WSR 07-14-017
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 22, 2007, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-019.

Title of Rule and Other Identifying Information: The department is amending WAC 388-440-0005 Exception to rule—Notification requirement.

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) 664-6094), on August 7, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 8, 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 August 7, 2007.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS Rules Consultant, by July 31, 2007, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal statement will simplify the notification process for the department to respond to individual requests for an exception to policy.

Reasons Supporting Proposal: The current WAC may confuse the reader as to when a notification is sent and for what purpose. This amendment simplifies the process to give the individual notification of when the request for an exception to rule is not being completed and when the completed ETR is approved or denied.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ian Horlor, 1009 College S.E., Lacey, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses; it only affects DSHS clients by explaining when the client will be notified of the request for an exception to rule.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to… rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

June 21, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-03-034, filed 1/12/00, effective 2/12/00)

WAC 388-440-0005 ((~~Exception to rule—Notification requirement.~~)) How am I informed of the decision on my request to the department for an exception to rule? (1) ((~~Clients are notified~~)) You will receive the decision in writing within ten days ((~~of~~)) when department staff:

(a) ((~~The department staff's decision~~)) Decides not to file ((~~an~~)) the exception to rule request; ((~~and~~)) or

(b) ((~~The department's decision~~)) Decides to approve or deny ((~~an~~)) the exception to rule request.

(2) The notice ((~~will~~)) includes information on how to file a ((~~the~~)) complaint ((~~procedures~~)) as specified in chapter 388-426 WAC.

(3) This section does not apply to notification requirements for exceptions to rules concerning noncovered medical or dental services or related equipment. See WAC 388-501-0160.

WSR 07-14-019
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 22, 2007, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-10-020.

Title of Rule and Other Identifying Information: The department is proposing:

- The amendment of WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services.
- The adoption of new WAC 388-513-1363 Evaluating the transfer of an asset for clients found eligible for LTC services on or after May 1, 2006.

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 August 7, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 8, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, 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 August 7, 2007.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS Rules Consultant, by July 31, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these amendments and new text to change transfer of asset rules for clients found eligible for long-term care (LTC) services. This change is due to the 2005 federal Deficit Reduction Act (DRA).

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, 74.09.575.

Rule is necessary because of federal law, Deficit Reduction Act (Public Law 109-171).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt, per RCW 34.05.328 (5)(b) (vii), relating only to client medical or financial eligibility.

June 19, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

(a) WAC ((~~388-450-0005(3), Income - Ownership and availability and WAC 388-475-0200,~~)) 388-475-0600 Definition of income SSI-related medical;

(b) WAC ((~~388-450-0085, Self-employment income - Allowable expenses~~)) 388-475-0650 Available income;

(c) WAC ((~~388-450-0210 (4)(b) and (e), Countable income for medical programs, and WAC 388-475-0750, SSI-related medical - Countable unearned income~~)) 388-475-7000 Income eligibility;

(d) WAC 388-475-0750 Countable unearned income;

(e) WAC 388-475-0840(3) Self employment income-allowance expenses;

(f) WAC 388-506-0620, SSI-related medical clients; and

((~~(e)~~)) (g) WAC 388-513-1315 (15) and (16), Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

(a) Income received in the client's name;

(b) Income paid to a representative on the client's behalf;

(c) One-half of the income received in the names of both spouses; and

(d) Income from a trust as provided by the trust.

(3) The department considers the following income unavailable to an institutionalized client:

(a) Separate or community income received in the name of the community spouse; and

(b) Income established as unavailable through a fair hearing.

(4) For the determination of eligibility only, if available income described in subsections (2)(a) through (d) minus income exclusions described in WAC 388-513-1340 exceeds the special income level (SIL), then:

(a) The department follows community property law when determining ownership of income;

(b) Presumes all income received after marriage by either or both spouses to be community income; and

(c) Considers one-half of all community income available to the institutionalized client.

(5) If both spouses are either applying or approved for LTC services, then:

(a) The department allocates one-half of all community income described in subsection (4) to each spouse; and

(b) Adds the separate income of each spouse respectively to determine available income for each of them.

(6) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(7) The department considers income not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the income to:

(a) The spouse; or

(b) A trust for the benefit of the spouse.

(8) The department evaluates the transfer of a resource described in subsection (6) according to WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366 to determine whether a penalty period of ineligibility is required.

NEW SECTION

WAC 388-513-1363 Evaluating the transfer of assets on or after May 1, 2006 for persons applying for or receiving long-term care (LTC) services. This section describes how the department evaluates asset transfers made on or after May 1, 2006 and their affect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institution equivalent to nursing facility services, and home and community-based services furnished under a waiver program. Program of all-inclusive care of the elderly (PACE) and hospice services are not sub-

ject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period.

• Refer to WAC 388-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003 and before May 1, 2006.

• Refer to WAC 388-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006 on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(2) The department does not apply a penalty period to transfers meeting the following conditions:

(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;

(b) The transfer is an excluded resource described in WAC 388-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d);

(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.

