.

Hearing Location(s): Ellensburg Inn and Conference Center, 1700 Canyon Road, Ellensburg, WA, on April 6-7, 2007, at 8:00 a.m.

Date of Intended Adoption: May 18, 2007.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by April 4, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by October 19, 2006 [April 3, 2007], TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To increase the maximum bid amount for sea urchin and sea cucumber license-reduction buy-back efforts to reduce fleet size in both fisheries and increase the economic return of the remaining fishers.

Reasons Supporting Proposal: Current rules with a lower maximum bid amount are not generating enough interest to cause existing license holders to sell their licenses. Thus, the goal of license-reduction levels has not yet been met.

Statutory Authority for Adoption: RCW 77.70.150 and 77.70.190.

Statute Being Implemented: RCW 77.70.150 and 77.70.190.

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

Name of Proponent: Washington Department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Morris W. Barker, 1111 Washington Street, Olympia, (360) 902-2826; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: None required.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None required.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No cost of compliance - participation is purely voluntary.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No, revenue and sales will be gained by remaining participants.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

- A. Cost per employee;
- B. Cost per hour of labor; or
- C. Cost per one hundred dollars of sales.

There is no cost of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The industry advisory board was consulted on the appropriate maximum bid amount.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency will present the rule proposals in a public forum under the auspices of the fish and wildlife commission's public rule-making process. See response to #6 above.

8. A List of Industries That Will Be Required to Comply with the Rule: The sea urchin and sea cucumber dive fishery may choose to participate in the voluntary license reduction program.

A copy of the statement may be obtained by contacting Morris W. Barker, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2826, fax (360) 902-2944, e-mail barkemwb@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

February 13, 2007

Loreva M. Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 02-184, filed 8/9/02, effective 9/9/02)

WAC 220-95-100 Sea urchin license reduction program. In order to provide for economic stability in the commercial sea urchin fishery, and in accordance with RCW 77.70.150, the department establishes the sea urchin license reduction program (program).

(1) Eligibility: All persons who currently hold a sea urchin commercial fishery license are eligible to offer their license(s) for purchase under the program.

(2) Method of purchase: The department will rank offers to sell sea urchin licenses from the lowest offer to the highest offer. The department will purchase licenses each year from the funds made available under RCW 77.70.150, with a maximum purchase price of \$((8,000)) 11,000 per license.

(3) Offer process: The department will accept offers to sell beginning August 1st of each year and will purchase licenses based on the funds that are available on the following September 30th.

(4) Selection process: The department will select licenses to be purchased beginning with the lowest offer to sell, and continuing until there are insufficient funds to purchase a complete offer. If two or more licenses are offered at the same price, selection will be by random draw.

(5) License reduction process: Upon selection, the department will issue a warrant to the license holder in the amount of the offer. On the date the warrant is mailed to the mailing address of the license holder as shown in their department licensing file, the department will void the license. Upon receipt of the warrant, the license holder is to return the license cards to the department.

(6) No prohibition on reentry: License holders who sell a license under the program may reenter the sea urchin commercial fishery.

(7) Program termination: This program terminates when the number of sea urchin commercial fishery licensees is reduced to twenty-five.

AMENDATORY SECTION (Amending Order 05-170, filed 8/5/05, effective 9/5/05)

WAC 220-95-110 Sea cucumber license reduction program. In order to provide for economic stability in the commercial sea cucumber fishery, and in accordance with RCW 77.70.190, the department establishes the sea cucumber license reduction program (program).

(1) Eligibility: All persons who currently hold a sea cucumber commercial fishery license are eligible to offer their license(s) for purchase under the program.

(2) Method of purchase: The department will rank offers to sell sea cucumber licenses from the lowest offer to the highest offer. The department will purchase licenses each year from the funds made available under RCW 77.70.190, with a maximum purchase price of \$((12,000)) 15,000 per license.

(3) Offer process: The department will accept offers to sell beginning August 1st of each year and will purchase licenses based on the funds that are available on the following September 30th.

(4) Selection process: The department will select licenses to be purchased beginning with the lowest offer to sell, and continuing until there are insufficient funds to purchase a complete offer. If two or more licenses are offered at the same price, selection will be by random draw.

(5) License reduction process: Upon selection, the department will issue a warrant to the license holder in the amount of the offer. On the date the warrant is mailed to the mailing address of the license holder as shown in their department licensing file, the department will void the license. Upon receipt of the warrant, the license holder is to return the license cards to the department.

(6) No prohibition on reentry: License holders who sell a license under the program may reenter the sea cucumber commercial fishery.

(7) Program termination: This program terminates when the number of sea cucumber commercial fishery licensees is reduced to twenty-five.

WSR 07-05-028

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 13, 2007, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-24-106.

Title of Rule and Other Identifying Information: WAC 16-301-525 What are the exemptions to the crucifer seed quarantine that apply within the regulated area? and 16-301-530 What requirements apply to planting crucifer seed in the regulated area?

Hearing Location(s): Washington State University Mount Vernon NWREC, 16650 State Route 536, Mount Vernon, WA 98273, on April 18, 2007, at 3:30 p.m.

Date of Intended Adoption: May 17, 2007.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail tnorman@agr.wa.gov, fax (360) 902-2085, by 5 p.m. on April 18, 2007.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY (360) 902-1996 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to address three areas of the crucifer quarantine that are of concern to segments of the seed industry. These rule modifications include providing an exemption for seed that was in a company's inventory when the quarantine took effect. In addition there will be an increase in the minimum package quantity that is exempt from the quarantine. In lieu of tagging small containers, there will be an allowance for alternative wording to be placed on an invoice or other documents that communicate quarantine compliance.

Reasons Supporting Proposal: This proposal is necessary to facilitate the sale of certain crucifer vegetable seeds into a select market. It will allow for the sale of small quantities of seed into the regulated area which will not pose a significant threat of disease introduction. By increasing the minimum package size that is exempt from the quarantine it will eliminate expensive testing for lots that only have a small amount in inventory. It is impractical to place a quarantine compliance label on small packages. Therefore, the allowance to communicate quarantine compliance on an alternative document that accompanies the seed will reduce the regulatory burden on the seed industry. Seed that was in a company's inventory may not have been tested for regulated diseases. In many cases there is insufficient seed remaining in these seed lots on which to conduct pathology testing. This exemption will allow for the utilization of these seed lots.

In total, the addressing of these three areas reduces the regulatory burden of compliance with the crucifer quarantine. This proposal also reduces the overall expense of testing and labor associated with quarantine compliance, making the overall rule user friendly while still protecting the Washington seed industry.

Statutory Authority for Adoption: Chapters 15.49, 17.24 and 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW.

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

Name of Proponent: Chris Osborne, Osborne Seed Company; and members of the crucifer quarantine workgroup, a consortium of seed industry representatives, private.

Name of Agency Personnel Responsible for Drafting and Implementation: Victor Shaul, Operations Manager, Yakima, (509) 225-2630; and Enforcement: Fawad Shah, Program Manager, Yakima, (509) 225-2636.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no increased cost to seed producers or seed conditioners. One of the main purposes of this rule-making order is to make quarantine compliance less expensive, and to reduce the amount

of resources necessary for the seed industry to comply with the quarantine. These rule amendments reduce the record-keeping and reporting time necessary to track the required information for each seed lot. Since there is a reduction in cost to the seed industry no small business economic impact statement was prepared.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency in RCW 34.05.328 (5)(a)(i).

February 13, 2007

Dennis Hannapel
Assistant Director

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05)

WAC 16-301-525 What are the exemptions to the crucifer seed quarantine that apply within the regulated area? This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550.

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of ~~((1/2 ounce))~~ 1 pound or less if the seeds are free of diseases; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated area if the seedlings are free of diseases.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse.

(6) Seed lots with a maximum weight of fifty pounds that were in inventory prior to January 1, 2007.

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 06-01-111, filed 12/21/05)

WAC 16-301-530 What requirements apply to planting crucifer seed in the regulated area? (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the regulated area.

(b) Any seed of a *Brassica* or *Sinapis* species planted or established in the regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the regulated area unless ~~((each seed container bears a label issued by the seed program indicating that the seed is in compliance with the requirements of this chapter))~~ accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the Seed Program.

(b) Larger containers must bear a label issued by the Seed Program indicating that the seed is in compliance with this chapter.

WSR 07-05-034

PROPOSED RULES

GAMBLING COMMISSION

[Filed February 14, 2007, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-07-111.

Title of Rule and Other Identifying Information: New sections WAC 230-15-065 Enforcement of card game rules of play, 230-15-126 Cutting cards in center dealer-dealt games, 230-15-150 Selling and redeeming chips, 230-15-275 Surveillance requirements for Class F card games, 230-15-285 Camera and monitor requirements for closed circuit television systems, 230-15-320 Surveillance room requirements for house-banked card game licensees, 230-15-400 Accounting for player-supported jackpot funds, and 230-15-430 Internal control requirements.

Hearing Location(s): Red Lion Hotel, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on April 13, 2007, at 9:30 a.m.

Date of Intended Adoption: April 13, 2007.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by April 1, 2007.

Assistance for Persons with Disabilities: Contact Shirley Corbett, Executive Assistant by April 1, 2007, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. At their October 2006, commission meeting, the commission voted to file a new chapter 230-15 WAC to codify rules relating to card rooms that had been rewritten in plain English, which was filed

under WSR 06-24-057. At the February 2007, commission meeting, changes were made to eight of the rules in chapter 230-15 WAC. As such, these eight rules are being held over for further discussion and this new filing provides notice that changes were made to these rules.

The card game rules were changed as they underwent review during the rules simplification project. We had several goals during rules simplification: To clarify the language in each rule, to reduce the number of words in each rule, to add any rule interpretations that addressed ambiguities in the rules, and to align the rules with current enforcement and compliance. During the public discussion of the filed rules, some amendments were necessary to correct misunderstandings, mistakes, and unclear language we had written into the rules. Because these changes were considered substantive, we chose to pull this group of rules and send it on a new filing track to give the public proper notice of the changes we had made to what was originally filed.

WAC 230-15-065 Enforcement of card game rules of play, the rule was amended to make house rules have priority over rules from one of the card game rule books we approve.

WAC 230-15-126 Cutting cards in center dealer-dealt games, this rule was added to complete instructions about cutting cards for all types of card games.

WAC 230-15-150 Selling and redeeming chips, this rule was amended to allow licensees more time to ensure that checks are deposited.

WAC 230-15-275 Surveillance requirements for Class F card games, this rule added camera coverage which included the table number. This had not been required of Class F licensees before.

WAC 230-15-285 Camera and monitor requirements for closed circuit television systems, this rule was amended to add additional requirements for nonhouse-banked card games which had accidentally been removed.

WAC 230-15-320 Surveillance room requirements for house-banked card game licensees, this rule was amended to allow authorized personnel to escort any other person into the surveillance room for educational, investigative, or maintenance purposes.

WAC 230-15-400 Accounting for player-supported jackpot funds, this rule was amended to allow licensees more time to ensure that checks are deposited.

WAC 230-15-430 Internal control requirements, this rule was amended to change the department responsible for the destruction of damaged chips.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule change clarifies language of rules without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

February 14, 2007
Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-15-065 Enforcement of card game rules of play. Card game licensees must conduct card games according to the approved rules of play. We enforce rules of play in the following order:

- (1) **First priority:** Rules explained in Title 230 WAC; and
- (2) **Second priority:** Rules explained by a licensed manufacturer of a patented game that we have approved; and
- (3) **Third priority:** House rules card game licensees have developed and we have approved; and
- (4) **Fourth priority:** Rules explained in the most current version of *The New Complete Hoyle, Revised* or *Hoyle's Modern Encyclopedia of Card Games*, or a similar authoritative book on card games which we have approved.

NEW SECTION

WAC 230-15-126 Cutting cards in center dealer-dealt games. In center dealer-dealt games:

- (1) After the shuffle, the dealer must offer the cards to a player for a cut. After this initial offer of a cut, the dealer may require any player who asks for a cut to pay a maximum of one dollar; and
- (2) Dealers must:
 - (a) Not cut the cards more than twice during each hand or game; and
 - (b) Place all the fees for cutting the cards into the pot for that hand or game.

NEW SECTION

WAC 230-15-150 Selling and redeeming chips. (1) Card game licensees must:

- (a) Sell chips and redeem chips at the same value; and
- (b) Sell chips for cash at gambling tables; and
- (c) Keep all funds from selling chips separate and apart from all other money received; and
- (d) Not extend credit to a person purchasing chips, including to card room employees playing cards; and
- (2) Licensees may accept checks, if the checks meet the requirements of WAC 230-06-005. They must:
 - (a) Deposit any check retained after the close of business no later than the second banking day after the close of business. Checks deposited to an armored car service no later than the second banking day after the close of business meet this requirement; and
 - (b) Count each transaction for the purchase of chips as a separate transaction. (Example: They must not allow a player's check to be altered after it is exchanged for chips.)

NEW SECTION

WAC 230-15-275 Surveillance requirements for Class F card games. (1) Class F licensees must use a closed circuit television system (CCTV) to record critical activities when:

- (a) Operating player-supported jackpots; or
- (b) Assessing fees on amounts wagered (rake method).
- (2) Class F licensees must have a CCTV that views:
 - (a) All gambling at each table including, at least, the:
 - (i) Cards; and
 - (ii) Wagers; and
 - (iii) Chip tray; and
 - (iv) Drop box openings; and
 - (v) Table number; and
 - (vi) Players; and
 - (vii) Dealers; and
 - (b) When the count is being conducted, at least, the:
 - (i) Count table; and
 - (ii) Floor; and
 - (iii) Drop boxes; and
 - (iv) Drop box storage shelves/cabinets.

NEW SECTION

WAC 230-15-285 Camera and monitor requirements for closed circuit television systems. (1) Class F and house-banked licensees' closed circuit television system must consist of light sensitive cameras capable of permitting the viewer to determine card and chip values. Each video camera must be capable of having the images displayed on a video monitor and recorded.

- (2) Class F and house-banked licensees must install, at least:
 - (a) Cameras in a manner that will prevent them from being obstructed, tampered with, or disabled; and
 - (b) Pan, tilt, zoom (PTZ) cameras behind a smoked dome, one-way mirror, or similar materials that conceal the camera from view; and
 - (c) One or more fixed camera focused over each gambling table, covering the entire table layout.
 - (d) In nonhouse-banked games, an additional fixed camera must focus over the dealer area, covering the chip rack, all drop box openings, and the community card area; and
 - (e) A sufficient number of fixed cameras and/or PTZ cameras to monitor players and dealers at each gambling table. The PTZ cameras must be:
 - (i) Permanently programmed; and
 - (ii) Capable of viewing each patron and dealer at each gambling position at least once every five minutes; and
 - (f) A sufficient number of fixed cameras and/or PTZ cameras in the count area or count room; and
 - (g) Fixed cameras and/or PTZ cameras in any other location deemed necessary.
- (4) In addition, house-banked card game licensees must:
 - (a) Install a sufficient number of video monitors in their CCTV system to simultaneously view multiple gambling tables, the cashier's cage, and count room activities;
 - (b) Install a sufficient number of fixed cameras and/or PTZ cameras in the cage(s); and

(c) Install a sufficient number of PTZ cameras having the ability to determine the card and chip values for winning hands.

NEW SECTION

WAC 230-15-320 Surveillance room requirements for house-banked card game licensees. House-banked card game licensees must maintain one or more surveillance rooms. They must:

- (1) Control access to the surveillance room so that only surveillance department employees use the room. Owners or their approved supervisory or management personnel may also enter the surveillance room to monitor activities. Licensees may allow authorized personnel to escort any other person into the surveillance room for educational, investigative, or maintenance purposes; and
- (2) Ensure that surveillance room entrances are not easily observed from the gambling floor; and
- (3) Ensure that a surveillance employee is present in the room and monitoring activities using the equipment any time the card room is conducting gambling and during the count process. However, licensees may operate the surveillance room without staff for routine breaks that are less than thirty minutes per shift; and
- (4) Ensure that any time a winning wager, a jackpot, or bonus pay out greater than one thousand dollars is won, they use pan-tilt-zoom (PTZ) cameras to verify:
 - (a) Winning hands; and
 - (b) Amounts of the wager; and
 - (c) Amounts of the pay out; and
 - (d) Players who won the prize.

NEW SECTION

WAC 230-15-400 Accounting for player-supported jackpot funds. Class F or house-banked licensees must:

- (1) Maintain a separate bank account in a bank, mutual savings bank, or credit union in Washington state for holding player-supported jackpot (PSJ) funds; and
- (2) Deposit only funds from PSJs into the account; and
- (3) Not make payouts from the PSJ funds until licensees have first deposited the funds in the PSJ account. However, licensees may pay out prizes won during the gambling day and deduct administrative expenses before licensees deposit the funds; and
- (4) Deposit the PSJ funds into the PSJ account or with an armored car service no later than the second banking day after the close of business; and
- (5) Identify all deposits of PSJ funds by the type of PSJ fund and date of collection. Licensees must keep the validated deposit receipts as a part of their required daily records; and
- (6) Transfer the amount from the PSJ account to the cage or general account before the end of the month if PSJ prizes are paid from the cage or general account. The licensee must keep the transfer information as part of the written records; and
- (7) Reconcile the account balance in their bank statement to the PSJ prize balance on their PSJ fund accrual record each month. "Reconcile" means the licensee must compare the

two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records.

NEW SECTION

WAC 230-15-430 Internal control requirements.

General accountability requirements.

- (1) House-banked card game licensees must have a system of internal controls including, at least:
 - (a) **Accounting controls** - Include the licensee's plan, procedures, and records concerned with the safeguarding of assets and the reliability of financial records. Licensees must design these controls to provide reasonable assurance that:
 - (i) Transactions are executed with management's general and specific authorization; and
 - (ii) Transactions are recorded so that financial statements are prepared in conformity with generally accepted accounting principles (GAAP), and so that accountability for assets is maintained; and
 - (iii) Access to assets is permitted only with management's authorization; and
 - (iv) Records are compared with existing assets at least annually and appropriate action is taken within five working days to correct any differences; and
 - (b) **Administrative controls** - Include, at least, the licensee's plan, procedures, and records outlining decision-making processes that lead to authorization of transactions. These must provide for:
 - (i) Competent personnel with an understanding of internal control procedures; and
 - (ii) Segregation of incompatible functions so that no employee is in a position to commit and conceal errors or wrongdoings in the normal course of his or her duties.

Designating a general manager.

- (2) The owner, partners, or board of directors for the licensee must designate an individual with overall responsibility for the business, called the "general manager." The general manager may also perform the duties of a gambling operations department manager; and

Establish separate departments or functions.

- (3) Licensees must establish separate departments or functions which must be independent from each other. At a minimum, these must include:
 - (a) Surveillance;
 - (b) Security;
 - (c) Gambling; and
 - (d) Accounting.

Surveillance department requirements.

- (4) The surveillance department manager must ensure that surveillance employees follow all requirements of the surveillance WACs, including, at least:
 - (a) Closely and clandestinely observing the operation of the card games, the cashier's cage, and count room; and
 - (b) Recording video and audio of the activities in the count room; and

(c) Monitoring for cheating, theft, embezzlement, and other illegal activities on the licensed premises; and

(d) Recording video of unusual or suspected illegal activities; and

(e) Notifying appropriate supervisors and us, within three working days, when they detect cheating, theft, embezzlement, or other illegal activities related to gambling; and

(f) Giving our agents or law enforcement personnel immediate access to the surveillance room; and

(g) Ensuring that each dealer is evaluated to determine if he or she follows all required dealer procedures set out in the house-banked card game licensee's approved internal controls; and

(h) Documenting procedures about how winning wagers, jackpots, or bonus pay outs will be verified; and

(i) Ensuring that all surveillance employees have demonstrated a knowledge of:

(i) Operating surveillance systems; and

(ii) Rules of play and procedures for the games being played; and

(iii) Overall procedures relating to the duties of all employees of the house-banked card room, including dealers, shift managers, floor supervisors, cage cashiers and count team members.

Security department requirements.

(5) The security department manager must ensure that security employees control:

(a) Transfer of cash and chips to and from the gambling tables, cage, and count room; and

(b) Dealing shoes and new and used cards, when not in use or when held in evidence; and

(c) Disposing of or destroying used cards and dealing shoes, and observing accounting department employees when they destroy damaged chips when removed from service.

Gambling operations department requirements.

(6) The gambling operations department manager, or general manager, is responsible for house-banked card games and must ensure that:

(a) Dealers operate card games at assigned gambling tables; and

(b) Cards and dealing shoes are properly accounted for when in use on the gambling floor; and

(c) There is adequate supervision on the business premises.

Accounting department requirements.

(7) The accounting department must be supervised by a person who reports directly to the general manager. The accounting department must, at least:

(a) Implement and monitor accounting controls; and

(b) Control processes in the count room and cashier's cage; and

(c) Supervise the count room personnel and cashier's cage personnel; and

(d) Control the inventory of unused forms; and

(e) Reconcile the used and unused forms; and

(f) Prepare, control, and store records and data we require; and

(g) Oversee, with the help of the security department, the destruction of damaged chips removed from service.

WSR 07-05-036

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed February 14, 2007, 4:36 p.m.]

Supplemental Notice to WSR 07-03-181.

Title of Rule and Other Identifying Information: WAC 232-28-353 Deer special permits and 232-28-354 Elk special permits.

Hearing Location(s): Ellensburg Inn and Conference Center, 1700 Canyon Road, Ellensburg, WA 98926, phone 1-800-321-8791, on April 6-7, 2007, at 8:00 a.m.

Date of Intended Adoption: April 6-7, 2007.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by March 14, 2007.

Assistance for Persons with Disabilities: Contact Susan Yeager by April 3, 2006 [2007], TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is to provide notice that the public hearing and the adoption of the WACs pertaining to deer and elk special permits will be April 6-7, 2007. This date change is to allow for public comment on the results of winter survey data collection and data analysis that will be presented at the April 6-7 commission meeting.

February 14, 2006 [2007]

Loreva M. Preuss
Rules Coordinator

WSR 07-05-038

PROPOSED RULES

COMMISSION ON JUDICIAL CONDUCT

[Filed February 14, 2007, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-106.

Title of Rule and Other Identifying Information: Commission on judicial conduct Rules of Procedure—Rule 11 (e)(5)—General applicability. Clarifies that the confidentiality rules also apply to former commission members, disciplinary counsel, investigative counsel and staff with regard to information they had access to while serving the commission.

Hearing Location(s): Holiday Inn Express Hotel & Suites, Evergreen Room, 19621 International Boulevard, SeaTac, WA 98188, April 6, 2007, at 11:00 a.m.

Date of Intended Adoption: April 6, 2007.

Submit Written Comments to: J. Reiko Callner, P.O. Box 1817, Olympia, WA 98507, e-mail rcallner@cjcs.state.wa.us, fax (360) 586-2918, by April 2, 2007.

Assistance for Persons with Disabilities: Contact Kathy Sullivan by April 2, 2007, TTY (360) 753-4585.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify in existing Rule 11 that confidentiality also applies to former commission members, disciplinary counsel, investigative counsel and staff.

Reasons Supporting Proposal: The change clarifies existing Rule 11.

Statutory Authority for Adoption: WA Const. Art IV. Sec. 31.

Statute Being Implemented: Chapter 2.64 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: Clarifies Rule 11; no fiscal impact.

Name of Proponent: Commission on judicial conduct, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: J. Reiko Callner, 210 11th Avenue S.W., #400, Olympia, WA 98501, (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. Does not apply. No fiscal impact.

February 13, 2007

J. Reiko Callner
Executive Director

AMENDATORY SECTION (Amending 99-04, filed 12/1/00)

RULE 11. CONFIDENTIALITY

(a) Investigative and initial proceedings.

(1) Before the commission files a statement of charges alleging misconduct by or incapacity of a judge, all proceedings, including commission deliberations, investigative files, records, papers and matters submitted to the commission, shall be held confidential by the commission, disciplinary counsel, investigative officers, and staff except as follows:

(A) With the approval of the commission, the investigative officer may notify respondent that a complaint has been received and may disclose the name of the person making the complaint to respondent pursuant to Rule 17(e).

(B) The commission may inform a complainant or potential witness of the date when respondent is first notified that a complaint alleging misconduct or incapacity has been filed with the commission. The name of the respondent, in the discretion of the commission, may not be used in written communications to the complainant.

(C) The commission may disclose information upon a waiver in writing by respondent when:

(I) Public statements that charges are pending before the commission are substantially unfair to respondent; or

(ii) Respondent is publicly accused or alleged to have engaged in misconduct or with having a disability, and the commission, after a preliminary investigation, has determined that no basis exists to warrant further proceedings or a recommendation of discipline or retirement.

(D) The commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.

(2) The fact that a complaint has been made, or that a statement has been given to the commission, shall be confidential during the investigation and initial proceeding except as provided under Rule 11.

(3) No person providing information to the commission shall disclose information they have obtained from the commission concerning the investigation, including the fact that an investigation is being conducted, until the commission files a statement of charges, dismisses the complaint, or otherwise concludes the investigation or initial proceeding.

(b) Hearings on statement of charges.

(1) After the filing of a statement of charges, all subsequent proceedings shall be public, except as may be provided by protective order.

(2) The statement of charges alleging misconduct or incapacity shall be available for public inspection. Investigative files and records shall not be disclosed unless they formed the basis for probable cause. Those records of the initial proceeding that were the basis of a finding of probable cause shall become public as of the date of the fact-finding hearing.

(3) Disciplinary counsel's work product shall be confidential.

(c) Commission deliberations. All deliberations of the commission in reaching a decision on the statement of charges shall be confidential.

(d) General Exceptions.

(1) A complainant may inform any third party, or the public generally, of the factual basis of his or her complaint.

(2) Any person, other than a complainant, who gives a statement to the commission, may inform any third party, or the public generally, of the factual basis of such statement.

(e) General Applicability.

(1) No person shall disclose information obtained from commission proceedings or papers filed with the commission, except that information obtained from documents disclosed to the public by the commission pursuant to Rule 11 and all information disclosed at public hearings conducted by the commission are not deemed confidential under Rule 11.

(2) Any person violating Rule 11 may be subject to a proceeding for contempt in superior court.

(3) A judge shall not intimidate, coerce, or otherwise attempt to induce any person to disclose, conceal or alter records, papers, or information in violation of Rule 11. Violation of Rule 11 (e)(3) may be charged as a separate violation of the Code of Judicial Conduct.

(4) If the commission or its staff initiates a complaint under Rule 17 (b)(1), then Rule 11 (a)(1) as it applies to the commission, rather than those applicable to complainants, shall govern the commission and its staff.

(5) These confidentiality rules also apply to former commission members, disciplinary counsel, investigative counsel

and staff with regard to information they had access to while serving the commission.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Commission on Judicial Conduct and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-05-052
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed February 16, 2007, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-017.

Title of Rule and Other Identifying Information: Chapter 388-502A WAC, Provider audit and appeals.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 27, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 23, 2007, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Repeal WAC 388-502-0240 and move under new chapter 388-502A WAC;
- Reorganize the original section into multiple sections under the new chapter;
- Eliminate old, outdated, sections of the WAC related to audit appeal hearings that are no longer applicable;
- Add and delete definitions;
- Reduce notification for on-site audits from twenty working days to ten working days - with the exception of hospitals;
- Clarify that hospitals receive thirty days for on-site audit notification;
- Allow the department to bypass the dispute process when certain conditions are met;
- Clarify what appropriate documentation is to support services;
- Clarify that the department reviews objective records;
- Clarify that billing adjustments to paid claims do not impact the original audit universe;
- Clarify that interest on overpayments are extrapolated;

- Clarify the department's authority to initiate a re-audit;
- Delete the revised draft report;
- Clarify that the department may issue a subpoena for records;
- Removes language about the department's process that does not need to be codified but which the department continues to adhere to such as "the department destroys records at the end of the audit" and "the department does not remove original records from the provider's office;"
- Clarify that the department does not reimburse providers administrative fees associated with an audit;
- Expand audit focus to include "medically necessary" and "provided at the appropriate level of care;"
- Reduce the time period for the provider to dispute draft audit findings from forty-five days to thirty;
- Clarify that the department will acknowledge dispute requests in writing;
- Require the provider attend the dispute conference;
- Require the provider to schedule the dispute conference within sixty days from when the provider receives the department's written acceptance of the dispute; and
- Eliminate the option to ask for an extension for requesting a dispute conference.

Reasons Supporting Proposal: Revisions of these rules are necessary to update and clarify the current audit review and appeal process including, but not limited to, deleting redundant sections and outdated sections. The department is also moving this section into new chapter 388-502A WAC.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.200.

Statute Being Implemented: RCW 74.09.200.

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: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Evonne Peryea, (360) 725-1859 or Scott Kibler, (360) 725-1861, P.O. Box 45503, Olympia, WA 98504-5503.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Evonne Peryea/Scott Kibler, P.O. Box 45503, Olympia, WA 98504-5503, phone (360) 725-1859/(360) 725-1861, e-mail peryeel@dshs.wa.gov.

February 13, 2007

Jim Schnellman, Chief

Office of Administrative Resources

Chapter 388-502A WAC

Provider Audits and Appeals

NEW SECTION

WAC 388-502A-0100 Purpose. (1) This chapter:

(a) Defines the department's audit and appeal process for providers; and

(b) Includes, but is not limited to, actions the department may take to ensure provider payments for covered services, supplies, or equipment:

(i) Are made in accordance with federal and state statutes and regulations; and

(ii) Comply with provider billing instructions, published memoranda, and fee schedules. For provider reimbursement rate appeals, see WAC 388-502-0220 and for hospital reports and audits, see WAC 388-550-5700.

(2) This chapter applies to all providers except:

(a) Nursing homes as described in chapter 388-96, 388-97, and 388-98 WAC; and

(b) Managed care organizations as described in chapter 388-538 WAC.

NEW SECTION

WAC 388-502A-0200 Definitions. Unless otherwise specified, the following definitions and those found in WAC 388-500-0005, apply to this chapter:

"Audit period" - The time period the department selects to review a provider's records. This time period is indicated in the audit report.

"Chargemaster" - A list of all goods and services and the prices the provider charges for each of those goods and services.

"Extrapolation" - The methodology of estimating an unknown value by projecting, with a calculated precision (i.e., margin of error), the results of an audited sample to the universe from which the sample was drawn.

"Medical assistance" - For purposes of this chapter, the common phrase used to describe all medical programs available through the department.

"Overpayment" - Any payment or benefit to a client or to a vendor in excess of what is entitled by law, rule or contract, including amounts in dispute, as defined in RCW 43.20B.010.

"Record" - Documentation maintained by a health services provider to show the details of the providing of services or products to a medical assistance client. See also WAC 388-502-0020, general provider requirements.

"Sample" - A selection of claims reviewed under a defined audit process.

"Universe" - A defined population of claims submitted by a provider for payment during a specific time period.

"Usual and customary charge" - The rate providers must bill the department for a certain service or equipment. This rate may not exceed:

(1) The established charge billed to the general public for the same services; or

(2) If the general public is not served, the established rate normally offered to other payers for the same services.

NEW SECTION

WAC 388-502A-0300 Authority to audit. (1) Chapter 74.09 RCW authorizes the department to conduct audits, including reaudits, and to enforce its regulations and policies for all providers.

(2) The department conducts audits on a routine basis and as necessary. Audits can be conducted prior to, or following, payment of services, supplies, or equipment.

(3) The department may also conduct an audit as a result of:

(a) Complaints/allegations;

(b) Actions taken by the Centers for Medicare and Medicaid Services or the department regarding Medicare or medical assistance; or

(c) Actions taken by the department of health.

NEW SECTION

WAC 388-502A-0400 Audit objectives. A department audit has the following objectives:

(1) To determine if services billed and paid under the state's medical assistance and medical care service programs were:

(a) Provided to an eligible client;

(b) Medically necessary;

(c) Provided at the appropriate level of care;

(d) Appropriately documented; and

(e) In accordance with WAC 388-502A-0100(1).

(2) To provide a systematic and uniform method of determining compliance with state and federal program rules and regulations;

(3) To provide a mechanism for data gathering which can be used to modify the state's medical assistance and medical care service programs policies and procedures;

(4) To determine if the services provided meet the community standard of care; and

(5) To determine if the provider is maintaining clinical and fiscal records which substantiate claims submitted for payment during the audit period.

NEW SECTION

WAC 388-502A-0500 Audit methods and locations. The department selects the appropriate method of conducting the audit including, but not limited to, the following:

(1) On-site audits, conducted on the provider's premises;

(2) Desk audits, conducted at the department's offices; or

(3) A combination of an on-site and a desk audit.

NEW SECTION

WAC 388-502A-0600 Notification of on-site audits. (1) The department sends written notice of a scheduled on-site audit as follows:

(a) Thirty calendar days in advance for hospitals according to RCW 70.41.045; and

(b) Ten business days in advance for all other providers.

(2) Exceptions to the written notice in subsection (1) of this section include, but are not limited to:

- (a) Providers who are suspected of fraudulent or abusive practices;
- (b) When the department has reason to believe that a provider's action endangers the health and safety of one or more clients; or
- (c) A third-party liability compliance audit.

NEW SECTION

WAC 388-502A-0700 Audit overview. (1) The following may be included in the department audit:

- (a) An examination of provider medical and financial records;
- (b) A draft audit report, which contains findings and directives;
- (c) A dispute process as described in WAC 388-502A-1100, unless a condition in subsection (4) of this section or a condition in WAC 388-502A-1100(8) applies; and
- (d) A final audit report.

(2) Providers must maintain appropriate documentation in the client's medical or health care service records to verify the level, type, and extent of services provided. Pursuant to WAC 388-502-0020, providers must:

- (a) Keep legible, accurate, and complete charts and records to justify the services provided to each client;
- (b) Assure charts are authenticated by the person who gave the order, provided the care, or performed the observation, examination, assessment, treatment or other service to which the entry pertains; and
- (c) Make charts and records available to DSHS, its contractors, and the U.S. Department of Health and Human Services upon request, for six years from the date of service or longer if required specifically by federal or state law or regulation. Refer to WAC 388-502-0020 for additional provider requirements.

(3) A health care provider's bill for services, appointment books, accounting records, or other similar documents alone do not qualify as appropriate documentation for services rendered.

(4) If a provider fails to participate or comply with the department's audit process or unduly delays the department's audit process, the department considers the provider's actions or lack thereof, as abandonment of the audit.

(5) If the department suspects a provider of fraud, abusive practices, audit abandonment, or presents a risk of imminent danger to clients, the department may take one or more of the actions listed below:

- (a) Immediately issue a final report;
- (b) Terminate the core provider agreement;
- (c) Issue a subpoena for the provider's records pursuant to RCW 43.20A.605; or
- (d) Refer the provider to the appropriate prosecuting authority.

NEW SECTION

WAC 388-502A-0800 Auditing process. (1) The department inspects provider records for objective data consistent with the purpose defined under WAC 388-502A-0100(1). The department may require a provider to furnish original records for the department to review.

(2) The department may assess an overpayment for medical services and terminate the core provider agreement if a provider fails to retain adequate documentation for services billed to the department.

(3) As part of the audit:

(a) The department may examine provider financial records, client medical records, employee records, provider appointment books, and any other applicable records that are related to the services billed to the department. The examination may:

- (i) Verify usual and customary charges and payables including receivable accounts;
- (ii) Verify third-party liability;
- (iii) Compare clinical and fiscal records to each claim; and

(iv) Compare Medicaid charges to other insured or private pay patient charges to determine that the amount billed to the department is not more than the usual and customary charge documented in the provider's chargemaster.

(b) The department's procedures for auditing providers may include:

- (i) Use of random sampling;
- (ii) Extrapolation of principal and interest;
- (iii) Conducting a claim audit;
- (iv) Interviews with clients, providers, and/or their employees;
- (v) Investigating complaints or allegations;
- (vi) Investigating actions taken regarding Medicare or medical assistance; and
- (vii) Investigating actions taken by the health profession's quality assurance commissions with the department of health.

(4) Per RCW 43.20A.605, the department may issue a subpoena for records from the provider or a third party including taking depositions or testimony under oath.

(5) When possible, the department works with the provider to minimize inconvenience and disruption of health care delivery during the audit.

(6) The department does not reimburse a provider's administrative fees, such as copying fees, for records requested during an audit.

NEW SECTION

WAC 388-502A-0900 Audit sampling, extrapolation, and claim-by-claim review. (1) The department's procedures for auditing providers may include, but are not limited to, the following:

(a) The use of random sampling and extrapolation; and/or

(b) A claim-by-claim based review.

(2) The department's sample sizes are sufficient to ensure a minimum of ninety-five percent confidence level.

(a) When calculating the amount to be recovered, the department totals all overpayments and underpayments reflected in the sample and may extrapolate to the universe from which the sample was drawn.

(b) When the department uses the results of an audit sample to extrapolate the amount to be recovered, the provider may request a description of all of the following:

(i) The universe from which the department drew the sample;

(ii) The sample size and method that the department used to select the sample; and

(iii) The formulas and calculation procedures the department used to determine the amount of the overpayment.

(c) If a provider rebills a claim(s) for an adjustment and that claim(s) is part of the audit universe, the department does not remove the original paid claim(s) amount from the audit universe.

(3) When a claim-by-claim audit is conducted, specific claims are selected from the universe and audit overpayments are not extrapolated.

(4) The department recovers overpayments identified in the final audit report.

(5) The department does not consider non-billed or zero paid services or supplies when calculating underpayments or overpayments.

(6) The department considers undocumented services to be program overpayments.

NEW SECTION

WAC 388-502A-1000 Provider audit—Draft report.

(1) Upon completion of the examination of records, the department notifies the provider of missing files or records that are necessary to complete the audit. The department allows the provider thirty calendar days from the date of notification to locate and provide those records needed to complete an audit.

(2) After the department completes its review of the provider's records, the department issues a draft report.

NEW SECTION

WAC 388-502A-1100 Provider audit—Dispute process.

(1) A provider may dispute the draft audit findings by submitting a written request within thirty calendar days of receipt of the draft report. The provider must:

(a) Specify which finding(s) the provider is contesting;

(b) Supply documentation to support the provider's position; and

(c) Indicate whether a dispute conference is requested.

(2) The department acknowledges and responds in writing to providers' requests for a dispute conference and to each disputed finding.

(3) In accordance with WAC 388-502A-0700 (4) and (5), the department may decline a provider's dispute request.

(4) The provider must schedule the dispute conference with the department within sixty calendar days from the day the provider receives the department's written acceptance of the request for a dispute conference.

(5) The provider requesting the dispute conference and the appropriate department representatives must attend the dispute conference.

(6) If the department and the provider reach an agreement during the dispute conference process, the department issues the final audit report.

(7) If the department and the provider cannot reach an agreement during the dispute process, and the provider has had the opportunity to raise all concerns related to the audit

findings, the department closes the dispute process and issues a final audit report.

(8) In addition to the circumstances in WAC 388-502A-0600(2), the department may also issue a final audit report without the dispute process described in this section when the provider:

(a) Transfers ownership of the business;

(b) Ceases doing business in Washington;

(c) Files for bankruptcy;

(d) Transfers business or personal assets available to the audited entity at the time of the initial audit; or

(e) Abandons the dispute process by failing to participate in the process.

NEW SECTION

WAC 388-502A-1200 Provider audit—Final report/appeal.

(1) After the department issues the final audit report, the provider has twenty-eight calendar days from the date of the report to appeal the overpayment. Audit appeal hearings are governed by RCW 43.20B.675.

(2) The request for an audit appeal hearing must:

(a) Be in writing;

(b) State the basis for contesting the final audit report;

(c) Include a copy of the department's final audit report;

(d) Be received by the department within twenty-eight calendar days of the provider's receipt of the notice of overpayment;

(e) Be served on the department in a manner which provides proof of receipt as described in WAC 388-02-0050; and

(f) Be sent to:

DSHS Office of Financial Recovery

P.O. Box 9501

Olympia, WA 98507-9501

(3) The burden of proving compliance with applicable federal and state statutes and regulations, provider billing instructions, published memoranda, and fee schedules rests with the provider at the audit appeal hearing.

NEW SECTION

WAC 388-502A-1300 Audit outcomes. (1) Based on audit findings, the department may:

(a) Request repayment, including interest on the amount of excess benefits or payments, per RCW 43.20B.695; and

(b) Assess civil penalties per chapter 74.09 RCW. The amount of civil penalties may not exceed three times the amount of excess benefits or payments the provider received.

(2) When the department imposes a civil penalty or terminates a provider's core provider agreement the department gives written notice of the action taken to the appropriate licensing agency, disciplinary commission, or other entity requiring a report.

(3) When an audit shows that a provider has not complied with the regulations and policies of the medical assistance or the medical care service program(s), the department may refer that provider to the appropriate disciplinary commission.

(4) When the department finds evidence of or has reason to suspect fraud, the provider is referred to the appropriate prosecuting authority for possible criminal action.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-502-0240 Audits and the audit appeal process for contractors/providers.

WSR 07-05-053
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed February 16, 2007, 2:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-14-037.

Title of Rule and Other Identifying Information: WAC 388-406-0040 What happens if the processing of my application is delayed?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E., and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on March 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 28, 2007.

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 schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on March 27, 2007.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by March 23, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended rule describes the department's current policy on when we deny food benefits for households that fail to keep or reschedule an intake interview.

Reasons Supporting Proposal: Revisions to the chapter are needed to clarify delayed application processing and actions on applications that are thirty days old for the Basic Food program consistent with provisions under Title 7 C.F.R. 273.2. Other amendments for the purposes of clarifying rule text may be incorporated with this revision.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, 74.04.515, 74.08.090, 7 C.F.R. 273.2.

Rule is necessary because of federal law, 7 C.F.R. 273.2.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bill Callahan, 1009 College S.E., Lacey, WA 98504, (360) 725-4619.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by defining how we issue cash and Basic Food benefits to eligible households, and describing what circumstances must exist for the department to replace unused cash or Basic Food benefits that we cancelled out of an unused electronic benefits transfer (EBT) account.

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."

February 14, 2007

Jim Schnellman, Chief

Office of Administrative Resources

AMENDATORY SECTION (Amending WSR 03-22-039, filed 10/28/03, effective 12/1/03)

WAC 388-406-0040 What happens if the processing of my application is delayed? (1) We process your application for benefits as soon as possible. We do not intentionally delay processing your application for benefits for any reason. If we have enough information to decide eligibility for:

(a) Basic Food, we promptly process your request for benefits even if we need more information to determine eligibility for cash or medical;

(b) Medical assistance, we promptly process your request for medical even if we need more information to determine eligibility for cash or Basic Food.

(2) If your application for Basic Food assistance is not processed within the first thirty days, you have completed your required interview under WAC 388-452-0005 and we have enough information to determine eligibility, we promptly process your application. If additional information is needed to determine eligibility, we give you:

(a) A written request for the additional information; and

(b) An additional thirty days to provide the information.

(3) If you fail to keep or reschedule your interview in the first thirty calendar days after filing your application, your application will be denied on the thirtieth day. If you are still interested in Basic Food benefits, you will need to reapply. Benefits will be based on your second application date.

(4) If we have not processed your application for Basic Food by the sixtieth day and;

(a) You are responsible for the delay, we deny your request for benefits.

(b) If we are responsible for the delay, we:

((+)) (i) Promptly process your request if we have the information needed to determine eligibility; or

((+)) (ii) Deny your request if we don't have enough information to determine eligibility. If we deny your request

we notify you of your right to file a new application and that you may be entitled to benefits lost.

(5) If you reapply by the sixtieth day of your first application, met your interview requirements under WAC 388-452-0005, and are eligible, we give you benefits lost from:

((+)) (a) The date of your first application if we caused the delay in the first thirty days; or

((+)) (b) The month following the month of your first application if you caused the delay in the first thirty days.

WSR 07-05-055
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)
[Filed February 20, 2007, 7:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-104 and 06-23-079.

Title of Rule and Other Identifying Information: The board of pharmacy is proposing amendments to WAC 246-863-095 Pharmacist's professional responsibilities and new section WAC 246-869-010 Pharmacies' responsibilities, to promote patient safety and access to health care by emphasizing the professional responsibilities of pharmacists and pharmacies.

Hearing Location(s): Renton Community Center, 1715 Maple Valley Highway, Renton, WA 98057, on March 29, 2007, at 9:15 a.m.

Date of Intended Adoption: March 30, 2007.

Submit Written Comments to: Doreen E. Beebe, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-4359, by March 23, 2007.

Assistance for Persons with Disabilities: Contact Doreen E. Beebe by March 21, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules meet the goals and objectives of the statute by promoting patient safety and access to health care. The proposed rules provide clear expectations to assure patients have access to safe and appropriate medication therapy by eliminating barriers that would prevent patients from receiving timely access to their lawful prescribed or therapeutically equivalent drugs and devices.

Reasons Supporting Proposal: The proposed rules are needed to minimize barriers to health care and to reduce risks for patients' health where there may be an emergent need for a prescribed drug or device. Pharmacy clients should receive appropriate drugs and treatments without fear of intimidation, discrimination, or interference by pharmacy staff. Rules are needed to clarify and enforce these requirements; guidance would not have the same effect nor be enforceable.

Statutory Authority for Adoption: RCW 18.64.005, 18.130.050.

Statute Being Implemented: RCW 18.64.005, 18.130.-180.

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

Name of Proponent: Board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lisa Salmi, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, (360) 236-4825.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Briefly Describe the Proposed Rule: The department of health, board of pharmacy is proposing amendments to WAC 246-863-095 Pharmacist's professional responsibilities and new section WAC 246-869-010 Pharmacies' responsibilities, to promote patient safety and access to health care by emphasizing the professional responsibilities of pharmacists and pharmacies.

WAC 246-863-095: The proposed rule states that it is a pharmacist's primary responsibility to ensure patients receive safe and appropriate medication therapy.

The proposed rule:

(1) Prohibits a pharmacist from delegating the decision to not dispense a lawful prescribed drug or device to pharmacy support staff.

(2) Provides grounds for discipline when a pharmacist, pharmacy intern, or pharmacy ancillary personnel engages in or permits the following conduct that is unprofessional.

(a) Destroy unfilled lawful prescription.

(b) Refuse to return unfilled lawful prescriptions.

(c) Violate a patient's privacy.

(d) Discriminate against patients or their agent in a manner prohibited by state or federal laws.

(e) Intimidate or harass a patient.

Please note that proposed amendments to WAC 246-863-095 are not analyzed within this small business economic impact statement (SBEIS) because the rule affects individual pharmacists, but does not create costs for businesses.

WAC 246-869-010: The proposed rule states that pharmacies have a duty to deliver/distribute lawful prescribed drugs and devices or provide a therapeutically equivalent drug or device to patients in a timely manner. The rule establishes requirements for a pharmacy to assure patients have access to lawfully prescribed and clinically safe medication therapy when a pharmacist cannot dispense.

The proposed rule:

(1) Provides examples of circumstances when it may be appropriate for a pharmacy not to deliver/distribute lawful prescribed drugs, devices, or provide therapeutically equivalent drugs. The list is not inclusive but validates additional circumstances as substantially similar to those listed in the proposed rule. The circumstances listed include: National or state emergencies or guidelines affect the availability, usage or supply; potentially fraudulent prescriptions; lack of specialized equipment or expertise to safely produce, store or dispense a pharmaceutical; or when a pharmacy is not compensated for its usual and customary or contracted charge.

(2) Requires pharmacies to provide patients with a timely alternative to appropriate therapy when the drug is not

in stock because it is not customarily needed by the pharmacy's patients, or the drug is temporarily out-of-stock.

Proposed Rule Options for Out-of-Stock Drugs		
Contact prescriber for alternative drug therapy	Return prescription to patient	Refer patient to another pharmacy that will fill the prescription

(3) Provides grounds for discipline when a pharmacy engages in or permits the following conduct that is unprofessional.

- (a) Destroy unfilled lawful prescription.
- (b) Refuse to return unfilled lawful prescriptions.
- (c) Violate a patient's privacy.
- (d) Discriminate against patients or their agent in a manner prohibited by state or federal laws.
- (e) Intimidate or harass a patient.

2. Is an SBEIS Required for this Rule? Yes, an SBEIS is required because the proposed rule may impose more than minor costs on pharmacies. The report analyzes the probable compliance costs of the proposed rules and compares the cost of compliance for small businesses with the costs of compliance for large businesses.

3. Which Industries are Affected by this Rule? The proposed rule can be expected to affect businesses identified by the standard industrial classification code 5912 for drug stores and proprietary stores that engage in the retail sale of prescription drugs, proprietary drugs, and nonprescription medicines and may also carry a number of related lines, such as cosmetics, toiletries, tobacco, and novelty merchandise. Small pharmacy businesses are those businesses with fifty or fewer employees.

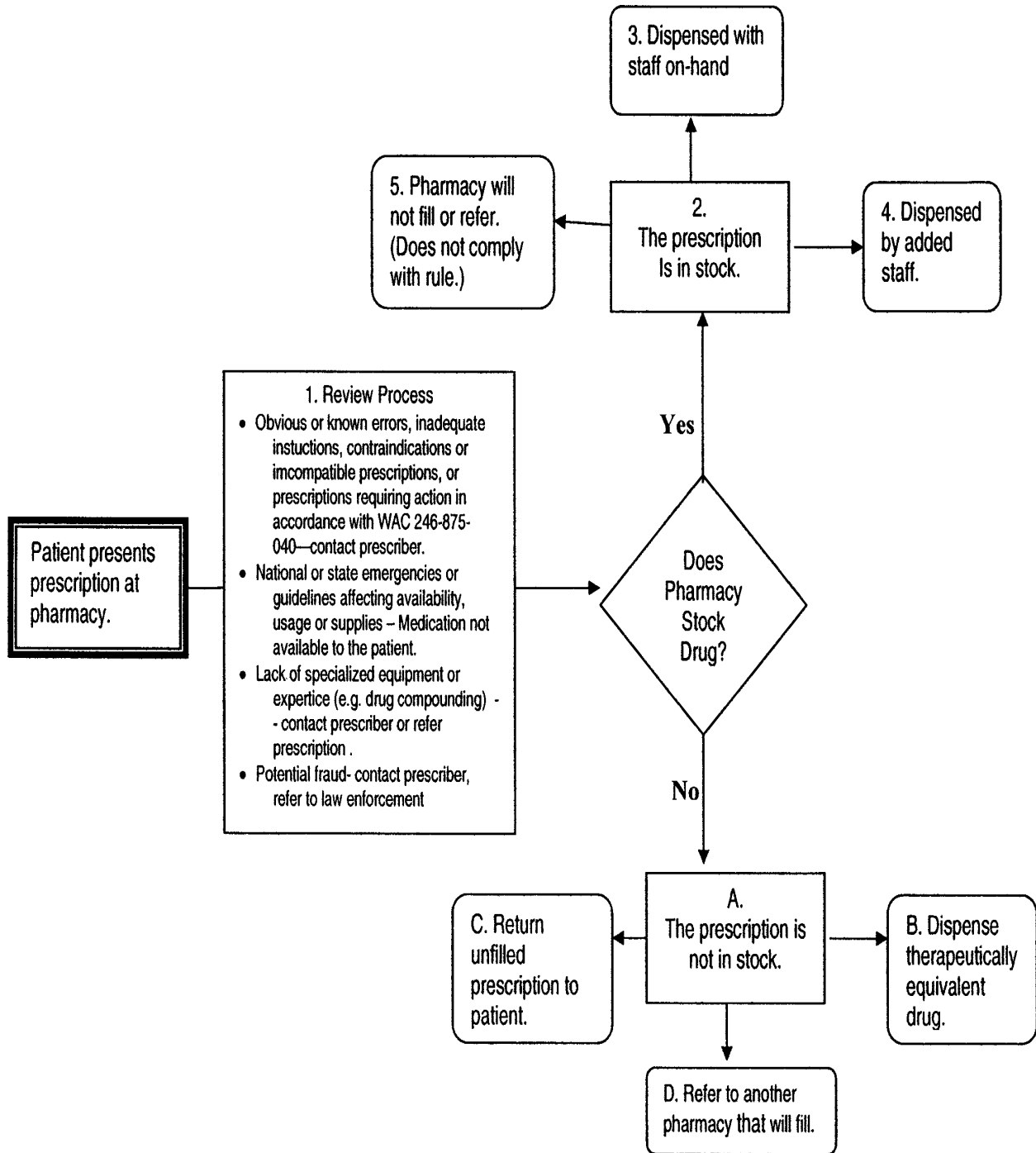
4. What are the Costs of Complying with this Rule for Small Businesses (Those with Fifty or Fewer Employees) and for the Largest 10% of Businesses Affected?

Background: The Washington board of pharmacy (board) is proposing adoption of rules amending chapter 246-863 WAC, Pharmacist's professional responsibilities and chapter 246-869 WAC, Pharmacy licensing. The SBEIS will specifically address costs issued related to the adoption of amendments to chapter 246-869 WAC. The statutes authorizing the board to adopt the proposed rule amendments are RCW 18.64.005 and 18.130.050.

The proposed amendment establishes requirements for pharmacies to deliver lawfully prescribed drugs and devices or provide a therapeutically equivalent drug to patients in a timely manner. The proposed rule will improve patient access to safe and appropriate health care by emphasizing the professional responsibilities of pharmacies.

Probable Costs of the Proposed Rules: To analyze the probable costs of the proposed rule, we must first look at the processes a pharmacy must follow in order to comply. Many of these steps are considered customary practice in a pharmacy and will not impose additional costs.

Diagram 1



Reviser's note: The spelling errors in the above material occurred in the copy filed by the department of health and appear in the Register pursuant to the requirements of RCW 34.08.040.

The first scenario, captured in steps 2-5, illustrates the expectations provided in subsection (1) of the proposed rule, WAC 246-869-010. Compliance cost is defined as a loss in current revenue, a loss in assets, or higher operating costs.

- Step 1, the pharmacist conducts a professional review of the prescription to determine the appropriateness of filling the prescription.

- Step 3, after a thorough review of the prescription, the pharmacy delivers with staff on-hand. There is no compliance cost.
- Step 4, after a thorough review of the prescription, the pharmacy complies with the proposed rule by having additional staff available to ensure the patient is delivered the appropriate medication therapy in situations when another pharmacist objects. The probable cost of additional staffing falls mainly to community pharmacies (small businesses) compared to corporate/chain pharmacies (large busi-

nesses) simply because of the availability of additional pharmacists. Corporate pharmacies tend to deliver/dispense larger volumes of prescriptions that support multiple pharmacists on duty at one time or overlapping shifts. Chain pharmacies often use "floaters," staff that can assist at various locations as needed. On the other hand, community pharmacies tend to have one pharmacist per shift and may have difficulty in finding part-time/on-call pharmacists.

- Step 5, the pharmacy is not in compliance with the proposed rule and may be subject to disciplinary actions.

Only Step 4 would result in costs to pharmacies. These costs are described in Table 4 and the narrative following that table.

The second scenario, captured in steps A - D, illustrates the expectations provided in subsection (3) of proposed WAC 246-869-010. In this scenario, the medication/device inventory is established in compliance with WAC 246-869-150.

- Step B - After a thorough review of the prescription, the pharmacist contacts the prescriber to address concerns, when appropriate. In this situation, a therapeutically equivalent product is identified and dispensed.
- Step C and D - After a thorough review of the prescription, the pharmacist contacts the prescriber, when appropriate. In this situation, the pharmacy has determined that it is unable to provide a timely alternative for appropriate therapy. By request of the patient, the prescription is returned (step C) or the prescription is transferred to a pharmacy of the patient's/agent's choice that will fill the prescription in a timely manner (step D).

Note: Possible costs may be incurred by pharmacies to maintain a representative assortment of drugs in order to meet the pharmaceutical needs of its patients; however, these costs are already present under existing rules. In addition, costs for medications are passed onto the consumer and pharmacies have an array of options to manage medication inventories:

- Returning soon-to-expire medication inventory to wholesalers/manufacturers.
- More frequent pharmaceutical deliveries - up to six days a week - requiring less inventory on hand.
- Pharmacies commonly borrow medications from each other when needed.

Costs associated with subsection (4) of proposed WAC 246-869-010 would be incurred only by those pharmacies that violate this subsection. Pharmacies engaging in or permitting unprofessional conduct constitute grounds for discipline. The proposed rule defines this conduct as destroying or refusing to return unfilled lawful prescriptions; violating a patient's privacy; harassing, intimidating or discriminating against a patient or their agent.

To assist in assessing the probable costs of the adoption of the proposed rule amendments, the board surveyed a random selection of Washington pharmacies. The survey focused on current pharmacy practice and asked about the anticipated cost of complying with the proposed rule.

Responses to the survey represented 39% of the one thousand three hundred seventy pharmacies located in Washington state.

Response to Survey by Pharmacy Type
Table 1

Rural	Urban	Unknown	Retail Chain	Totals
38	67	7	428	540

Note: We contacted the corporate offices of nine retail chains, rather than the individual pharmacies within the chain, to get responses to the survey based on corporate standard policies and procedures. The nine corporations represent four hundred twenty-eight retail chain pharmacies. The four hundred twenty-eight pharmacies are located in rural and urban areas.

To obtain information about compliance with the rule, the board asked pharmacies specifically, "If a rule is adopted that required a pharmacy to dispense all lawful prescribed prescriptions, how might your pharmacy comply?" Although there is some resistance to the proposed rules the majority of pharmacies in each category indicated that they would comply with the rule.

Pharmacy Compliance with Proposed Rule
Table 2

Number of pharmacies responding	Rural (38)	Urban (67)	Pharmacy Chains (9 corporations)
Number and percent of pharmacies indicated that they [will] be able to comply with the rule.	32 (84%)	62 (92%)	9 (100%)

The board also asked what, if any, policies/procedures might currently be in place that would allow a pharmacy to provide services to [a] patient if a pharmacist refuses to dispense a lawful prescription for moral, ethical or religious reasons. Table 2 shows that few pharmacies have policies and procedures in place to ensure that, when a pharmacist refuses to dispense, patients receive appropriate medication therapy in a timely manner.

Pharmacist Refusal-Procedures
Table 3

Number of pharmacies responding	Rural (38)	Urban (67)	Pharmacy Chains (9 corporations)
Number and percent of pharmacies that currently have procedures in place if a pharmacist refuses to dispense.	3 (8%)	7 (10%)	5 (55%)

It is important to note that a small number of respondents did indicate that additional staffing would be necessary to ensure compliance with the rule.

Probable Staffing Cost to Comply With Proposed Rule
Table 4

	Rural (38)	Urban (67)	Chain Pharmacies (428) Representing 9 corporations
Pharmacies indicating additional pharmacists needed.	1 pharmacy	6 pharmacies	2 corporations
Cost of additional pharmacists needed based on \$80,000 per pharmacist.	\$80,000	\$80,000 cost to most pharmacies replying*	\$14,194 average cost per pharmacy**
Pharmacies indicating a probable cost of less than \$1,000.	1 pharmacy	7 pharmacies	0 corporations
Pharmacies indicating no additional cost.	26 pharmacies	50 pharmacies	3 corporations
Pharmacies that did not answer the question.	10 pharmacies	4 pharmacies	4 corporations

*5 pharmacies require 1 pharmacist at \$80,000 and 1 pharmacy reported needing 1.5 pharmacists (\$80,000) times 1.5 equals \$120,000.

**11 pharmacists at \$80,000 are shared at 62 pharmacies: (\$880,000) divided by 62 equals a \$14,194 average per pharmacy.

Of the pharmacies surveyed, 87% anticipate no additional staffing costs. For the pharmacies that employ pharmacists that will not dispense certain drugs it is estimated that the added yearly staffing costs will average \$80,000 for small pharmacies and \$14,194 for chain store pharmacies (large businesses).

These assumptions illustrate the likelihood that the proposed rules may impose a disproportionate financial impact on small businesses. Many health care organizations and associations have reported a serious shortage of pharmacists for a number of years. The shortage can be attributed to growth in prescription volume and new employment opportunities for pharmacists.

79% of community pharmacies responding to the survey rated the possibilities of finding an additional or temporary pharmacist as "very difficult" or "impossible." 67% of corporate retail chain pharmacies echoed these concerns.

However, as stated earlier in this analysis, the responsibilities established in the proposed rule mirror those processes that are customary practice in pharmacies today and would not result in additional costs. Additional pharmacist staffing costs and recruitment challenges pose real obstacles for any pharmacy that must institute alternatives to fulfilling its duty to deliver lawfully prescribed drugs and devices (as illustrated in step 4 in diagram 1).

Probable Benefits: The board of pharmacy has determined that the probable benefits of the proposed rules are greater than its probable costs to those that must comply. Costs of complying with the proposed rules must be balanced against the significant medical and social cost of not receiving

a time-dependent medication in a timely manner. Access to medication is a critical factor in an individual's health and the efficacy of some medications is directly related to receiving the medication within a specified time.

Healthcare providers stress the importance of taking medication as prescribed. For example, when a patient has an infection they are instructed to take the entire supply of antibiotics prescribed. Compliance or adherence refers to their ability to take their medications as prescribed. People who comply have better results in combating diseases than those who do not.

For example, human immunodeficiency virus (HIV) medications are highly time sensitive. An HIV patient must regularly take the HIV drugs prescribed to suppress the virus. The consequences of missing as few as three doses can result in the virus mutating. If the virus mutates the current drug regimen is no longer effective, requiring new tests to determine what new combination of drugs may be effective. New drugs are usually less effective and more expensive. Given that the mutation is permanent, the ultimate consequence is that the patient's probability of long-term survivability can be greatly diminished.

Each time an HIV patient infection is prevented by treatment; there is a cost avoidance of \$303,000^a. Healthcare providers caring for HIV patients refer to the "seventy-two hour rule." When a patient misses medication doses, the drug levels fall and the virus is able to multiply. The "seventy-two hours rule" refers to the time beyond which the virus can mutate and become resistant. If the patient has a gap in taking their medication longer than seventy-two hours, the provider must repeat expensive genotype and phenotype lab tests which cost from \$500-1,000 each to establish whether treatment failure has occurred.^b

HIV patients who develop viral resistance have to use what is called "salvage therapy." The medications used in salvage therapy have far greater side effects and one of the drugs used must be given by injection, at a cost of \$1,500 to \$1,800 each month. During this time the patient has an increased ability to transmit the HIV virus to others. The patient is also immunosuppressed and vulnerable to serious infections.

Emergency contraceptive pills would be another example of a time-dependent medication. In the United States, about 50% of all pregnancies are unintended. This is the highest rate of all industrialized nations. If a woman receives emergency contraceptive pills within seventy-two hours of intercourse, there is a high probability of preventing pregnancy. Emergency contraceptive pills effectively prevent unintended pregnancy at a cost of \$35-\$45. If barriers impede the timely administration of this contraception, pregnancy is likely to occur. Unintended pregnancies have been shown to have significant quantitative and qualitative costs.^c

When a woman has an unintended pregnancy, the impacts of an abortion may have serious emotional and health risks. The long-term costs associated with unwanted pregnancies have been calculated to be in the hundreds of thousands of dollars. The costs can be thousands of times more expensive than the cost of the emergency contraceptive pills prescription.

A new analysis by the Guttmacher Institute, published in August 2006 as part of the Institute's *Occasional Report* series, looked at the expanding eligibility for Medicaid-covered contraceptive services as a potential way of reducing unplanned pregnancy and, thereby, abortion. The findings suggest that providing access to contraceptive services for all Medicaid-funded women would be [a] very cost-effective program. This approach would avert \$2.3 billion in costs from unplanned births and results in a net savings of \$1.5 billion in Medicaid costs in the third year of the program's operation.^d

A similar case can be made for other time-dependent medications or devices such as insulin and diabetic syringes, emergency contraceptive pills and erectile dysfunction medications.

5. Does the Rule Impose a Disproportionate Impact on Small Businesses? Yes, the cost of additional staffing of rule compliance for community pharmacies that reported a need to hire staff to comply with the proposed rule is much greater than the average cost of additional staffing for corporate pharmacies that indicated a need to hire staff to comply. However, only one of thirty-eight small rural pharmacies, and six of sixty-seven small urban pharmacies indicated a need to hire an additional pharmacist in order to comply with the rule. More than two thirds of small rural and urban pharmacies surveyed said they would incur no costs of complying with the proposed rule.

6. If the Rule Imposes a Disproportionate Impact on Small Businesses, What Efforts Were Taken to Reduce That Impact (Or Why Is it Not "Legal and Feasible" to Do So) By:

(a) Reducing, modifying, or eliminating substantive regulatory requirements? Reducing, modifying, or eliminating substantive regulatory requirements is not legal or feasible because the proposed rule establishes a duty to dispense prescriptions as a universal requirement to the practice of pharmacy. Prescriptions that must be taken within a short timeframe by the patient need a timely response from the pharmacy to provide the medications. On the other hand, the rule reduces the impact by including customary pharmacy practices when the time-dependent medication is not in stock.

The pharmacist may call the prescriber for a therapeutically equivalent drug, return the prescription to the patient, or refer the patient to another pharmacy with the needed medication.

Many of the responding pharmacies, who don't stock the time-sensitive medication, indicated they have or will develop a referral system as the least costly alternative.

For those pharmacies who allow the right of refusal to their pharmacists, the least cost alternative is to have pharmacist coverage with on-call pharmacist, or in the case of the larger pharmacies having at least one pharmacist on duty that will dispense the medication.

(b) Simplifying, reducing, or eliminating record-keeping and reporting requirements? The board considered simplifying, reducing, or eliminating record-keeping and reporting requirements as a means to reduce the impact of the rule on small businesses. Record-keeping requirements for pharmacies are defined in federal and state laws.

The board does not have the authority to change federal or state law.

(c) Reducing the frequency of inspections? The adoption of the proposed rule does not impact the board's inspection process. Reducing inspections would not be a viable way of reducing costs to affected small businesses. Conducting inspections is necessary to protect public health and safety.

(d) Delaying compliance timetables? The board has not considered delaying implementation of the rule to give affected businesses time to find ways they can comply. The intent of the rule is to require timely compliance by pharmacies and pharmacists in delivering/dispensing appropriate medication therapy to patients. Timeliness of medication delivery to the patient is the focus of proposed rules. To delay compliance with the proposed rules would not be in the best interest of the public.

(e) Reducing or modifying fine schedules for noncompliance? Assuring timely access to medications is a critical factor in an individual's health. The efficacy of some medications is directly related to receiving the medication within a specified time. Reducing fines for small businesses who decide not to comply with the proposed rule does not meet the goal of the proposed rule.

(f) Any other mitigation techniques?

a) The rule applies to pharmacies, as well as pharmacists, to provide pharmacies with flexibility in staffing to meet the requirements of the proposed rule.

b) The rule excludes national or state emergencies affecting the availability or supplies of drugs and devices.

c) The proposed rule excludes specialized pharmacy practices that only provide limited prescriptions like compounded drugs or nuclear medicine drugs.

d) Within the one hundred twelve community pharmacies and four hundred twenty-eight corporate pharmacies surveyed, four hundred four pharmacists have a collaborative drug therapy agreement. The agreements allow the pharmacists to both prescribe and dispense medications in a timely manner, allowing even greater access to drugs or devices.

7. How are Small Businesses Involved in the Development of this Rule? Small pharmacies have been involved in the development of this rule through stakeholder meetings, letters and messages sent to the board of pharmacy, representation on the board, and participation in a pharmacy cost-of-rule survey sent to rural and urban pharmacies.

^a JS Gallant. Moore News Quarterly vol 1(1) December 2000.

^b Richard Aleshire, DOH HIV Program, personal communication.

^c SK Henshaw. Unintended Pregnancy in the U.S. Family Planning Perspectives. 30 (Jan-Feb) 24-29, 1998.

^d The Guttmacher Institute. (2006) *U.S. Teenage Pregnancy Statistics National and State Trends and Trends by Race and Ethnicity*. New York: The Guttmacher Institute.

A copy of the statement may be obtained by contacting Doreen E. Beebe, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4834, fax (360) 586-4359, e-mail doreen.beebe@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Doreen E. Beebe, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360)

236-4834, fax (360) 586-4359, e-mail doreen.beebe@doh.wa.gov.

February 15, 2007
Lisa Salmi
Acting Executive Director

AMENDATORY SECTION (Amending WSR 96-02-005, filed 12/20/95, effective 1/20/96)

WAC 246-863-095 Pharmacist's professional responsibilities. (1) A pharmacist's primary responsibility is to ensure patients receive safe and appropriate medication therapy.

(2) A pharmacist shall not delegate the following professional responsibilities:

(a) Receipt of a verbal prescription other than refill authorization from a prescriber.

(b) Consultation with the patient regarding the prescription, both prior to and after the prescription filling and/or regarding any information contained in a patient medication record system provided that this shall not (~~preclude a~~) prohibit pharmacy (~~assistant~~) ancillary personnel from providing to the patient or the patient's health care giver certain information where no professional judgment is required such as dates of refills or prescription price information.

(c) Consultation with the prescriber regarding the patient and the patient's prescription.

(d) Extemporaneous compounding of the prescription (~~provided that~~), however, bulk compounding from a formula and IV admixture products prepared in accordance with chapter 246-871 WAC may be performed by a (~~level A~~) pharmacy (~~assistant~~) technician when supervised by a pharmacist.

(e) Interpretation of data in a patient medication record system.

(f) Ultimate responsibility for all aspects of the completed prescription and assumption of the responsibility for the filled prescription, such as: Accuracy of drug, strength, labeling, proper container and other requirements.

(g) Dispense prescriptions to patient with proper patient information as required by WAC 246-869-220.

(h) Signing of the poison register and the Schedule V controlled substance registry book at the time of sale in accordance with RCW 69.38.030 and WAC 246-887-030 and any other item required by law, rule or regulation to be signed or initialed by a pharmacist.

(i) Professional communications with physicians, dentists, nurses and other health care practitioners.

~~((2))~~ (j) Decision to not dispense lawfully prescribed drugs or devices or to not distribute drugs and devices approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies.

(3) Utilizing personnel to assist the pharmacist.

(a) The responsible pharmacist manager shall retain all professional and personal responsibility for any assisted tasks performed by personnel under his or her responsibility, as shall the pharmacy employing such personnel. The responsible pharmacist manager shall determine the extent to which personnel may be utilized to assist the pharmacist and shall

assure that the pharmacist is fulfilling his or her supervisory and professional responsibilities.

(b) This does not preclude delegation to an intern or extern.

(4) It is considered unprofessional conduct for any person authorized to practice or assist in the practice of pharmacy to engage in any of the following:

(a) Destroy unfilled lawful prescription;

(b) Refuse to return unfilled lawful prescriptions;

(c) Violate a patient's privacy;

(d) Discriminate against patients or their agent in a manner prohibited by state or federal laws; and

(e) Intimidate or harass a patient.

NEW SECTION

WAC 246-869-010 Pharmacies' responsibilities. (1) Pharmacies have a duty to deliver lawfully prescribed drugs or devices to patients and to distribute drugs and devices approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies, or provide a therapeutically equivalent drug or device in a timely manner consistent with reasonable expectations for filling the prescription, except for the following or substantially similar circumstances:

(a) Prescriptions containing an obvious or known error, inadequacies in the instructions, known contraindications, or incompatible prescriptions, or prescriptions requiring action in accordance with WAC 246-875-040.

(b) National or state emergencies or guidelines affecting availability, usage or supplies of drugs or devices;

(c) Lack of specialized equipment or expertise needed to safely produce, store, or dispense drugs or devices, such as certain drug compounding or storage for nuclear medicine;

(d) Potentially fraudulent prescriptions; or

(e) Unavailability of drug or device despite good faith compliance with WAC 246-869-150.

(2) Nothing in this section requires pharmacies to deliver a drug or device without payment of their usual and customary or contracted charge.

(3) If despite good faith compliance with WAC 246-869-150, the lawfully prescribed drug or device is not in stock, or the prescription cannot be filled pursuant to subsection (1)(a) of this section, the pharmacy shall provide the patient or agent a timely alternative for appropriate therapy which, consistent with customary pharmacy practice, may include obtaining the drug or device. These alternatives include but are not limited to:

(a) Contact the prescriber to address concerns such as those identified in subsection (1)(a) of this section or to obtain authorization to provide a therapeutically equivalent product;

(b) If requested by the patient or their agent, return unfilled lawful prescriptions to the patient or agent; or

(c) If requested by the patient or their agent, communicate or transmit, as permitted by law, the original prescription information to a pharmacy of the patient's choice that will fill the prescription in a timely manner.

(4) Engaging in or permitting any of the following shall constitute grounds for discipline or other enforcement actions:

- (a) Destroy unfilled lawful prescription.
- (b) Refuse to return unfilled lawful prescriptions.
- (c) Violate a patient's privacy.
- (d) Discriminate against patients or their agent in a manner prohibited by state or federal laws.
- (e) Intimidate or harass a patient.

WSR 07-05-056

PROPOSED RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed February 20, 2007, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-02-025.

Title of Rule and Other Identifying Information: Chapter 392-153 WAC, Traffic safety education.

Hearing Location(s): Office of Superintendent of Public Instruction, Billings Conference Room, 600 South Washington Street, Olympia, WA 98504, on March 27, 2007, at 9:00 a.m.

Date of Intended Adoption: March 28, 2007.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by March 21, 2007.

Assistance for Persons with Disabilities: Contact Penny Coker by March 21, 2007, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change "behind the wheel" minimum course of instruction from four to six hours of driving experience to align with commercial school program requirements as administered through the department of licensing. The effective date will be September 1, 2007.

Statutory Authority for Adoption: Chapter 28A.220 RCW and RCW 46.20.100.

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: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This revision is only applicable to public school districts.

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

February 20, 2007
Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending WSR 06-08-043, filed 3/30/06, effective 4/30/06)

WAC 392-153-035 Course scheduling requirements.

(1) Any portion of a traffic safety education course may be taught after regular school hours or on Saturdays, as well as on regular school days or as a summer school course.

(2) Students shall not have more than two hours of classroom and one hour laboratory instruction in any twenty-four hour period. Where simulation and/or off-street multiple car driving ranges are utilized, up to one additional hour per day is allowed.

(3) The minimum course of instruction is thirty hours of classroom instruction, (~~four~~) six hours of driving experience and four hours of driving observation time. Break time shall not be included in clock hours. Four hours of simulation instruction may be substituted for up to one hour driving experience. Two hours of multiple car off-street driving range time may be substituted for up to one hour of driving experience.

WSR 07-05-070

PROPOSED RULES

**DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed February 20, 2007, 2:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-01-100.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501, on March 27, 2007, at 1:00 p.m.

Date of Intended Adoption: May 1, 2007.

Submit Written Comments to: Tom Davis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail dato235@LNI.wa.gov, fax (360) 902-4249, by April 3, 2007.

Assistance for Persons with Disabilities: Contact Tom Davis by March 20, 2007, TTY (360) 902-5797 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to update the department's payment rates for health care services by: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource-based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(2), increase the RBRVS conversion factor from \$54.22 to \$56.38.

WAC 296-20-135(3), increase the anesthesia conversion factor from \$2.97 to \$3.08.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from \$109.92 to \$113.84.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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: (1) Increasing the conversion factors used to calculate maximum payment for services paid with the RBRVS fee schedule;

(2) Increasing the conversion factor used to calculate maximum payment for anesthesia services; and

(3) Increasing the maximum daily payment for physical and occupational therapy services.

The conversion factor updates are made in accordance with WAC 296-20-132 Determination of conversion factor adjustments. The anticipated effect of this rule change is to allow injured workers continued access to health care services.

Name of Proponent: Department of labor and industries.

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Robert Malooly, Assistant Director, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

February 20, 2007

Judy Schurke
Acting Director

AMENDATORY SECTION (Amending WSR 06-09-071, filed 4/18/06, effective 7/1/06)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist or a physical therapist assistant serving under the direction of a licensed physical therapist. In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or (~~(\$109.92)~~) \$113.84 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 06-09-071, filed 4/18/06, effective 7/1/06)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ~~(\$109.92)~~ \$113.84 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 06-09-071, filed 4/18/06, effective 7/1/06)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of ~~(\$54.22)~~ \$56.38. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~(\$2.97)~~ \$3.08 per minute, which is equivalent to ~~(\$44.55)~~ \$46.20 per 15 minutes. The base units and payment policies can be found in the fee schedules.

WSR 07-05-071

PROPOSED RULES

OLYMPIC REGION

CLEAN AIR AGENCY

[Filed February 20, 2007, 2:51 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations, Rule 3.1 Annual Registration Fees and Rule 3.3 Notice of Construction Fees. The proposal increases annual fees for registration and notice of construction activities.

Hearing Location(s): Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, on April 11, 2007, at 10:00 a.m.

Date of Intended Adoption: April 11, 2007.

Submit Written Comments to: Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, e-mail Robert@orcaa.org, fax (360) 491-6308, by April 6, 2007.

Assistance for Persons with Disabilities: Contact Dan Nelson by April 2, 2007, (360) 586-1044.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This change will enable the agency to collect additional revenue for the registration and notice of construction programs. The additional revenue is needed to more fully fund these programs. There will be an increase in the annual registration fees charged to existing businesses and industries registered with ORCAA. Fees associated with air permits for new sources of air pollution will also increase.

Reasons Supporting Proposal: Chapter 70.94 RCW provides air agencies authority to charge fees sufficient to cover costs of implementing air regulatory programs including annual registration of existing sources of air pollution and air permitting programs for new sources of air pollution. The registration and permitting programs have always been subsidized by other funding sources. The fees have been increased once (by 3.6%) in the last thirteen years.

Statutory Authority for Adoption: Chapter 70.94 RCW.
Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Olympic Region Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Moody, 2940 B Limited Lane N.W., Olympia, WA 98502, (360) 586-1044.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the Regulatory Fairness Act (chapter 19.85 RCW) because air pollution control authorities are not deemed state agencies (RCW 70.94.141).

A cost-benefit analysis is not required under RCW 34.05.328. Air pollution control authorities are not deemed to be state agencies (RCW 70.94.141).

February 16, 2007
Richard A. Stedman
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-06 issue of the Register.

WSR 07-05-075
PROPOSED RULES
SPOKANE COUNTY AIR
POLLUTION CONTROL AUTHORITY
[Filed February 20, 2007, 3:18 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Revise SCAPCA Regulation I, Article VI, Section 6.17 - Standards for Municipal Solid Waste Combustors which implements federal emission guidelines for municipal solid waste combustors.

Hearing Location(s): Spokane County Public Works Building, Lower Level Hearing Room, 1206 West Broadway, Spokane, WA 99201, on April 5, 2007, at 9:00 a.m.

Date of Intended Adoption: April 5, 2007.

Submit Written Comments to: April Westby, 1101 West College, Suite 403, Spokane, WA 99201, e-mail alwestby@scapca.org, fax (509) 477-6828, by April 4, 2007.

Assistance for Persons with Disabilities: Contact Barbara Nelson by April 4, 2007, (509) 477-4727, ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose: Revise SCAPCA Regulation I, Article VI, Section 6.17 to incorporate recent revisions to federally established emission guide-

lines (40 C.F.R. Part 60, Subpart Cb) for municipal solid waste combustors.

Reasons Supporting Proposal: If local rules are not adopted, EPA will enforce the federal standards.

Statutory Authority for Adoption: RCW 70.94.141 and 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW, 42 U.S.C. 7401 et. seq. and 42 U.S.C. 7412.

Rule is necessary because of federal law, [no information supplied by agency].

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule implements revised federally established emission guidelines for certain municipal solid waste combustors. The federal emission guidelines are codified in 40 C.F.R. 60, Subpart Cb. This proposal amends the earlier version of SCAPCA Regulation I, Section 6.17. The rule lowers allowable emissions from affected combustors for several pollutants. The rule affects one facility in Spokane County.

Name of Proponent: Spokane County Air Pollution Control Authority, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: April Westby, 1101 West College, Suite 403, Spokane, WA 99201, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local air pollution control authority rule. Chapter 19.85 RCW does not apply to local air pollution control authority rule development/amendments.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule amendment.

February 20, 2007
William O. Dameworth
Director

AMENDATORY SECTION

REGULATION I, ARTICLE VI, SECTION 6.17

SECTION 6.17 STANDARDS FOR MUNICIPAL SOLID WASTE COMBUSTORS

A. Purpose. This section implements the emission guidelines promulgated by the United States Environmental Protection Agency (EPA) in 40 CFR Part 60, Subpart Cb, establishing standards for the control of certain pollutants emitted from municipal solid waste combustors.

B. Definitions. The definitions in 40 CFR §60.31b, as in effect on (~~September 1, 1998~~) December 1, 2006, are adopted by reference except:

1. The references to §60.52b(c) in the definitions of maximum demonstrated municipal waste combustor unit load and maximum demonstrated particulate matter control device temperature are hereby changed to §60.33b (c)(1). (~~(i) and (ii)~~)

2. In sections 60.53b, 60.58b, and 60.59b, Administrator means both the administrator of EPA and the Spokane County Air Pollution Control Authority.

C. Applicability. Section 6.17 applies to all facilities within Spokane County that are designated facilities as established in 40 CFR §60.32b, as in effect on ~~((September 1, 1998))~~ December 1, 2006.

D. Emission Standards. The following emission standards are adopted by reference. ~~((All facilities (i.e., each municipal solid waste combustor unit) designated in C. of this section shall comply with these standards in accordance with the compliance schedule given in J. below.))~~

1. Particulate matter emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(1)(i), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

2. Opacity shall not exceed the emission limit in 40 CFR §60.33b (a)(1)(iii), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

3. Cadmium emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(2)(i), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

4. Lead emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(4), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

5. Mercury emissions shall not exceed the emission limit in 40 CFR §60.33b (a)(3), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

6. Sulfur dioxide emissions shall not exceed the emission limit in 40 CFR §60.33b (b)(3)(i), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

7. Hydrogen chloride emissions shall not exceed the emission limit in 40 CFR §60.33b (b)(3)(ii), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

8. Dioxins/furans emissions shall not exceed the emission limit in 40 CFR §60.33b (c)(1)(i) ~~or (ii)~~, as in effect on ~~((September 1, 1998))~~ December 1, 2006.

9. Nitrogen oxide emissions shall not exceed the emission limits in Table 1 of 40 CFR §60.33b(d) (24-hour daily arithmetic average), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

10. Carbon monoxide emissions shall not exceed the emission levels specified in Table 3 of 40 CFR §60.34b(a), as in effect on ~~((September 1, 1998))~~ December 1, 2006.

E. Operating Practices. The operating practices of 40 CFR §60.53b (b) and (c), as in effect on ~~((September 1, 1998))~~ December 1, 2006, are adopted by reference. ~~((All facilities designated in C. of this section shall comply with these practices in accordance with the compliance schedule given in J. below.))~~

F. Operator Training and Certification. The operator training and certification requirements of 40 CFR §60.54b, as in effect on ~~((September 1, 1998))~~ December 1, 2006, are adopted by reference with the following change:

1. A State certification program may only be used to meet the certification requirements if it has been demonstrated to EPA's satisfaction that the State program is equivalent to the American Society of Mechanical Engineers certification program.

~~((All facilities designated in C. of this section shall comply with these requirements in accordance with the compliance schedule given in J. below.))~~

G. Fugitive Ash Emissions. The fugitive ash emission requirements of 40 CFR §60.55b, as in effect on ~~((September~~

~~1, 1998))~~ December 1, 2006, are adopted by reference. ~~((All facilities designated in C. of this section shall comply with these requirements in accordance with the compliance schedule given in J. below.))~~

H. Compliance and Performance Testing. The compliance and performance testing requirements in 40 CFR §60.58b, as in effect on ~~((September 1, 1998))~~ December 1, 2006, are adopted by reference with the following changes:

1. In §60.58b (a)(1)(iii), the references to §60.53b(a) are hereby changed to Table 3 of §60.34b(a).

2. In §60.58b(c), the reference to §60.52b (a)(1) and (a)(2) is hereby changed to §60.33b (a)(1)(i) and (iii).

3. In §60.58b(d), the reference to §60.52b(a) is hereby changed to §60.33b (a)(2), (a)(3), and (a)(4).

4. In §60.58b (d)(1), the reference to §60.52b (a)(3) and (4) is hereby changed to §60.33b (a)(2) and (a)(4).

5. All references to §60.52b (a)(5) in §60.58b are hereby changed to §60.33b (a)(3).

6. In §60.58b(e), the reference to §60.52b (b)(1) is hereby changed to §60.33b (b)(3)(i).

7. In §60.58b(f), the reference to §60.52b (b)(2) is hereby changed to §60.33b (b)(3)(ii).

8. All references to §60.52b(c) in §60.58b are hereby changed to §60.33b (c)(1). ~~((i) and (ii).))~~

9. In §60.58b (g)(5)(iii), the alternate testing schedule for dioxins/furans, as applicable, shall be available to facilities that achieve a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

10. In §60.58b(h), the references to §60.52b(d) are hereby changed to Table 1 of §60.33b(d).

11. In §60.58b(i), the reference to §60.53b is hereby changed to Table 3 of §60.34b(a) and §60.53b (b) and (c).

12. In §60.58b(i), the references to §60.53b(a) are hereby changed to Table 3 of §60.34b(a).

1. In §60.58b(c), the reference to §60.52b (a)(1) and (a)(2) is hereby changed to §60.33b (a)(1)(i) and (iii).

2. In §60.58b(d), the reference to §60.52b(a) is hereby changed to §60.33b (a)(2), (a)(3), and (a)(4).

3. In §60.58b (d)(1), the reference to §60.52b (a)(3) and (4) is hereby changed to §60.33b (a)(2) and (a)(4).

4. All references to §60.52b (a)(5) in §60.58b are hereby changed to §60.33b (a)(3).

5. In §60.58b(e), the reference to §60.52b (b)(1) is hereby changed to §60.33b (b)(3)(i).

6. In §60.58b(f), the reference to §60.52b (b)(2) is hereby changed to §60.33b (b)(3)(ii).

7. All references to §60.52b(c) in §60.58b are hereby changed to §60.33b (c)(1) and (ii).

8. In §60.58b (g)(5)(iii), the alternate testing schedule for dioxins/furans, as applicable, shall be available to facilities that achieve a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen.

9. In §60.58b(h), the references to §60.52b(d) are hereby changed to Table 1 of §60.33b(d).

10. In §60.58b(i), the reference to §60.53b is hereby changed to Table 3 of §60.34b(a) and §60.53b (b) and (c).

11. In §60.58b(i), the references to §60.53b(a) are hereby changed to Table 3 of §60.34b(a).

~~((All facilities designated in C. of this section shall comply with the compliance and performance testing requirements of this subsection in accordance with the compliance schedule given in J. below.))~~

I. Reporting and Recordkeeping. The reporting and recordkeeping requirements in 40 CFR §60.59b, as in effect on December 1, 2006, are adopted by reference with the following changes:

1. §60.59b (a), (b)(5), and (d)(11) are hereby deleted.

2. In §60.59b(d), the reference to §60.52b is hereby changed to §60.33b.

3. In §60.59b(d), the reference to §60.53b is hereby changed to Table 3 of §60.34b(a) and §60.53b (b) and (c).

~~((All facilities designated in C. of this section shall comply with the recordkeeping and reporting requirements of this subsection in accordance with the compliance schedule given in J. below.))~~

J. Compliance Schedule. All designated facilities, as determined in B. above, shall comply with the requirements of Section 6.17 as of the effective date of this regulation ~~((December 1, 1999))~~ except for the following:

1. The requirement specified in §60.54b(d) does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers or a state certification plan on or before December 1, 1999.

2. The owner or operator may request that the EPA Administrator waive the requirement specified in §60.54b(d) for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers or a state certification plan on or before December 1, 1999.

~~((3. The initial training requirements specified in §60.54b (f)(1) shall be completed no later than 12 months after December 1, 1999, or the date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation whichever is later.~~

~~4. The initial performance evaluation/test, required in H. above, shall be completed no later than 180 days after December 1, 1999.))~~

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane County Air Pollution Control Authority and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-05-078

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 05-16—Filed February 20, 2007, 4:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-151.

Title of Rule and Other Identifying Information: Chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund and chapter 173-95A WAC, Uses and limitations of the centennial clean water fund.

Hearing Location(s): Federal Way Regional Library, 34200 1st Way South, Federal Way, 98003, on March 28,

2007, at 1:00 p.m.; and at the Ramada Inn Spokane Airport, 8909 West Airport Drive, Spokane, WA 99219, on March 29, 2007, at 1:00 p.m.

Date of Intended Adoption: June 28, 2007.

Submit Written Comments to: Cindy Price, Department of Ecology, Water Quality Financial Management Section, P.O. Box 47600, Olympia, WA 98504-7600, e-mail cpri461@ecy.wa.gov, fax (360) 407-7151, by April 6, 2007.

Assistance for Persons with Disabilities: Contact Shawna Beers at (360) 407-6502 by at least seven days prior to hearing, TTY 711 or persons with speech disability call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule changes is to reflect existing and new funding initiatives and priorities identified by ecology, EPA, and other stakeholders and clients.

These changes include, but are not limited to the following:

- Incorporate and clarify federal requirements, such as perpetuity for the water pollution control revolving fund.
- Incorporate and clarify the intent of state statute.
- Add and clarify definitions.
- Update hardship-funding criteria for loans and grants to include a sliding scale for level of hardship and level of interest rates charged, which will help sustain the perpetuity of the water pollution control revolving fund.
- Redistribute program funding allocations between facilities and activities projects.
- Update requirements in the alternative contracting pilot rule of 2002 based on lessons learned (the pilot rule was rescinded in 2006).
- Enhance the current integrated funding approach between the water pollution control revolving fund and the centennial program and provide consistency.
- Add new loan and grant eligibilities, such as best management practices.
- Enhance the current on-site septic system local loan program by introducing hardship grants.
- Provide added flexibility in the application process.
- Apply "plain talk" principles per the governor's executive order.

Statutory Authority for Adoption: Chapter 90.50A RCW, Water pollution control facilities—Federal capitalization grants.

Statute Being Implemented: Chapter 90.50A RCW, Water pollution control facilities—Federal capitalization grants and chapter 70.146 RCW, Water pollution control facilities financing.

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: Cindy Price, Ecology Headquarters, Olympia, Washington, (360) 407-7132; Implementation and Enforcement: Steve Carley, Ecology Headquarters, Olympia, Washington, (360) 407-6572.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt from chapter 19.85 RCW because the stakeholders and clients impacted by the proposed rule changes are public bodies and therefore no small businesses are impacted.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from the requirements in RCW 34.05.328 because the rules relate only to internal government operations that are not subject to violation by a nongovernmental party.

February 20, 2007
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-010 ((What is the purpose of this chapter?)) Purpose. ((The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the water quality account, as authorized by chapter 70.146 RCW. This fund provides financial assistance, in the form of loans and grants to meet high priority water quality management needs, to public bodies throughout the state of Washington. Funded projects must address water quality problems related to public health and environmental degradation. In order to encourage the timely use of funds provided by the state legislature, priority will be given to projects shown to be ready to proceed.)) (1) The purpose of this chapter is to set forth requirements for the department of ecology's administration of the centennial clean water program, as authorized by chapter 70.146 RCW, Water pollution control facilities financing. This fund provides financial assistance to public bodies for statewide, high-priority water quality projects in the form of grants and loans through appropriation by the Washington state legislature.

(2) The centennial program may be used for the following purposes:

(a) To make grants and loans to finance the planning, design, and/or construction of water pollution control facilities; and

(b) To make grants and loans for nonpoint source pollution control management programs, including planning and implementing elements of the most current version of the "Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution," (ecology publication #05-10-027).

NEW SECTION

WAC 173-95A-015 Integrated funding approach. (1)

Where possible, the Washington state department of ecology combines the management of the centennial program with other funding programs, such as the Washington state water pollution control revolving fund, and the Clean Water Act section 319 nonpoint source fund.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-020 ((What are the definitions of key terms?)) Definitions. ((1) "Activities"—see "water pollution control activity."

(2) "Applicant" means a public body that has applied for funding.

(3) "Best management practices" means physical, structural, and/or managerial practices, approved by the department, that, when used singularly or in combination, prevent or reduce pollutant discharges.

(4) "Cash match" means funds to match the state share of a grant that are under the sole control of a public body.

(5) "Centennial" means the centennial clean water fund.

(6) "Ceiling amounts" means the largest amount of financial assistance the department can provide to an individual project. Ceiling amounts vary based on factors including the type of project and whether a loan or a grant is awarded.

(7) "Commercial, industrial, and institutional flows" means the portion of the total flows to a facilities project that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) "Cost effective alternative" means the alternative with the lowest present worth or equivalent annual value that achieves the requirements of the facility and that recognizes environmental and other nonmonetary considerations.

(9) "Department" means the department of ecology.

(10) "Easement," for the purposes of this rule, means a written agreement between a public body and an individual landowner, that allows the public body to have access to the property at any time to inspect, maintain, or repair activities or facilities installed with a loan or a grant, or to hold occasional public tours of the site for educational purposes.

(11) "Eligible cost" means the portion of the cost of the facilities or activities project that can be financed under the provisions of this chapter.

(12) "Enforcement order" means an administrative order that is a document issued by the department under the authority of RCW 90.48.120 and that directs a public body to complete a specified course of action within an explicit period of time to achieve compliance with the provisions of chapter 90.48 RCW.

(13) "Engineering report" means a report that evaluates engineering and other alternatives that meet the requirements set forth in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(14) "Environmental emergency" means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community, and requires immediate corrective action.

(15) "Estimated construction cost" means the estimated sum of moneys, excluding sales tax, to be paid to construction contractors and suppliers for all labor, materials, equipment, and other related work necessary to construct the proposed project.

(16) "Existing needs" means water pollution control facilities capability for the existing population in order to meet the requirements of the water quality based effluent lim-

itations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(17) "Existing residential need" means water pollution control facilities capability for the existing residential population in order to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(18) "Excess capacity" means water pollution control facilities capability beyond what is needed for the existing residential population to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(19) "Extended grant payments" means cash disbursements for eligible project costs made under a multiyear centennial grant agreement according to conditions established in RCW 70.146.075 and funded through legislative appropriations. Extended grant payments do not follow the normal process of reimbursement for actual costs incurred.

(20) "Facilities plan" means an engineering report that includes all the elements required by the National Environmental Policy Act, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(21) "Facilities" - see "water pollution control facilities."

(22) "Force account" means loan or grant project work performed using labor, materials, or equipment of a public body.

(23) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.

(24) "Funding cut-off line" means the position on a final offer list ranked by priority below which financial assistance will not be offered from that fund, proviso, or funding category.

(25) "Funding list" - see "offer list."

(26) "Grant agreement" means a contractual arrangement between a public body and the department that includes an approved scope of work, total project cost, set grant percentage, eligible costs, budget, and a schedule for project completion (in addition to other requirements).

(27) "Immediate corrective action" means that the director of the department or the director's designee has determined that the project must proceed to correct the problem in a timely manner before funds are available during the next regular funding cycle. This usually would involve a "public health emergency" or an "environmental emergency."

(28) "Indirect cost" means costs that benefit more than one activity of the recipient and that may not be directly assigned to a particular project objective.

(29) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.

(30) "Infiltration and inflow correction" means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow from an existing sewer system.

(31) "In-kind contributions" means the value of noncash contributions provided by a public body or any other approved parties.

(32) "Interlocal costs" means the cost of goods or services provided to a project under the terms of an interlocal agreement by a public body eligible to apply for centennial

funds. These costs may be considered as part of a cash match if they are eligible for funding under the grant agreement.

(33) "Loan agreement" means a contractual arrangement between a public body and the department that involves a disbursement of funds that must be repaid. The agreement includes an approved scope of work, total project cost, loan terms (including interest rates) and a repayment schedule.

(34) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.

(35) "Local prioritization process" means a process to prioritize projects locally as specifically described in WAC 173-95A-050.

(36) "Match" means the portion of the eligible project costs not covered by a grant, including actual cash outlays, and noncash (in-kind) contributions.

(37) "Maximum eligible costs" means the ceiling on the portion of the costs of a project that are eligible.

(38) "Nonpoint source water pollution" means pollution that enters any waters from widespread water- or land-based activities. Nonpoint source water pollution includes, but is not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

(39) "Offer list" means a list of projects prioritized for receiving financial assistance from the centennial program.

(40) "Previously funded objective" means a project or project element intended to address the same need as a project or project element that has been previously funded by a loan or grant from a funding program administered by the department.

(41) "Project" means water pollution control facilities or activities for which a loan or grant is awarded by the department.

(42) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized by the federal government.

(43) "Public health emergency" means a situation in which illness or exposure known to cause illness is occurring or is imminent (as determined by the Washington state department of health).

(44) "Recipient" means a public body that applied for funding, has been offered funding, and has signed a funding agreement with the department.

(45) "Scope of work" means a detailed description of a project, including measurable objectives useful for determining successful completion. The scope of work is negotiated between the department and the loan or grant recipient.

(46) "Severe public health hazard" means a situation in which the potential for illness exists, but illness is not occurring or imminent (as determined by the Washington state department of health).

(47) "Sewer" means a pipe and related pump stations located on public property, or on public rights of way and easements, that conveys wastewater from individual buildings or groups of buildings to a treatment plant.

(48) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(49) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.

(50) "Step process" means a systematic process that facilities projects must follow to be eligible for loans or grants.

(51) "Total eligible project cost" means the sum of all costs associated with a water quality project that have been determined to be eligible for loan or grant funding.

(52) "Total project cost" means the sum of all eligible and ineligible costs associated with a water quality project.

(53) "Water pollution control activities" or "activities" means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(54) "Water pollution control facilities" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(55) "Water pollution" means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(56) "Water resource inventory area" or "WRIA" means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in chapter 173-500 WAC as it existed on January 1, 1997.) For the purposes of this chapter:

(1) **Activities** see water pollution control activities.

(2) **Applicant** means a public body that has applied for funding.

(3) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(4) **Cash match** means moneys used to match the state share of a grant.

(5) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(6) **Centennial** means the centennial clean water program.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) **Competitive funding** means moneys available for projects through a statewide evaluation process.

(9) **Completion date or expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event; or

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to

inspect, maintain, or repair loan-or-grant-funded activities or facilities.

(20) **Effective date** means the date the loan or grant agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of the facilities or activities project that can be funded.

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(28) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(29) **Extended grant payments** means cash disbursements for eligible project costs made with equal annual payments as established in RCW 70.146.075.

(30) **Facilities** see water pollution control facility.

(31) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(32) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

(33) **Force account** means loan or grant project work performed using labor, materials, or equipment of a public body.

(34) **Funding cycle** means the events related to the competitive process used to allocate moneys from the clean water state revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

(35) **Grant agreement** means a contractual arrangement between a public body and the department.

(36) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(37) **In-kind contributions** means the value of noncash contributions provided for a project.

(38) **Interlocal agreement** means a written arrangement between a grant recipient and another public body to provide eligible grant match contributions to a project. Interlocal agreements are subject to chapter 39.34 RCW, Interlocal Cooperation Act.

(39) **Interlocal costs** means the value of goods or services provided to a project by a public body under the terms of an interlocal agreement. Interlocal contributions satisfy cash matching requirements.

(40) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(41) **Infiltration and inflow correction** means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to an existing sewer system.

(42) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(45) **Match** means the recipient share of eligible project costs.

(46) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

(47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(48) **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

(49) **Project** means a water quality improvement effort funded with a grant or loan.

(50) **Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

(51) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or insti-

tutions of higher education when the proposed project is not part of the school's statutory responsibility.

(52) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

(53) **Recipient** means a public body that has an effective loan or grant agreement with the department.

(54) **Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

(55) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

(56) **Service area population** means the number of people served in the area of the project.

(57) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

(58) **Sewer** means the pipe and related pump stations located on public property or on public rights of way and easements that convey wastewater from buildings.

(59) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(60) **State environmental review process (SERP)** means the National Environmental Protection Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

(61) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

(62) **Total project cost** means the sum of all expenses associated with a water quality project.

(63) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(64) **Water pollution control activities or activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(65) **Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water,

residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

(66) **Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

PART 1 ELIGIBLE PROJECT TYPES

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-100 ((How are grants and loans managed?)) Grant and loan eligible. ((1) Timely use of funds: Projects funded with loans or grants from the centennial fund must be spent in a timely fashion so that funds are put to work for the water quality of the state as soon as possible. To accomplish this, certain time restrictions are placed on the use of funds as follows:

(a) Work on a project must be started within sixteen months of the publication date of the final offer list on which the project was proposed.

(i) Any expenditure of funds which is eligible for reimbursement under the terms of the loan or grant agreement constitutes starting the project.

(ii) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension and when the extension is included in the signed funding agreement with the department.

(iii) Valid reasons for a time extension allowing a start date more than sixteen months after the publication date of the final offer list are limited to:

(A) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.

(iv) If the funding recipient has one of these valid reasons to wait longer than sixteen months to start the project, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed loan or grant agreement.

(b) Work on a project must be completed within five years of the publication date of the final offer list on which the project was proposed or within a shorter time period if the shorter period is identified in the funding agreement for the project. When all work identified in the funding agreement scope of work is finished, the project is deemed to be completed. After the five-year time limit is reached, no further expenditures may be reimbursed unless an extension is made.

(i) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension; and

(A) The extension is requested no less than three months before the funding agreement is due to expire; and

(B) The department's water quality program manager agrees that the extension is for a valid reason:

(ii) Valid reasons for a time extension are limited to:

(A) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.

(iii) If the funding recipient has one of these valid reasons to be allowed a time extension, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed amendment to the existing loan or grant agreement.

(e) In-kind goods and services may be used as match for activities grants subject to ceiling amount restrictions covered in WAC 173-95A-030 and subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(d) In-kind goods and services may be used as match for facilities grants only in the case of projects undertaken under the small town environmental program, or "STEP."

(2) Prior authorization to incur costs. In cases where a project has been identified on a final offer list, the applicant may make a written request to the water quality program manager, asking to begin incurring costs related to a loan or grant for which there is not yet a signed loan or grant agreement. If the department concurs with this request, the water quality program manager will send the applicant a letter authorizing the costs. The applicant incurs the costs at their own risk. When an agreement is signed, previously incurred costs that are not eligible under the terms of the agreement are the sole responsibility of the applicant.

(3) Appeals of loan and grant agreement decisions: The only decisions which may be appealed are written decisions by the department made during the effective loan or grant agreement period. Appeals must be filed in writing to the department within forty five days from the date of the disputed decision. Following the final decision of a dispute, the department and the recipient shall proceed with the project in accordance with the decision rendered. Administrative or legal costs and other expenses incurred as part of an appeal will not be eligible for reimbursement.

(4) The department, or at the department's discretion another authorized auditor, may audit the loan or grant agreement and records.

(5) The administration of all loans and grants will be subject to all terms and conditions in a funding agreement signed by the department and by the recipient.

(6) Ongoing management of most aspects of loan and grant projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*, copies of which will be provided to all recipients.)) Certain projects or project elements, including but not limited to the following may be eligible for centennial loan or grant assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution can be addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property;

(a) Best management practices that consist of new, innovative or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner;

(3) **BMP implementation** on public property;

(4) **Computer equipment and software** specific to the funded project and preapproved by the department;

(5) **Diagnostic studies** to assess current water quality;

(6) **Education and outreach** efforts for the public;

(7) **Environmental checklists, assessments, and impact statements** necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(8) **Equipment and tools** as identified in a grant or loan agreement;

(9) **Ground water protection activities** such as well-head protection and critical aquifer recharge area protection;

(10) **Hardship assistance** for wastewater treatment facilities construction, storm water management, and on-site septic system repair and replacement, and construction elements of a design-build-operate project;

(11) **Implementation** of eligible projects identified in water quality plans;

(12) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(13) **Lake implementation and planning activities** on lakes with public access;

(14) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;

(15) **Light refreshments** for meetings when specified in the loan or grant agreement;

(16) **Monitoring BMP effectiveness;**

(17) **Monitoring equipment** used for water quality assessment;

(18) **Monitoring water quality;**

(19) **On-site septic systems;**

(a) **Development and administration of a local loan fund for on-site septic system repair and replacement** for residential and small commercial systems; and

(b) **On-site wastewater system surveys;**

(20) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from non-point sources;

(21) **Planning** comprehensive basin, watershed, and area-wide water quality development;

(22) **Riparian and wetlands habitat restoration and enhancement, including revegetation;**

(23) **Sales tax;**

(24) **Stream restoration** that meets recognized water quality standards;

(25) Storm water certain nonpermit-related planning activities, such as education and outreach, establishing a storm water utility, identifying and mapping of pollution sources, and department-approved erosion control;

(26) Total maximum daily load study development and implementation;

(27) Training to develop specific skills that are necessary to directly satisfy the scope of work. Training, conference registration, or annual meeting fees must be preapproved by the department;

(28) Wastewater or storm water utility development;

(29) Wastewater or storm water utility rate or development impact fee studies;

(30) Water quality education and stewardship programs; and

(31) Wellhead protection.

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-110 ((General provisions.)) Loan only eligible. ~~((1) Other state and federal grant funding: Other grant funds provided by the state legislature, federal government, or from other sources will be managed in a manner consistent with the centennial rule.~~

~~(2) For all projects, the recipient must acknowledge department financial assistance in all reports, technical documents, publications, brochures, and other materials produced using funding from the loan or grant. All site-specific projects must have a sign of sufficient size to be seen from nearby roadways, acknowledging department financial assistance, and left in place throughout the life of the project. Department logos must be on all signs and documents. Logos will be provided as needed.)~~ Certain projects or project elements, including but not limited to the following may be eligible for centennial loan assistance:

(1) CAFOs, for BMP implementation;

(2) Facilities for wastewater and storm water:

(a) Planning:

(i) Comprehensive sewer planning, including wastewater elements of capital facilities planning under the Growth Management Act;

(ii) Facilities planning for water pollution control facilities; and

(iii) Storm water planning for permitted facilities;

(b) Design preparation of plans and specifications for water pollution control facilities;

(c) Construction of:

(i) Combined sewer overflow abatement;

(ii) Side sewers or individual pump stations or other appurtenances on private residential property;

(iii) Sewers and side sewers on public property for infiltration and inflow correction projects, and to replace existing water pollution control facilities;

(iv) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of storm water; and

(v) Water pollution control facility construction with reserve capacities to meet up to one hundred ten percent of existing residential needs;

(d) Value engineering for water pollution control facilities;

(e) Design or construction costs associated with design-build or design-build-operate contracts;

(3) Land acquisition:

(a) As an integral part of the treatment process (e.g., land application);

(b) For prevention of water pollution;

(c) For siting of water pollution control facilities, sewer rights of way, easements, and associated costs; or

(d) for wetland habitat preservation;

(4) Legal expenses will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

(5) On-site septic systems:

(a) Local loan fund program development and administration;

(b) New sewer systems to eliminate failing or failed on-site septic systems;

(6) Spare parts initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements; and

(7) Transferring ownership of a small wastewater system to a public body.

NEW SECTION

WAC 173-95A-120 Projects ineligible for centennial program funding. While it is impossible to list every project or project element that is not eligible, some examples of ineligible projects include:

(1) **Abandonment** or demolition of existing structures;

(2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;

(3) **Commercial, institutional or industrial** wastewater pretreatment;

(4) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(5) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(6) **Facilities** intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;

(7) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;

(8) **Flood control**, projects or project elements intended solely for flood control;

(9) **Funding application preparation** for loans or grants;

(10) **Interest** on bonds, interim financing, and associated costs to finance projects;

(11) **Landscaping** for aesthetic reasons;

(12) **Legal expenses** associated with claims and litigation;

(13) **Lobbying** or expenses associated with lobbying;

- (14) **Monitoring equipment** for sampling and analysis of commercial, institutional, or industrial discharges;
- (15) **Office furniture** not included in the recipient's indirect rate;
- (16) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;
- (17) **Operation and maintenance** costs;
- (18) **Overtime** differential paid to employees of a public body to complete administrative or force account work;
- (19) **Permit fees**;
- (20) **Professional dues**;
- (21) **Reclamation** of abandoned mines;
- (22) **Refinance** of existing debt;
- (23) **Rework costs** or previously funded objectives;
- (24) **Solid or hazardous waste**;
- (25) **Vehicle purchase** except for vehicles intended for the transportation of liquid or dewatered sludge or septage; and
- (26) **Water quantity** or other water resource issues.

**PART 2
LOAN INTEREST RATES**

NEW SECTION

WAC 173-95A-200 Centennial clean water program loan interest rates. The department bases loan recipient interest rates on the average market interest rate. The average market interest rate is based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds for the period from sixty to thirty days before the annual funding application cycle begins. See WAC 173-95A-400 for hardship interest rates.

Loan terms and interest rates are as follows:

NEW SECTION

WAC 173-95A-310 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than five but no more than twenty years:	Sixty percent of the average market rate.

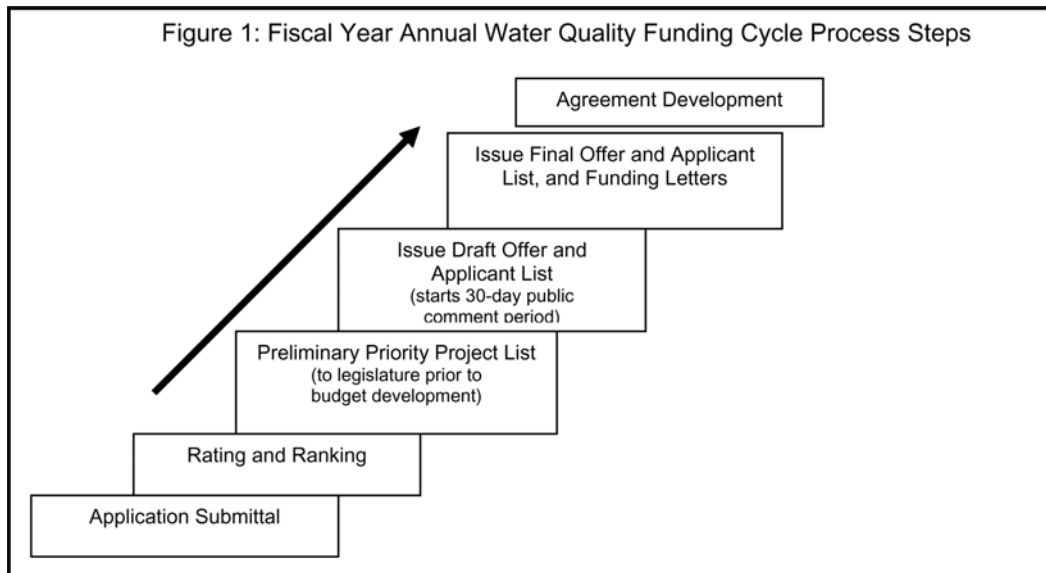
**PART 3
HOW TO APPLY FOR FUNDING**

NEW SECTION

WAC 173-95A-300 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the agency web site.

(2) The applicant may be asked to provide the following project information:

- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;
- (c) Project goals, objectives, and milestones;
- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in "Washington's water quality plan to control nonpoint sources of pollution," or other such plans;
- (h) Performance measures and postproject assessment monitoring;
- (i) Readiness to proceed, likelihood of success, and measures of success specific to the project;
- (j) Local initiatives, commitments, or priorities related to the project; or
- (k) Other information requested by the department.



(2) Ecology will provide the following services:

- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
- (b) Conduct at least one application workshop in each of ecology's four regions;
- (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
- (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
- (e) Request other agencies to provide evaluation assistance as needed;
- (f) Rate and rank the applications using a consistent scoring system;
- (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
- (h) Submit preliminary project priority list to the state legislature for budget consideration;
- (i) Develop a combined draft offer and applicant list;
- (j) Facilitate a public review and comment period for the combined draft offer and applicant list;
- (k) Sponsor at least one public meeting to explain the combined draft offer and applicant list;
- (l) Develop a combined "final offer and applicant list." Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan or grant agreements.

NEW SECTION

WAC 173-95A-320 Final offer and applicant list.

Loan and grant offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan and grant offers that do not result in a signed agreement are automatically terminated.

PART 4

FINANCIAL HARDSHIP ASSISTANCE

NEW SECTION

WAC 173-95A-400 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of a wastewater treatment facilities projects:

- (a) Service area population;
- (b) Existing residential need at the time of application; and
- (c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants serving an area of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form, provided by the department, along with the grant and loan funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** Water pollution control facilities construction costs that are associated with existing residential need plus ten percent at the time of application may be eligible for funding. Additional reserve capacity for growth is not eligible for grant funding.

For example:

If an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for reserve capacity for growth, the applicant may be eligible for six million six hundred thousand dollars in grant funding.

Residential need:	\$6,000,000
Reserve capacity for growth (10% of \$6M):	<u>\$600,000</u>
Grant Eligible Amount	\$6,600,000

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using:

- (i) Estimated construction cost;
 - (ii) Projected future operation and maintenance costs for the total facility;
 - (iii) The applicant's current debt service on the project;
 - (iv) Other grants;
 - (v) Existing annual operation, maintenance, and equipment replacement costs;
 - (vi) The total number of households existing at the time of application that will be served by the project; and
 - (vii) The nonresidential share of the total annual costs;
- (b) The sewer user fee as a percentage of the MHI is the basis for the department's grant and loan hardship-funding continuum (shown below in figure 2 and figure 3);

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Hardship grant ceiling amounts.** The department uses the grant hardship-funding continuum, shown in figure 2 below, to determine the percent of grant awarded. There is a funding ceiling of five million dollars per project.

For example:

When a grant applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may receive a grant of seventy-five percent of eligible project costs, not to exceed five million dollars (see figure 2 below).

(6) If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, up to five million dollars, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

(7) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum, shown in figure 2 below, to determine the hardship-loan interest rates. There is a funding ceiling of five million dollars. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When a loan applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 3 below).

(8) **Design-build-operate (construction portion).**

(a) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations;

(b) The construction portion of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for a grant if the public body can demonstrate financial hardship in accordance with

(10) **Figure 2: Grant Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Grant Hardship-Funding Continuum	0% Grant	50% Grant (up to five million dollars)	75% Grant (up to five million dollars)	100% Grant (up to five million dollars)

(11) **Figure 3: Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

WAC 173-95A-400. Hardship-grant ceiling amounts found in WAC 173-95A-520 apply;

(c) Design-build-operate projects must comply with chapter 35.58 RCW, Metropolitan municipal corporations;

(d) The project scope of work must implement a department-approved facilities plan;

(e) In addition to the project application information found in WAC 173-95A-300, the project will be evaluated on the applicant's level of administrative and technical expertise;

(f) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to utilize the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(g) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(h) Costs associated with change orders are not eligible for reimbursement;

(i) Projects must be completed according to the timeline in WAC 173-95A-700 and 173-95A-710; and

(j) Before the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements.

(9) **Extended grant payments.** In some cases, the legislature may appropriate extended grant payments per RCW 70.146.075.

NEW SECTION

WAC 173-95A-410 On-site septic system repair and replacement programs. Applicants may apply for grant funding in conjunction with a state water pollution control revolving fund loan to establish or continue programs that provide hardship funding for on-site septic system repair and replacement for homeowners and small commercial enterprises. The ceiling amounts used for activities grants, cited in WAC 173-95A-520, also apply.

NEW SECTION

WAC 173-95A-420 Storm water projects. (1) Storm water-related activities, such as education and outreach, monitoring, and some planning efforts, are not grant eligible when those activities are required under a permit, unless the applicant can demonstrate financial hardship.

(2) There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;
- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

(3) **Service area population, presence of permit, and median household income.** Applicants under a permit, whose service area population is less than twenty-five thousand, and whose median household income is sixty percent or less of the average statewide MHI, can request hardship-funding consideration.

(4) In rare cases where financial hardship cannot be determined using population and percent of median household income, the department will make financial hardship determinations on a case-by-case basis.

(a) The most recent available census data determines the statewide average median household income; and

(b) This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the *Consumer Price Index*.

(5) **Matching requirements, percent of grant, and grant ceiling amounts.** Storm water-hardship grants are fifty percent grants with a fifty percent cash-matching requirement.

The maximum amount available for a storm water-hardship grant is \$500,000.

For example:

When a grant applicant whose service area population is twenty-five thousand or less can demonstrate that its MHI is below the state MHI, the applicant may be eligible for a fifty percent grant, not to exceed five hundred thousand dollars.

PART 5**REQUIREMENTS FOR MANAGING GRANTS AND LOANS**NEW SECTION

WAC 173-95A-500 Funding allocation. There are two project categories in which the competitive funding is allocated: Activities and facilities.

(1) The scores derived from the application rating and ranking process will determine the allocation of the competitive funding;

(2) No more than two-thirds of the fund can go to either category;

(3) If the demand for funding is low in either category, then moneys may be shifted amongst categories; and

(4) The department will adjust the funding allocation based on the following:

(a) To provide match for other funding sources, such as the Clean Water Act section 319 nonpoint source fund or other funding programs; or

(b) To comply with funding restrictions in legislative appropriations.

For example:

If fifty percent of the competitive centennial program funding is comprised of state building construction account moneys, then fifty percent of the centennial program funding must be allocated to projects approved for that funding source.

NEW SECTION

WAC 173-95A-510 Funding recognition. (1) The recipient must acknowledge department funding in reports, technical documents, publications, brochures, and other materials.

(2) Site-specific projects must display a sign acknowledging department funding. The sign must be large enough to be seen from nearby roadways, and include a department logo.

NEW SECTION

WAC 173-95A-520 Ceiling amounts. (1) **Activities projects.** Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(a) Five hundred thousand dollars if the match for the grant is in the form of cash and/or interlocal costs; or

(b) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services; and

(c) Five hundred thousand dollars for activities project loans.

(2) **Facilities projects.** Loans are subject to ceiling amounts of five million dollars.

(3) **Hardship projects.** Grants for facilities construction projects are subject to ceiling amounts of five million dollars.

(4) **Partially funded projects.** If a project is offered partial funding due to the lack of available centennial moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(5) **Water pollution control facilities construction bid overruns.**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding for up to ten percent of the engineer's estimate;

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information, see WAC 173-95A-400.

(6) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information on hardship, see WAC 173-95A-400.

NEW SECTION

WAC 173-95A-530 Match. (1) Depending on the grant amount, match can consist of cash or interlocal and in-kind contributions that total twenty-five percent of the total eligible project cost.

(2) No match is required for loans under the centennial program.

NEW SECTION

WAC 173-95A-540 Step process for facilities. (1) The step process is required for facilities construction projects. The process begins with site-specific planning, and continues through design to construction or implementation. At the time of application, all previous steps must be approved by the department. Draft documents must be sent to the department's engineers at least sixty days prior to end of application cycle for approval by end of application cycle. Funding for one step does not guarantee the future funding of subsequent steps.

(2) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design can be considered for funding. Facilities plans approved by the department more than two years prior to the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(3) **Combined steps for smaller design-bid-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must

demonstrate that step two (design) can be completed and approved by the department within one of the time frames the funding agreement is signed. The total project costs for step four projects must be five million dollars or less.

(4) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

NEW SECTION

WAC 173-95A-550 Commercial, industrial, and institutional flows. (1) The portion of a project designed to serve the needs of commercial, industrial, and institutional customers may be funded using loans only.

(2) Capacity to serve local public primary and secondary schools may be grant eligible if the applicant can demonstrate financial hardship according to WAC 173-95A-400.

NEW SECTION

WAC 173-95A-560 Step process for water pollution control activities. The step process is required for lake projects and recommended for all activities projects.

(1) **Planning** involves the identification of problems and evaluation of cost-effective alternatives.

(2) **Implementation** is the actual implementation of the project based on the planning document. Where the project includes construction, a design element may be included before the implementation step.

NEW SECTION

WAC 173-95A-570 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

PART 6

COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS

NEW SECTION

WAC 173-95A-600 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and regulations relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

NEW SECTION

WAC 173-95A-610 The Growth Management Act.

(1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means that:

A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director and addressed to the public official who signed the loan or grant application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

PART 7

TIMELY USE OF CENTENNIAL PROGRAM MONEYS

NEW SECTION

WAC 173-95A-700 Starting a project. Costs incurred before a grant or loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department.

(1) Prior authorization to incur costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the "final offer and applicant list";

(ii) Costs are incurred between the publication date of the "final offer and applicant list" and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred prior to the publication date of the "final offer and applicant list" are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) Project initiation. Grant or loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the grant or loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the "final offer and applicant list" on which the project was proposed.

(b) Starting a project means making any measurable steps toward achieving the milestones, objectives, and overall goals of the project.

(3) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

- (a) Schedules included in water quality permits, consent decrees, or enforcement orders; or
- (b) There is a need to do work during an environmental window in a specific season of the year.

NEW SECTION

WAC 173-95A-710 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the "final offer and applicant list" on which the project was proposed. A shorter time period may be specified in the grant or loan agreement; and

(b) Completing a project means fulfilling all milestones and objectives associated with the goals of the grant or loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

- (i) Schedules included in water quality permits, consent decrees, or enforcement orders; or
- (ii) There is a need to do work during an environmental window in a specific season of the year; and
- (b) To ensure timely processing, the time extension request must be made prior to the completion or expiration date of the loan or grant agreement.

PART 8

GENERAL ADMINISTRATIVE PROVISIONS

NEW SECTION

WAC 173-95A-800 Accounting requirements for grant and loan recipients. (1) Recipients must maintain accounting records in accordance with RCW 43.09.200, Local government accounting—Uniform system of accounting. For example, charges must be properly supported, related to eligible costs, and documented by appropriate records. These records must be maintained separately.

(2) Accounting irregularities may result in an immediate payment hold. The director may require immediate repayment of misused loan or grant moneys.

NEW SECTION

WAC 173-95A-810 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision by a written appeal to the water quality program

manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient may request review of the decision within thirty days to the deputy director;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received, and that decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

NEW SECTION

WAC 173-95A-820 Audit requirements for grant and loan recipients. The department, or at the department's discretion another authorized auditor, will audit the grant or loan agreement and records.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-95A-030	How and under what conditions, can money from the centennial fund be used?
WAC 173-95A-040	Where can I obtain details about the application and review process for centennial funds?
WAC 173-95A-050	How can a local area have a role in determining funding priorities?
WAC 173-95A-060	What are the limitations on the use of funds?
WAC 173-95A-070	How does the Growth Management Act impact the use of funds?
WAC 173-95A-080	What is the "step process" for planning facilities and activities projects?
WAC 173-95A-090	What other laws, regulations or requirements must recipients comply with?

AMENDATORY SECTION (Amending Order 98-10, filed 11/24/98, effective 12/25/98)

WAC 173-98-010 (~~(What is the purpose of this chapter?)~~) **Purpose.** ((The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the state water pollution control revolving fund (SRF), as authorized by chapter 90.50A RCW. This fund provides financial assistance to applicants throughout the state of Washington who need such assistance to meet high-priority water quality management needs.)) The purpose of this chapter is to set forth requirements for the department of ecology's administration of the Washington state water pollution control revolving fund, as authorized by chapter 90.50A RCW, water pollution control facilities financing. This fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-020 (~~(What are the definitions of key terms?)~~) **Integrated funding approach.** ((Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Act" means the Federal Water Pollution Control Act (33 U.S.C. 4661 et seq.).

(2) "Applicant" means a public body that has applied for funding.

(3) "Best management practices" means physical, structural, and/or managerial practices approved by the department or by another agency with regulatory oversight that, when used singularly or in combination, prevent or reduce pollutant discharges.

(4) "Concentrated animal feeding operation" means an animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five year, twenty-four hour storm event; or if the operation is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or the operation will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or the department or the U. S. Environmental Protection Agency determines the operation is considered to be polluting the waters of Washington state.

(5) "Commercial, industrial, and institutional flows" means the portion of the total flows to a facilities project that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(6) "Construction" means the erection, installation, expansion, or improvement of water pollution control facilities or activities.

(7) "Cost-effective alternative" means that alternative with the lowest present worth or equivalent annual value that

achieves the requirements of the project while recognizing the environmental and other nonmonetary considerations.

(8) "Defeasance" means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal and interest on all or a portion of an obligation as it comes due.

(9) "Department" means the Washington state department of ecology.

(10) "Design" means the plans and specifications for water pollution control facilities or activities.

(11) "Director" means the director of the Washington state department of ecology or his or her authorized designee.

(12) "Easement," for the purposes of this rule, means a written agreement between a public body and an individual landowner, that allows the public body to have access to the property at any time to inspect, maintain, or repair activities or facilities installed with a loan or a grant, or to hold occasional public tours of the site for educational purposes.

(13) "The effective date of the loan agreement" means the date the loan agreement is signed by the department's water quality program manager.

(14) "Enforcement order" means an administrative order that is a document issued by the department under the authority of RCW 90.48.120 and that directs a public body to complete a specified course of action within an explicit period of time to achieve compliance with the provisions of chapter 90.48 RCW.

(15) "Engineering report" means a report that evaluates engineering and other alternatives that meet the requirements set forth in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "Excess capacity" means water pollution control facilities capability beyond what is needed for the existing residential population to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(18) "Existing residential need" means work required on the water quality based effluent limitations in the recipient's water pollution control facilities for the existing residential population in order to meet the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(19) "Facilities plan" means plans and studies necessary for treatment works to comply with enforceable requirements of the act and with state statutes. Facilities plans must include a systematic evaluation of alternatives that are feasible in light of the unique demographic, environmental or ecological, topographic, hydrologic and institutional characteristics of the area. Facilities plans must also demonstrate that the selected alternative is cost-effective.

(20) "Federal capitalization grant" means a federal grant awarded by EPA to the state as seed money to help establish the state water pollution control revolving fund.

(21) "Financial assistance" means each of the four types of assistance specified in WAC 173-98-030 (1)(b) through (f) and other assistance authorized by Title VI of the act and chapter 90.50A RCW.

(22) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.

(23) "Fund" means the state water pollution control revolving fund.

(24) "General obligation debt" means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(25) "Initiation of operation" means the actual date the water pollution control facilities initiates operation and the entity begins using the facilities for its intended purpose. This date may occur prior to final inspection and will be determined by the department after consultation with the recipient. This date may be the same or earlier than the date of project completion.

(26) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.

(27) "Infiltration and inflow correction" means the cost-effective alternative or alternatives identified in an approved facility plan for eliminating or reducing the infiltration and inflow from an existing sewer system.

(28) "Intended use plan (IUP)" means a plan identifying the intended uses by the department of the amount of funds available for financial assistance from the state water pollution control revolving fund (SRF) for that fiscal year as described in section 606(e) of the act. The projects on the intended use plan will be ranked by environmental and financial need.

(29) "Loan agreement" means a legal contract between a recipient and the state, enforceable under state law, and specifying the terms and schedules under which assistance is provided.

(30) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.

(31) "Local prioritization process" means a process to prioritize projects locally.

(32) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to:

(a) Atmospheric deposition, surface water runoff from agricultural lands, urban areas, forest lands, subsurface or underground sources; and

(b) Discharges from boats or other marine vessels.

(33) "Plans and specifications" means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(34) "Project" means the scope of work for which financial assistance is issued.

(35) "Project completion" means the date the project is determined by the department as being complete.

(36) "Public body" means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes recognized as such by the federal government at the time the SRF loan agreement is signed.

(37) "Public health emergency" means a situation declared by the Washington state department of health in

which illness or exposure known to cause illness is occurring or is imminent.

(38) "Recipient" means an applicant for financial assistance which has signed an SRF loan agreement.

(39) "Reserve account" means, for a loan that constitutes revenue-secured debt, the account of that name created in the loan fund to secure the payment of the principal and interest on the loan.

(40) "Revenue-secured debt" means an obligation of the recipient secured by a pledge of the revenue of a utility and one not of a general obligation of the recipient.

(41) "Scope of work" means a detailed description of a project, including measurable objectives useful for determining successful completion. The scope of work is negotiated between the department and the loan or grant recipient.

(42) "Senior lien obligations" means all revenue bonds and other obligations of the recipient outstanding on the date of execution of this agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

(43) "Severe public health hazard" means a situation declared by the state department of health and the department in which the potential for illness exists, even if the illness is not currently occurring or imminent. For the purposes of this chapter there must be contamination of drinking water or contamination must be present on the surface of the ground in such quantities and locations to create a potential for public contact. The problem must generally involve a serviceable area including, but not limited to, a subdivision, town, city, or county. Also, the problem must be one which cannot be corrected through more efficient operation and maintenance of the wastewater disposal system(s).

(44) "Sewer" means a pipe and related pump stations located on public property, or on public rights of way and easements, that conveys wastewater from individual buildings or groups of buildings to a treatment plant.

(45) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(46) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.

(47) "State water pollution control revolving fund (SRF)" means the water pollution control revolving fund established by RCW 90.50A.020.

(48) "Step process" means a systematic process that facility projects must follow to be eligible for loans or grants.

(49) "Total eligible project cost" means the sum of all costs associated with a water quality project that have been determined to be eligible for loan or grant funding.

(50) "Total project cost" means the sum of all eligible and ineligible costs associated with a water quality project.

(51) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including, but not limited to, change in:

(a) Temperature;

- (b) Taste;
- (c) Color;
- (d) Turbidity; or
- (e) Odor.

It also means a discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render those waters harmful, detrimental, or injurious to the public health, safety, or welfare, or injurious to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(52) "Water pollution control activities" means actions taken by a public body to achieve the following purposes:

- (a) To control nonpoint sources of water pollution;
- (b) To develop and implement a comprehensive conservation and management plan for estuaries; and
- (c) To maintain, improve, or protect water quality through the use of water pollution control facilities, management programs, or other means.

(53) "Water pollution control facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater. Wastewater includes, but is not limited to, sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property integral to the treatment process, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include facilities, equipment, and collection systems which are necessary to protect federally designated sole source aquifers.

(54) "Water resource inventory areas," sometimes referred to as "WRIAs," means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in chapter 173-500 WAC as it existed on January 1, 1997. All parts of the state of Washington are located in a single water resource inventory area.) (1) Where possible, the Washington state department of ecology combines the management of the Washington state water pollution control revolving fund with other funding programs, such as the centennial clean water program, and the federal Clean Water Act section 319 non-point source fund.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-030 ((How, and under what conditions, can money from the state water pollution control revolving fund be used?)) Definitions. ((1) Uses of the money. The state water pollution control revolving fund (SRF) may be used for the following purposes:

- (a) To accept and retain funds from capitalization grants provided by the federal government, state matching funds

appropriated in accordance with chapter 90.50A RCW, payments of principal and interest, and any other funds earned or deposited;

(b) To make loans to applicants in order to finance the planning, design, and/or the construction of water pollution control facilities, make loans to applicants for the implementation of nonpoint source pollution control management programs (which includes planning and implementing elements of the nonpoint source pollution assessment and management program), and make loans to applicants for the development and implementation of a comprehensive estuary conservation and management plan, subject to the requirements of the act;

(c) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(d) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities. (March 7, 1985, was the date that the amendments adding Title VI to the act were first considered by Congress. Any refinancing agreements must be for construction initiated after that date according to federal and state law);

(e) To guarantee or purchase insurance for local obligations where such an action would improve credit market access or reduce interest rates;

(f) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, if the proceeds of those bonds will be deposited in the fund; and

(g) To finance the reasonable costs incurred by the department in the administration of the account as authorized by the act and chapter 90.50A RCW.

(2) Policies for establishing the terms of financial assistance. Recipients' interest rates will be based on the average market interest rate. The average market interest rate will be based on the daily market rate published in the *Bond Buyer's Index* for tax exempt municipal bonds for the period from sixty to thirty days before the SRF annual funding application cycle begins, using the daily market interest rate for that period.

Loan terms and interest rates are as follows:

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than 5 but no more than 20 years:	Sixty percent of the average market rate.

The director of the department of ecology or the director's designee may approve lower interest rates for the annual funding application cycle if a financial analysis of the fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the fund.

(3) Financial hardship assistance for facilities construction.

(a) Financial hardship assistance may be available to loan recipients for the existing residential need portion of a water pollution control facilities construction project if the project will cause a residential sewer user charge in excess of one and one-half percent of the median household income.

(i) Median household income for this purpose is based on the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

(ii) If median household income data are not available for a community or if the community disputes the data used by the department, the department will allow a local government to conduct a scientific survey to determine the median household income.

(iii) In situations where a project is proposed for an area with demographics which may not be representative of the entire census designated place, the department may require a scientific survey to determine the median household income.

(iv) In rare cases where financial hardship cannot be established using residential user fees as a percent of median household income financial hardship determinations will be made on a case-by-case basis.

(b) The need for hardship assistance is calculated on water pollution control facilities construction costs associated with existing residential need at the time an application for funding is received by the department. The analysis does not include costs for growth. For example, if an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for growth, the hardship analysis would be based on the six million dollars for existing residential need.

(e) If the department determines that financial hardship exists, it may make changes to the offer of financial assistance in an attempt to lower the residential user charges below the financial hardship level for the existing residential need. These changes may include:

(i) Changing the structure of the loan agreements with terms to lengthen the repayment period to a maximum of twenty years, lowering the interest rate, or a combination of a lower interest rate and an extended term; and, if this is not sufficient;

(ii) Offering partial centennial grant funding as allowable under the provisions of chapter 173-95A WAC.

(d) If an applicant is requesting financial hardship assistance, it should submit a completed financial hardship analysis form with its application for financial assistance.) For the purposes of this chapter:

(1) **Act** means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) **Activities** see water pollution control activities.

(3) **Annual debt service** means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) **Applicant** means a public body that has applied for funding.

(5) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) **Competitive funding** means moneys available for projects through a statewide evaluation process.

(9) **Completion date** or **expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

(20) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of the facilities or activities project that can be funded.

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a

specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(28) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(29) **Facilities** see water pollution control facility.

(30) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(31) **Federal capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(32) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

(33) **Force account** means loan project work performed using labor, materials, or equipment of a public body.

(34) **Funding category** see "water pollution control activities funding category" and "water pollution control facilities funding category."

(35) **Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

(36) **General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(37) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(38) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(39) **Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

(40) **Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

(41) **Intended use plan (IUP)** means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

(42) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(45) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

(46) **Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

(47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(48) **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

(49) **Project** means a water quality improvement effort funded with a grant or loan.

(50) **Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

(51) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

(52) **Public health emergency** means a situation declared by the Washington state department of health in

which illness or exposure known to cause illness is occurring or is imminent.

(53) **Recipient** means a public body that has an effective loan agreement with the department.

(54) **Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

(55) **Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

(56) **Revolving fund** means the water pollution control revolving fund.

(57) **Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

(58) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

(59) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of this agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

(60) **Service area population** means the number of people served in the area of the project.

(61) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

(62) **Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

(63) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(64) **State environmental review process (SERP)** means the National Environmental Protection Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

(65) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

(66) **Total project cost** means the sum of all expenses associated with a water quality project.

(67) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(68) **Water pollution control activities or activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(69) **Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

(70) **Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

(71) **Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

(72) **Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

(73) **Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-040 (~~Where can I obtain more detail about the application, review, and issuance processes for funds from the state~~) **Water pollution control revolving fund**(?) **(revolving fund) uses.** ((+)) Applicants must apply for financial assistance in order to be considered for funding and for their projects to be included on the intended use plan. Projects must be on a current or past intended use plan in order to receive SRF loans.

(a) A schedule of the annual funding cycle will be published no later than the last business day of November each year, for the funding corresponding to the next state fiscal year.

(b) The period during which applications are accepted each year will last a minimum of sixty days, and application forms and guidelines for that year will be made available at the beginning of that period.

(c) In the first thirty days of the period during which applications are accepted each year, the department will conduct at least one application workshop in each of the department's four regions.

(d) When there is limited demand for funds from the current funding cycle, projects from any past intended use plan, starting with the most recent, may be funded in priority order, where:

(i) Cost overruns to a funded project are shown to be justifiable; or

(ii) Final cost reconciliation shows that higher costs are reasonable; or

(iii) The applicant received partial funding for the project and the change is shown on a current intended use plan.

(2) The application for funding will consist of two parts. Part one of the application will request information for identification, description, and other information about the project for tracking purposes, and part two of the application will request information about the water quality problem or problems being addressed by the project and the proposed solutions to the problems. In the application, applicants will be asked to fully describe the environmental and financial need for the project. Applications for SRF financial assistance for facilities projects must address problems such as public health emergencies, severe public health hazards, the need to provide secondary or advanced treatment, the need to improve and protect water quality, reduction of combined sewer overflows, and other environmental needs. Applications for SRF financial assistance for nonpoint projects must implement the remedies and prevention of water quality degradation associated with nonpoint source water pollution and must not be inconsistent with needs identified in the department's approved nonpoint source pollution management plan.

(3) The application form, part two, will include five main question areas, each with subsidiary questions designed to elicit the information needed to evaluate the project. The maximum points awarded for these question areas equal ninety percent of the total possible score with a maximum of ten percent coming from the local prioritization. The five main question areas and their associated maximum point percentages are:

(a) "What is the overall water quality problem and how will the problem be solved or addressed by the project?" This question is intended for general background purposes and to give evaluators an overview of the proposed project; no points are assigned.

(b) "What are the specific public health and water quality impairments caused by the problem and what are the pollution prevention aspects?" This question area is worth a maximum of thirty-four percent of the total score.

(c) "How will your proposed project address the water quality problem, and what are your measures of success?" This question area is worth a maximum of thirty-four percent of the total score.

(d) "What are some of the local initiatives you have taken that will help make your project a success?" This question area is worth a maximum of twelve percent of the total score.

(e) "Are there any state of Washington or federal mandates that this proposed project addresses?" This question area is worth a maximum of ten percent of the total score.

(f) "Local prioritization process." This question area is worth a maximum of ten percent of the total score. The local prioritization process is described in detail in WAC 173-95A-050.

(4) The department will evaluate the proposed projects based on the information contained in the applications:

(a) Projects will be ranked according to potential water quality benefit and protection of public health.

(b) Projects which have the highest environmental and public health need will be given priority for financial assistance under the SRF program.

(c) Because funds must be used in a timely manner, readiness to proceed is also used in establishing the priority of projects.

(d) Other factors, including funding provisions in chapter 90.50A RCW and provisos identified in the department's biennial capital budget, relationship to the department's published plans such as the *Water Quality Management Plan to Control Nonpoint Sources of Pollution* and total maximum daily load studies, and relationship to published plans created by other federal and state agencies will be included in the priority evaluation.

(e) The department will request other agencies to provide evaluation assistance as needed, including but not limited to, the Washington state conservation commission, the Puget Sound action team, and the Washington state department of health.

(f) The department will coordinate maximum funding amounts and other issues with other state and federal funding agencies when possible.

(5) The total score that each proposed project receives based on the application form, part two, will be added to the local prioritization score (see WAC 173-95A-050 for more information on the local priority setting process) to develop the final score for the proposed project.

(6) The department will prepare a draft intended use plan each year after evaluating all applications. The draft intended use plan will list projects in rank order starting with the project receiving the most points in its final score. This will also generally be the order that projects may be offered financial assistance. After issuing the draft intended use plan the department will allow a minimum of thirty days for public review and comment on the draft intended use plan. No later than fifteen days before the end of the public review and comment period the department will conduct at least one workshop to explain the draft intended use plan, answer questions about the draft intended use plan and the evaluation process, and provide details on the public comment process.

(7) The final intended use plan will be issued no later than sixty days after the end of the public review and comment period. The final intended use plan will reflect any changes made as a result of public comments or other information received during the public review and comment period, and will include a responsiveness summary. The final intended use plan will generally list projects in the order that projects may be offered financial assistance.) The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management programs including planning and implementing elements of the Washington's water quality management plan to control nonpoint sources of pollution;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.

PART 1 ELIGIBLE PROJECT TYPE

AMENDATORY SECTION (Amending Order 98-10, filed 11/24/98, effective 12/25/98)

WAC 173-98-100 ((How do recipients comply with the state environmental review process?)) Eligible. ((1) All recipients which receive SRF loans must meet the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC. Additional provisions are currently needed by federal law under Title VI of the act to satisfy the state's responsibility to help ensure that recipients comply with the National Environmental Policy Act (NEPA) and other applicable environmental laws, regulations, and executive orders. The lead agency (WAC 197-11-050(2)) responsible for SEPA compliance for each project under the SRF program shall also comply with the following additional provisions. When a categorical exclusion, finding of no significant impact, or a record of decision has been issued under NEPA for the same project scope of work, no additional environmental documentation is required. Applicants will need to adopt the federal environmental documentation to meet their responsibilities as required by SEPA rules WAC 197-11-600, 197-11-610, and 197-11-630. If federal environmental documentation has not been submitted for approval to the appropriate federal agency, applicants and designated lead agencies must:

(a) Consult with the department before determining that the project is categorically exempt from SEPA and obtain concurrence that the project meets the criteria for a categorical exemption (WAC 197-11-305) and give public notice of the categorical exemption by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the facilities plan and other environmental information.

(b) Consult with the department prior to issuing a threshold determination (WAC 197-11-330), and submit a copy of the environmental checklist (WAC 197-11-315) and a recommended threshold determination to the department.

(c) Obtain written concurrence from the director with the recommended threshold determination as to whether a determination of nonsignificance (DNS) (WAC 197-11-340) or an environmental impact statement (EIS) is to be issued prior to issuing the actual document.

(d) Issue the threshold determination, determination of nonsignificance (DNS) or determination of significance (DS)

(WAC 197-11-360) and submit copies to the department; two copies shall be sent to the department's environmental review section and one copy to the regional water quality program (WQ) of the department. The director must concur in writing with the findings of the checklist and DNS if a DNS is issued.

(e) Give public notice of the threshold determination by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the threshold determination, facilities plan, and other environmental information.

(f) Distribute copies of the threshold determination and supporting documents to other affected local, state, and federal agencies, Indian tribes, and the public.

(g) When a DS is issued, the lead agency will develop the final scope of elements to be addressed in the environmental impact statement (EIS) and obtain written concurrence from the director. The department shall be consulted throughout the EIS process.

(h) Distribute copies of the draft and final EIS to the department; two copies shall be sent to both the environmental review section and the department's water quality program.

(i) Give public notice of the draft and final EIS by publishing notices in a newspaper of area-wide circulation. Notices shall include the locations where the public may review the draft and final EIS or obtain copies.

(j) Distribute copies of the draft and final EIS to other affected local, state, and federal agencies, Indian tribes, and the public.

(k) The director must concur in writing with the finding of the final EIS.

(2) The lead agency shall issue a notice of action for the final EIS regarding the preferred alternative in accordance with RCW 43.21C.080, WAC 197-11-680, and 197-11-990.

(3) A cost effectiveness analysis will be required for all SRF projects. Planning must include a comparison of the total cost, i.e., capital, operation and maintenance, and replacement costs of the project with other alternatives, including the no action alternative. The comparison of the total costs, e.g., total present worth or annual equivalent costs of projects for the planning period, must be included. Cost-effective analyses must also include nonmonetary cost of the project, i.e., the environmental impact, resource utilization, implementability, etc. This analysis must be included in the planning document and must be summarized in the EIS or DNS. Financial assistance under the SRF program will be offered to the cost-effective solution to the water pollution control problem.

(4) All mitigation measures committed to in the environmental checklist or state EIS, or in the finding of no significance impact/environmental assessment or record of decision/federal EIS (for federally approved projects) will become SRF loan agreement conditions. Applicants must complete all mitigation measures required. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

(5) The applicant must comply with the requirements of applicable environmental laws, regulations, and executive orders. Concurrence from the director will be based on best available information provided by the applicant. The depart-

ment is not responsible for concurrence based on erroneous information.) Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

(1) **Aquatic plant control** when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) **BMP implementation** on public property;

(4) **Capacity for growth.** Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) **Computer equipment and software** specific to the funded project and preapproved by the department;

(6) **Confined animal feeding operations (CAFO)** located in federally designated national estuaries;

(7) **Conservation planning;**

(8) **Design-build or design-build-operate** (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) **Diagnostic studies** to assess current water quality;

(10) **Education and outreach** efforts for the public;

(11) **Environmental checklists, assessments, and impact statements** necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) **Equipment and tools** as identified in a loan agreement;

(13) **Facilities** for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial:

(a) **Planning:**

(i) **Comprehensive sewer planning,** including wastewater elements of capital facilities planning under the growth management act;

(ii) **Storm water planning;**

(iii) **Facilities planning** for water pollution control facilities;

(b) **Design** preparation of plans and specifications for water pollution control facilities;

(c) **Construction of:**

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site septic systems;

(d) **Value engineering** for water pollution control facilities;

(e) **Design or construction** costs associated with design-build or design-build-operate contracts.

(14) **Ground water protection activities** such as well-head protection and critical aquifer recharge area protection;

(15) **Hardship assistance** for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;

(16) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(17) **Lake implementation and associated planning activities** on lakes with public access;

(18) **Land acquisition:**

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

(19) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;

(20) **Legal expenses** will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

(21) **Light refreshments** for meetings when preapproved by the department;

(22) **Monitoring BMP effectiveness;**

(23) **Monitoring equipment** used for water quality assessment;

(24) **Monitoring water quality;**

(25) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from non-point sources;

(26) **On-site septic systems:**

(a) **On-site septic system repair and replacement** for residential and small commercial systems;

(b) **On-site wastewater** system surveys;

(c) **Local loan fund** program development and implementation;

(27) **Planning** comprehensive basin, watershed, and area-wide water quality development;

(28) **Refinancing** of water pollution control facility debt;

(29) **Riparian and wetlands habitat restoration and enhancement, including revegetation;**

(30) **Sales tax;**

(31) **Spare parts** initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

(32) **Stream restoration projects;**

(33) Total maximum daily load study development and implementation;

(34) Training to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

(35) Transferring ownership of a small wastewater system to a public body;

(36) Wastewater or storm water utility development;

(37) Wastewater or storm water utility rate or development impact fee studies;

(38) Water quality education and stewardship programs.

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-110 ((What are the repayment options and schedules?)) Noneligible. ((1) General provisions:

When the scope of work identified in the SRF loan agreement has been fully completed and/or the initiation of operation date has been determined:

(a) The department and recipient will execute a final SRF loan agreement amendment which details the final loan amount. This amount will include the principal from disbursements made to recipients and accrued interest. Interest will accrue on each disbursement as it is paid to the recipient.

(b) The department will prepare according to the SRF loan agreement, a repayment schedule which fully amortize the final loan amount within twenty years of project completion. The first repayment of principal and interest will be due no later than one year after the initiation of operation date or at project completion date, whichever occurs first. Equal payments will be due every six months after this first payment. Loan balances may be repaid or additional principal payments may be made at any time without penalty.

(c) If any amount of the final loan amount or any other amounts owed to the department remains unpaid after it becomes due and payable, the department may assess a late charge. The late charge shall be additional interest at the rate of one percent per month, or fraction thereof, starting on the date the debt becomes past due and until it is paid in full.

(d) If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies.

(2) Phased or segmented project. Where a project has been phased or segmented, the general provisions for repayment shall apply to the completion of individual phases or segments.

(3) More than five years to complete project. When a project approved by the department takes longer than five years to complete, loan repayment must begin within five years of the first disbursement for the project, unless the director determines that the fund is fiscally sound without this repayment schedule. Repayments for these loans must follow the general provisions as outlined in subsection (1)(b) of this section.

(4) Security for loan repayment. Loans shall be secured by a general obligation pledge or a revenue pledge of the

recipient. The obligation of the recipient to make loan repayments from the sources identified in its SRF loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(a) General obligation. When repayment of a loan is secured by a general obligation pledge, the recipient shall pledge for so long as the loan is outstanding, to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors, on all of the taxable property within its boundaries in an amount sufficient, together with other money legally available and to be used for loan repayment, to pay when due the principal of and interest on the loan, and the full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(b) Revenue obligation. Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments. In such cases:

(i) Lien position. Repayment of a loan shall constitute a lien and charge (A) upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations and, (B) if applicable, upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(ii) Reserve requirement. For loans that are revenue-secured debt with terms greater than five years, the recipient must accumulate a reserve for the loan equivalent to at least the average annual debt service on the loan during the first five years of the repayment period of the loan. This amount shall be deposited in a reserve account in the loan fund in approximately equal annual payments commencing within one year after the initiation of operation or the project completion date, whichever comes first. "Reserve account" means, for a loan that constitutes revenue-secured debt, an account of that name created in the loan fund to secure the payment of the principal of and interest on the loan. The amount on deposit in the reserve account may be applied by the recipient (A) to make, in part or in full, the final repayment to the department of the loan amount or, (B) if not so applied, for any other lawful purpose of the recipient once the loan amount, plus interest and any other amounts owing to the department hereunder, have been paid in full.

(5) Repayment from other than pledged sources. A recipient may repay any portion of its loan from any legally available funds other than those pledged in its SRF loan agreement to repay the loan.

(6) No defeasance or advance refunding. So long as the department holds a loan, the recipient shall not be entitled to, and shall not effect, its economic defeasance or advance refunding.)) Certain projects or project elements, including but not limited to the following are not eligible for loan assistance:

(1) Abandonment or demolition of existing structures not interfering with proposed construction of a wastewater or storm water treatment facility;

(2) Acts of nature that alter the natural environment, thereby causing water quality problems;

(3) Aquatic plant control for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

(4) Bond costs for debt issuance;

(5) Bonus or acceleration payments to contractors to meet contractual completion dates for construction;

(6) Commercial, institutional or industrial wastewater pollution control activities or facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage wastewater;

(7) Commercial, institutional or industrial monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

(8) Commercial, institutional or industrial wastewater pretreatment;

(9) Compensation or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(10) Cost-plus-a-percentage-of-cost contracts (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(11) Engineering reports;

(12) Fines and penalties due to violations of or failure to comply with federal, state, or local laws;

(13) Flood control, projects or project elements intended solely for flood control;

(14) Funding application preparation for loans or grants;

(15) Interest on bonds, interim financing, and associated costs to finance projects;

(16) Landscaping for aesthetic reasons;

(17) Legal expenses associated with claims and litigation;

(18) Lobbying or expenses associated with lobbying;

(19) Mitigation unless it addresses water quality impacts directly related to the project, and determined on a case-by-case basis;

(20) Office furniture not included in the recipient's indirect rate;

(21) Operating expenses of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;

(22) Operation and maintenance costs;

(23) Overtime differential paid to employees of public body to complete administrative or force account work;

(24) Permit fees;

(25) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(26) Professional dues;

(27) Reclamation of abandoned mines;

(28) Refinancing of existing debt;

(29) Solid or hazardous waste cleanup;

(30) Vehicle purchase except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and

(31) Water quantity or other water resource issues.

PART 2

HOW TO APPLY FOR FUNDING

NEW SECTION

WAC 173-98-200 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the agency web site.

(2) The applicant may be asked to provide the following project information:

(a) Basic information such as names of contacts, addresses, and other tracking information;

(b) Project summary;

(c) Project goals, objectives, and milestones;

(d) Overall water quality benefits;

(e) Public health benefits;

(f) Sources of pollution addressed;

(g) How the project will address state and federal mandates, elements in "Washington's water quality plan to control nonpoint sources of pollution," or other such plans;

(h) Performance measures and postproject assessment monitoring;

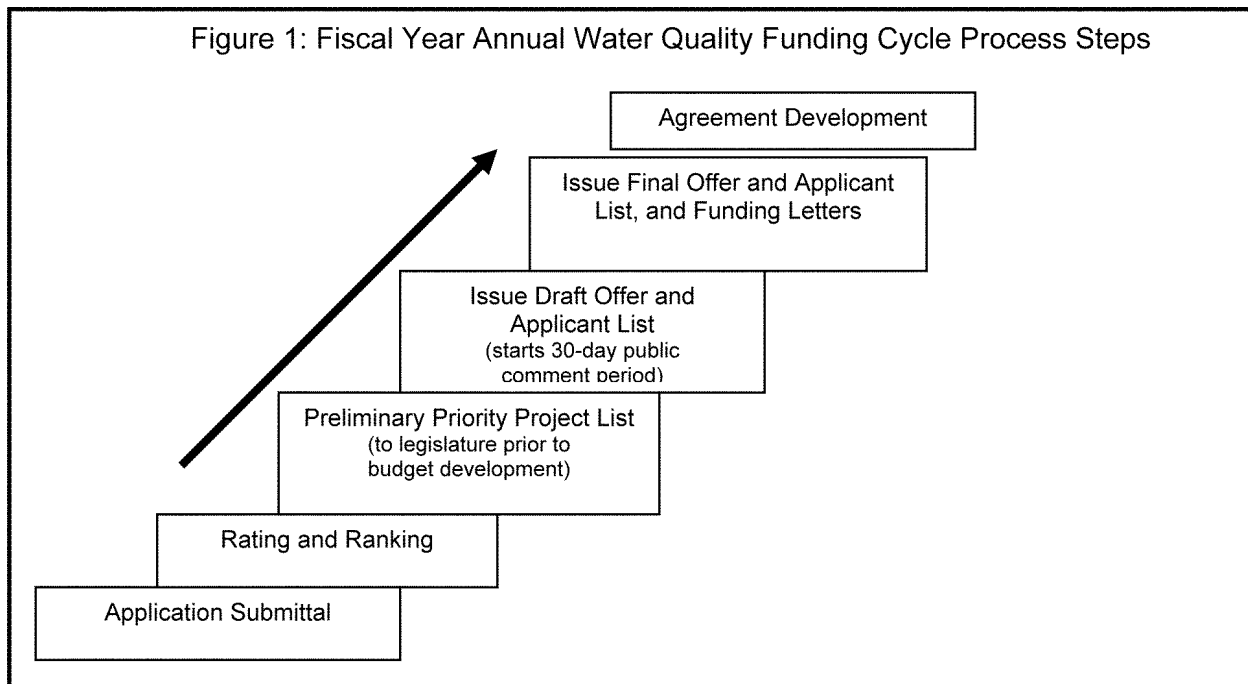
(i) Readiness to proceed, likelihood of success, and measures of success specific to the project;

(j) Local initiatives, commitments, or priorities related to the project; or

(k) Other information requested by the department.

NEW SECTION

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.



(2) Ecology will provide the following services:

(a) Make available the application and applicable guidelines before the associated funding cycle begins;

(b) Conduct at least one application workshop in each of ecology's four regions;

(c) Conduct preapplication workshops to discuss regional level priorities if applicable;

(d) After the application deadline, complete an initial review of project proposals for funding eligibility;

(e) Request other agencies to provide evaluation assistance as needed;

(f) Rate and rank the applications using a consistent scoring system;

(g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;

(h) Submit preliminary project priority list to the state legislature for budget consideration;

(i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;

(j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;

(k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;

(l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;

(m) Issue funding decision letters to all applicants; and

(n) Negotiate, develop, and finalize loan agreements.

NEW SECTION

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan offers that do not result in a signed agreement are automatically terminated.

NEW SECTION

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues an IUP for each funding cycle.

(2) The IUP is issued in conjunction with the "final offer and applicant list."

(3) It contains a detailed report of how the department expects to allocate moneys available in the current funding cycle.

PART 3**FINANCIAL HARDSHIP ASSISTANCE**NEW SECTION

WAC 173-98-300 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

(a) Service area population;

(b) Existing residential need at the time of application; and

(c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;
- (vii) Other grants;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

NEW SECTION

WAC 173-98-310 On-site septic system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(xi) Median household income;

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate
Below 50% county MHI	Up to 15% of MR	0%	Severe

Figure 4.

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small commercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:
 - (i) Above 80% of county MHI
 - (ii) 50 to 80% of county MHI
 - (iii) Below 50% of county MHI
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above \$100,000
 - (ii) \$50,000 to \$100,000
 - (iii) Below \$50,000

NEW SECTION

WAC 173-98-320 Storm water projects. (1) There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;
- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

(2) **Service area population, presence of permit, and median household income.** Applicants under a permit, with a service area population of twenty-five thousand or less, and whose MHI is sixty percent or less of the average statewide MHI can request hardship-funding consideration. If the service area population is different from the population of the applicant, the applicant must show that the hardship assis-

tance is solely used to benefit the population of the service area.

(3) If MHI data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI.

(4) Figure 5 describes the interest rate schedule. For information on how the market rate is determined, see WAC 173-98-400.

Figure 5.

Service area MHI is:	20-Year Term	5-Year Term
Above 60% statewide MHI	Not eligible	Not eligible
60% or below statewide MHI	Up to 30% of MR	Up to 15% of MR

**PART 4
LOAN TERMS**

NEW SECTION

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

- (a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and
- (b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or 173-98-3010 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

NEW SECTION

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different regulations: Standard refinance and interim refinance.

(2) **Standard refinance** refers to a completed project funded with moneys from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for moneys for new projects;

(c) All department prerequisites must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the rate payers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using moneys from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

NEW SECTION

WAC 173-98-420 Defeasance. (1) No defeasance is allowed as long as the department holds the loan.

(2) Defeasance means setting money aside in a special account that is dedicated to pay all or some of the principal and interest on a debt when it comes due.

NEW SECTION

WAC 173-98-430 Repayment. When a project is complete and all disbursements are made the department will execute a final amendment that will include:

(1) A final loan repayment schedule that reflects the length of repayment terms and the principal from disbursements and accrued interest;

(2) The first repayment of principal and interest will be due one year after the initiation of operation date, or one year after the project completion date, whichever occurs first;

(3) The director may extend the first repayment due date if it is not detrimental to the perpetuity of the revolving fund. However, this will not change the total length of the loan terms, rather, the loan amount will be amortized over a shorter period of time;

(4) Equal payments will be due every six months;

(5) If the due date for any payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies;

(6) Loan balances may be repaid or additional principal payments may be made at any time without penalty; and

(7) The department may assess a late fee for delinquent payments, according to WAC 173-98-470.

NEW SECTION

WAC 173-98-440 Loan security. Loans shall be secured by a general obligation pledge or a revenue pledge of the recipient. The obligation of the recipient to make loan repayments from the sources identified in its revolving fund loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(1) **General obligation.** Repayment of the loan may be secured by a general obligation pledge. The recipient shall

pledge to include in its budget an amount sufficient to pay the principal and interest on the loan when due. For so long as the loan is outstanding, the recipient shall ensure adequate funds are available to enable timely loan repayment, which may require the recipient to levy additional annual taxes against the taxable property within its boundaries. The full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(2) **Revenue obligation.** Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments.

Repayment of a loan shall constitute a lien and charge upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations. If applicable, repayment of a loan shall constitute a lien and charge upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(3) **Tribal governmental enterprises.** Federally recognized Indian tribes may provide loan security through dedicated revenue from governmental enterprises. The recipient must demonstrate that the security used has a sufficient track record of income to secure the loan. Tribal governmental enterprises may include leases, gaming as provided under approved gaming compacts, forestry, or other tribal government-owned enterprises.

NEW SECTION

WAC 173-98-450 Loan reserve requirements. For a revenue obligation secured loan with terms greater than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments on the revolving fund loan.

NEW SECTION

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. Such moneys will be applied to the debt.

NEW SECTION

WAC 173-98-470 Late payments. A late fee of one percent per month on the past due amount will be assessed starting on the date the debt becomes past due and until it is paid in full.

PART 5
WATER POLLUTION CONTROL REVOLVING
FUND REQUIREMENTS FOR MANAGING LOANS

NEW SECTION

WAC 173-98-500 Funding categories. (1) The revolving fund is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

NEW SECTION

WAC 173-98-510 Funding recognition. (1) Where applicable, the recipient must acknowledge department and EPA funding in reports, technical documents, publications, brochures, and other materials.

(2) Where applicable, the recipient must display signs for site-specific projects acknowledging department and EPA funding. The sign must be large enough to be seen from nearby roadways and include a department or EPA logo.

NEW SECTION

WAC 173-98-520 Ceiling amounts. (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund moneys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding for up to ten percent of the engineer's estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

NEW SECTION

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. At the time of application, completion of the previous steps must be approved by the department. Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. A facilities plan must be approved by the department before an application for design can be considered for funding.

Facilities plans approved by the department more than two years prior to the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one of the time frames the funding agreement is signed. The total project costs for step four projects must be five million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

NEW SECTION

WAC 173-98-540 Step process for water pollution control activities. The step process is required for lake projects and recommended for all activities projects.

(1) **Planning** involves the identification of problems and evaluation of cost-effective alternatives.

(2) **Implementation** is the actual implementation of the project based on the planning document. Where the project includes construction, a design element may be included before the implementation step.

NEW SECTION

WAC 173-98-550 Declaration of construction after project completion. Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.

NEW SECTION

WAC 173-98-560 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

PART 6**DESIGN-BUILD AND DESIGN-BUILD-OPERATE PROJECTS**NEW SECTION

WAC 173-98-600 Design-build and design-build-operate project requirements. (1) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

(2) The design and construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.

(3) The following conditions apply to design-build and design-build-operate projects:

(a) The ceiling amounts in WAC 173-98-520;

(b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;

(c) Interest rates for nonhardship projects are set according to WAC 173-98-400;

(d) In the case of hardship, a reduced interest rate may be available for the design and construction portion of a design-build-operate project;

(e) The project scope of work must implement a department-approved facilities plan;

(f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;

(g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;

(h) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to utilize the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(j) Costs associated with change orders are not eligible for reimbursement;

(k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements and/or contracts;

(l) Projects funded prior to the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded;

(m) Projects must be completed according to the timeline in WAC 173-98-800 and 173-98-810; and

(n) Projects funded under the alternative contracting service agreement AC/SA pilot rule of 2002 are placed at the top of the "final offer and applicant list" and IUP each year in relative priority to other AC/SA projects. Loan moneys may be disbursed in equal annual payments or by other means that are not detrimental to the perpetuity of the revolving fund.

PART 7**COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS**NEW SECTION

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and regulations relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

NEW SECTION**WAC 173-98-710 The Growth Management Act.** (1)

A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state;

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

NEW SECTION

WAC 173-98-720 State environmental review process (SERP). (1) All recipients must comply with the SERP.

(2) SERP includes all the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, and applicable federal requirements.

(3) All mitigation measures committed to in documents developed in the SERP process, such as the environmental checklist, environmental report, SEPA environmental impact statement (EIS), the finding of no significance impact/environmental assessment, or record of decision/federal EIS will become revolving fund loan agreement conditions. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

NEW SECTION

WAC 173-98-730 Cost-effectiveness analysis for water pollution control facilities. (1) Funding will only be considered if the project is shown to be the cost-effective alternative/solution to the water pollution control problem. The cost-effective alternative is determined using a cost-effectiveness analysis.

(2) A cost-effectiveness analysis must be included in the facilities plan and must include the following:

(a) A comparison of the total cost, total present worth or annual equivalent costs of projects for the planning period;

(b) The no action alternative; and

(c) The nonmonetary cost of the project, such as the environmental impact, energy impacts, growth impacts, and community priorities.

(3) Facilities plans proposing design-build or design-build-operate projects must demonstrate that this approach is the cost-effective alternative for procurement.

**PART 8
TIMELY USE OF REVOLVING FUND
LOAN MONEYS**

NEW SECTION

WAC 173-98-800 Starting a project. Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the

department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410.

(1) Prior authorization to incur eligible costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the IUP;

(ii) Costs are incurred between the publication date of the "final offer and applicant" list and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred prior to the publication date of the "final offer and applicant list" are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) Project initiation. Loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the "final offer and applicant list" on which the project was proposed.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

(3) Project initiation extension. Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

NEW SECTION

WAC 173-98-810 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) Project completion.

(a) Work on a project must be completed within five years of the publication date of the "final offer and applicant list" on which the project was proposed. A shorter time period may be specified in the loan agreement; and

(b) Completing a project means completing all milestones and objectives associated with the goals of the loan agreement.

(2) Project completion extension.

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made prior to the completion or expiration date of the loan agreement.

PART 9

ADMINISTRATIVE PROVISIONS

NEW SECTION

WAC 173-98-900 Water pollution control revolving fund (revolving fund) perpetuity. (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030, by 2016.

NEW SECTION

WAC 173-98-910 Accounting requirements for loan recipients. (1) Recipients must maintain accounting records in accordance with RCW 43.09.200 Local government accounting—Uniform system of accounting.

(2) Accounting irregularities may result in a payment hold until irregularities are resolved. The director may require immediate repayment of misused loan moneys.

NEW SECTION

WAC 173-98-920 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision in writing to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient has thirty days to submit a written request to the deputy director for a review of the decision;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received. The deputy director's decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed

with the court. This time frame is to ensure minimal disruptions to the program.

NEW SECTION

WAC 173-98-930 Audit requirements for loan recipients. The department, or at the department's discretion, another authorized auditor may audit the revolving fund loan agreement and records.

NEW SECTION

WAC 173-98-940 Insurance for water pollution control facilities projects. Recipients shall maintain comprehensive insurance coverage on the project for an amount equal to the moneys disbursed.

NEW SECTION

WAC 173-98-950 Indemnification. To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of a project funded with a revolving fund loan except for such damage, claim, or liability resulting from the negligence or omission of the department.

NEW SECTION

WAC 173-98-960 Sale of facilities to private enterprises. Recipients may sell facilities financed with the revolving fund to private enterprises. However, the revolving fund loan agreement must be terminated and the revolving fund loan must be repaid immediately upon the sale of that facility.

NEW SECTION

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program requirements. The recipient must:

- (a) Request certification authority;
- (b) Document that it has the capability and resources;
- (c) Document that it is in the best interest of the state; and
- (d) Demonstrate that the request is consistent with state and federal laws and regulations.

(2) Concurrences required in the environmental review process cannot be delegated to recipients.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-98-050	What are the limitations on the use of funds and how are the funds categorized?
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WAC 173-98-060	What is the step process for planning facilities and activities projects?
WAC 173-98-070	What other laws, regulations, or requirements must recipients comply with?
WAC 173-98-075	How does the Growth Management Act impact the use of funds?
WAC 173-98-080	Indemnification.
WAC 173-98-090	How are loans managed?
WAC 173-98-120	General provisions.

WSR 07-05-087

PROPOSED RULES

CONSERVATION COMMISSION

[Filed February 21, 2007, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-21-127.

Title of Rule and Other Identifying Information: Chapter 135-100 WAC, Procedures for conservation district special assessments.

Hearing Location(s): Spokane County CD, 210 North Havana, Spokane, WA, on March 27, 2007, informal question and answer at 2:00 - 3:00 p.m., public hearing at 3:00 - 4:00 p.m.; at the Kittitas Valley Events Center, 512 North Poplar Street, Ellensburg, WA, on March 28, 2007, informal question and answer at 10:00 a.m. - 11:00 a.m., public hearing 11:00 a.m. - 12:00 p.m.; and at the Lacey Community Center, 6729 Pacific Avenue S.E., Lacey, WA, on March 29, 2007, informal question and answer at 2:00 - 3:00 p.m., public hearing at 3:00 - 4:00 p.m.

Copies of the draft rule may be obtained by contacting Mary Anderson of Washington state conservation commission at (360) 407-6202 or e-mail mara461@ecy.wa.gov. The draft rule is also available online at www.scc.wa.gov/rules.

Date of Intended Adoption: April 30, 2007.

Submit Written Comments to: Web page www.scc.wa.gov/rules, Mary Anderson, Rules Coordinator, P.O. Box 47721, Olympia, WA 98504-7721, e-mail mara461@ecy.wa.gov, fax (360) 407-6215, by April 5, 2007.

Assistance for Persons with Disabilities: Contact Mary Anderson by March 21, 2007, TTY (360) 407-6200 or (360) 407-6202.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: It is the intent of the conservation commission to interpret and clarify RCW 89.08.400 in this rule in order to assist conservation districts and county legislative authorities in their efforts to develop and impose a system of assessments for the conservation of renewable natural resources. The conservation commission believes the interpretations and clarifications provided in the proposed rule will increase confidence of all parties, resulting in more conservation districts and county legislative authori-

ties choosing to implement this local funding mechanism. The proposed rule is intended to increase public involvement in conservation district program planning, special assessments, and the funding of conservation activities and programs most needed and desired by local communities.

Reasons Supporting Proposal: Conservation districts and county legislative authorities have interpreted existing statutory language widely, resulting in lack of confidence about the basis for conservation district special assessments and how they may be used. The conservation commission has observed a number of real or threatened legal actions because of the difficulty in interpreting RCW 89.08.400. This proposed rule is intended to make requirements and steps in developing, proposing, adopting, implementing, modifying and renewing conservation district special assessments less confusing.

Statutory Authority for Adoption: RCW 89.08.040 and [89.08.]070.

Statute Being Implemented: RCW 89.08.400.

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

Name of Proponent: Washington state conversation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tom Salzer, 300 Desmond Drive S.E., Lacey, WA, (360) 407-6214.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There are no economic impacts for small business.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt per RCW 34.05.328 (5)(b).

February 21, 2007

Mark A. Clark

Executive Director

Chapter 135-100 WAC

SPECIAL ASSESSMENTS FOR NATURAL RESOURCE CONSERVATION

NEW SECTION

WAC 135-100-010 Purpose of this rule. It is the intent of the conservation commission to interpret and clarify RCW 89.08.400 in this rule in order to assist conservation districts and county legislative authorities in their efforts to develop and impose a system of assessments for the conservation of renewable natural resources.

NEW SECTION

WAC 135-100-020 Definitions. "Authorized conservation program" and "conservation program" mean the renewable resources program defined in RCW 89.08.220(7) that includes a comprehensive long-range plan and a supplemental annual work plan.

"Renewable natural resources" or "natural resources" includes land, air, water, vegetation, fish, wild-

life, wild rivers, wilderness, natural beauty, scenery, and open space.

"Special benefits to lands" means tangible improvements to renewable natural resources. "Special benefits to lands" can also mean intangible improvements to renewable natural resources, including, but not limited to, education and outreach activities and programs that result, directly or indirectly, in improvements to renewable natural resources. "Special benefits to lands" does not necessarily mean that appraised property values are improved or altered as a result of the activities and programs funded by the special assessment.

"System of assessments" means:

- (1) A classification or categorization of lands according to the benefits conferred, or to be conferred, by the conservation district's authorized conservation program;
- (2) An annual rate of assessment for each land classification;
- (3) A total amount of assessments that will be collected from each land classification; and
- (4) The duration of the assessment.

The system of assessments does not include a budget or intended allocation of funds to be derived from the special assessment.

NEW SECTION

WAC 135-100-030 Purpose and use of assessments.

The purpose of conservation district special assessments is to help conservation districts implement their authorized conservation program.

Funds generated by special assessments for natural resource conservation may only be used to benefit lands assessed.

NEW SECTION

WAC 135-100-040 County has authority to impose assessment. The county legislative authority has sole authority to impose a special assessment for natural resource conservation on conservation district lands within the boundaries of the county.

When more than one conservation district occurs in a county, special assessments for natural resource conservation need not be imposed for all of the conservation districts in the county.

When one conservation district exists in more than one county, special assessments for natural resource conservation need not be imposed by all counties.

NEW SECTION

WAC 135-100-050 System of assessments. The conservation district develops a system of assessments that classifies all lands in the conservation district into classifications or categories according to benefits conferred, or to be conferred, through the authorized conservation program of the conservation district.

The conservation district must also classify lands which will not benefit from the authorized conservation program.

The system of assessments cannot exempt lands based on taxpayer characteristics such as age or income level.

NEW SECTION

WAC 135-100-060 Term of assessment. The minimum term of a special assessment for natural resource conservation should be at least two years. The maximum term is ten years.

NEW SECTION

WAC 135-100-070 Public lands may be assessed. Two kinds of public lands are subject to the special assessment: Lands owned by local governments, and lands owned by the state.

Public lands owned by local governmental entities are subject to the special assessment if such lands will receive special benefits from the district's authorized conservation program.

Public lands owned by state governmental entities are subject to the special assessment if such lands will receive special benefits from the district's authorized conservation program. In addition, the conservation district must follow the requirements described in chapter 79.44 RCW when assessing such lands.

If public lands will not benefit from the conservation district's conservation program, they must be identified in the system of assessments as a class of land not receiving special benefits.

NEW SECTION

WAC 135-100-080 Assessment rates. Assessment rates must be based on the special benefits to be conferred to natural resources by the district's authorized conservation program.

The conservation district must determine an annual per-acre rate of assessment for each class of land. The conservation district must calculate the total amount of special assessments proposed to be collected for each class of lands.

Lands not benefited by the conservation district's conservation program must be classified separately and must not be subject to the special assessment.

For each classification of land to receive special benefits, the annual assessment rate must be either:

- (1) A uniform per-acre amount; or
- (2) A uniform per-acre amount plus an annual flat rate per parcel.

The uniform per-acre amount must be greater than zero cents per acre and cannot exceed ten cents per acre.

The maximum annual per-parcel rate is five dollars, except for counties with a population of over one million five hundred thousand persons where the maximum annual per-parcel rate cannot exceed ten dollars.

NEW SECTION

WAC 135-100-090 Forest lands may be assessed at special rates. Some forest lands, referred to as qualified forest lands, may be subject to a special rate of assessment.

Qualified forest lands are parcels used only for the planting, growing, or harvesting of trees. Such lands qualify for special rates of assessment.

Forest lands used for purposes other than, or in addition to, the planting, growing, or harvesting of trees do not qualify for special rates of assessment.

For qualified forest lands, no per-parcel assessment may be charged. In lieu of a per-parcel charge, each owner of more than one parcel of qualified forest lands may be charged up to three dollars a year if their forest lands will benefit from the conservation district's conservation program.

The per-acre rate of special assessments for qualified forest lands may not exceed one-tenth the weighted average per-acre assessment of all other assessed lands in the district. The weighted average is calculated by dividing the total assessment to be collected from all lands except qualified forest lands by the total acreage of all lands except qualified forest lands.

Only the first ten thousand acres of qualified forest lands owned by the same person or entity may be assessed. Additional acres beyond the first ten thousand acres must be identified in the system of assessments as a class of land exempt from assessment.

NEW SECTION

WAC 135-100-100 Special notice requirements for public hearings. When proposing a system of assessments, the conservation district and county legislative authority must comply with notice requirements for public hearings described in RCW 89.08.400(2).

NEW SECTION

WAC 135-100-110 Conservation district public hearing before August 1. The supervisors of a conservation district must hold at least one public hearing on the system of assessments being proposed by the district. The hearing or hearings must occur before the first day of August in the calendar year prior to the year the proposed assessments will be collected.

Public hearings may be held as part of regular or special meetings of the conservation district board of supervisors. Such hearings must have a specified start and end time for the board to receive public comment.

The conservation district should work to educate affected landowners about the costs and benefits of the special assessment well in advance of the conservation district formal public hearing(s).

NEW SECTION

WAC 135-100-120 Conservation district proposal and budget filed with county. On or before the first day of August in the calendar year before the assessment will be collected, the conservation district must file the proposed system of assessments with the county legislative authority. The conservation district must also provide to the county legislative authority a proposed budget for the first year the assessment will be collected.

Filing means the county legislative authority, or its authorized representative such as the county auditor or clerk, has physically received the proposed system of assessments and the proposed budget by the close of business on or before the first day of August. Along with the proposed system of assessments and proposed budget, the county should receive a copy of the resolution passed by the conservation district board of supervisors that asks the county legislative authority to impose a special assessment for natural resource conservation consistent with RCW 89.08.400 and this rule.

NEW SECTION

WAC 135-100-130 County public hearing after receiving proposal. After the county legislative authority has received the proposed system of assessments and proposed budget from the conservation district, the county must hold at least one public hearing on the proposal.

NEW SECTION

WAC 135-100-140 County may modify proposed system after public hearing. After the county's public hearing, and before the county legislative authority takes final action on the conservation district request to impose a special assessment, the county legislative authority may modify or amend the proposed system of assessments. The county legislative authority may not modify a conservation district's proposed budget or alter the intended allocation of special assessment funds.

NEW SECTION

WAC 135-100-150 County imposes system of assessments. To impose the proposed or modified system of assessments, the county legislative authority must find:

- (1) That the proposed system will serve the public interest; and
- (2) That the special benefits to lands provided by the assessment will meet or exceed the amount to be assessed.

This does not necessarily mean appraised property values are improved or altered through the authorized conservation program of the district.

NEW SECTION

WAC 135-100-160 Conservation district may withdraw or modify assessment. The conservation district, through official action of the conservation district board of supervisors, may withdraw or modify the proposed system of assessments at any time before a county legislative authority takes final action to impose the system of assessments.

NEW SECTION

WAC 135-100-170 Conservation district may alter assessment on parcels. The conservation district may alter assessments on individual parcels at any time if land uses change that would affect the classification of such parcels. The conservation district must notify the county assessor of

any changes that affect the classification of parcels to be assessed.

If the county assessor seeks to change the classification of individual parcels, the conservation district must approve such changes before collecting the assessment for such parcels.

NEW SECTION

WAC 135-100-180 Conservation district prepares assessment roll. After the county legislative authority authorizes special assessments for natural resource conservation, the conservation district must prepare an assessment roll to implement the approved system of assessments. The conservation district should seek assistance from the county assessor in preparing the assessment roll.

NEW SECTION

WAC 135-100-190 County assessor applies assessment to tax rolls. The county assessor will apply the classifications and rates in the conservation district's system of assessments to lands to be assessed.

NEW SECTION

WAC 135-100-200 County treasurer collects assessments. Special assessments will be collected by the county treasurer and accounted for with property taxes. Collection of special assessments starts in the calendar year following the county legislative authority's action approving the special assessment.

NEW SECTION

WAC 135-100-210 County can recover actual costs. The county treasurer may recover the actual costs incurred by the county assessor and county treasurer in spreading and collecting the special assessments. Upon request, the county treasurer must explain the basis for cost recovery charges made against the assessment.

NEW SECTION

WAC 135-100-220 Conservation district to receive all remaining funds. All funds collected, minus the actual cost of spreading and collecting the assessment, must be promptly transferred to the conservation district. For conservation districts that use the county treasurer as the district treasurer per RCW 89.08.215, assessment funds collected (minus actual costs) must be accounted for separately.

NEW SECTION

WAC 135-100-230 Conservation district to keep landowners informed. The conservation district should inform landowners with lands to be assessed how their assessment was calculated.

NEW SECTION

WAC 135-100-240 Landowners may petition the county to object. Landowners with lands to be subject to the special assessments may object to the assessment by petitioning the county legislative authority. The petition must be signed by at least twenty percent of the owners of land that would be subject to the special assessments.

The petition must be filed with the county legislative authority on or before the close of business on the fourteenth day of December in the year the county approves the special assessment.

If a petition meeting these requirements is filed, the county may not spread or collect the assessment.

NEW SECTION

WAC 135-100-250 Renewal of assessment. Renewal of a conservation district special assessment must meet the same requirements as for a newly proposed assessment.