(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer.

(iii) All assets transferred for less than fair market value have been returned to the client.

(iv) The denial of eligibility would result in an undue hardship as described in WAC 388-513-1367.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 388-475-0050 (1)(c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the individual to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 388-475-0050 (1)(c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 388-475-0050 (1)(c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 388-511-1105 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(f), if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on

an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC 388-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (8)(a) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC 388-513-1330 (6) through (8).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in subsection (10)(a) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsections (7)(a), (b), and (c).

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services;

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g. the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter 388-02 WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices-Obtaining assistance-Disposal of realty;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

WSR 07-14-032
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS

[Filed June 26, 2007, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-072.

Title of Rule and Other Identifying Information: WAC 363-116-070 Collection of fees.

Hearing Location(s): 2901 Third Avenue, 4th Floor, Rainier Conference Room, Seattle, WA 98121, on August 9, 2007, at 9:30 a.m.

Date of Intended Adoption: August 9, 2007.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by August 2, 2007.

Assistance for Persons with Disabilities: Contact Judy Bell by August 6, 2007, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule increases the annual state pilot license fee for an active pilot by $3,000 and an inactive pilot by $500.

Pilot license fees are the sole source of funding for the operations of the board. Without an increase in this fee, operating revenue will fall short of the anticipated expenditures budgeted for the 2007-09 biennium.

Reasons Supporting Proposal: It is necessary to establish adequate funding to ensure the board's continued administration of the Pilotage Act.

Statutory Authority for Adoption: RCW 88.16.090.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The 2007 legislature, by enacting ESHB 1094, gave the board authority to set pilot license fees through rule making. The proposed rule was adopted under emergency provisions on June 14, 2007, for implementation on July 1, 2007, the beginning of the 2007-09 biennium. It is the intent of the board to adopt a permanent rule. License fees have not been increased since 2001.

The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested parties.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the attached proposed language.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

June 26, 2007
Peggy Larson
Administrator

AMENDATORY SECTION (Amending WSR 04-14-017, filed 6/28/04, effective 7/29/04)

WAC 363-116-070 Collection of fees. All pilots shall pay an annual license fee of ((~~three~~)) six thousand dollars for every year in which they perform any pilotage services. If a licensed pilot does not perform pilotage services during a license year, his/her fee for that year shall be reduced to ((~~five hundred~~)) one thousand dollars upon application to the board. The board of pilotage commissioners shall receive all fees for licenses or for other purposes and make proper accounting of same and transmit all such funds to the pilotage account.

WSR 07-14-037
PROPOSED RULES
HEALTH CARE AUTHORITY
[Order 07-03—Filed June 26, 2007, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-069.

Title of Rule and Other Identifying Information: WAC 182-50-005 Definitions and 182-50-200 Endorsing practitioner therapeutic interchange program; effect of practitioner's endorsing status; dispense as written instructions.

Hearing Location(s): Health Care Authority, The Sue Crystal Center, 676 Woodland Square Loop S.E., Olympia, WA 98504, on September 11, 2007, at 9:00 a.m.

Date of Intended Adoption: September 12, 2007.

Submit Written Comments to: Duane Thurman, Health Care Authority, Mailstop TB-51, 1511 Third Avenue, Suite 202, Seattle, WA 98101, e-mail duane.thurman@hca.wa.gov, fax (206) 521-2001, by 5:00 p.m., September 11, 2007.

Assistance for Persons with Disabilities: Contact Nikki Johnson by August 28, 2007, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to revise WAC 182-50-005(9) and 182-50-200 (1)(b) to include "the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks" as a basis for exemption from preferred drug substitution as required by RCW 69.41.180.

Reasons Supporting Proposal: To incorporate amendments to RCW 69.41.180 created by SSB 5838 (chapter 233, Laws of 2006).

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: RCW 69.41.180.

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

Name of Proponent: Duane Thurman, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Duane Thurman, Mailstop TB-51, 1511 Third Avenue, Suite 201, Seattle, WA 98101, (206) 521-2036.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

June 26, 2007
Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 03-02, filed 2/23/04, effective 3/25/04)

WAC 182-50-005 Definitions. When used in this chapter:

(1) "Appointing authority" shall mean the following persons acting jointly: The administrator of the health care authority, the secretary of the department of social and health services, and the director of the department of labor and industries.

(2) "Committee" means the independent Washington state pharmacy and therapeutics committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the department of social and health services, the committee may serve as the drug use review board provided for in WAC 388-530-1850.

(3) "Drug" means the term as it is defined in RCW 69.41.010 (9) and (12).

(4) "Endorsing practitioner" means a practitioner who has reviewed the preferred drug list and has notified the health care authority that he or she has agreed to allow therapeutic interchange of a preferred drug for any nonpreferred drug in a given therapeutic class.

(5) "Practitioner" means a health care provider, except a veterinarian, as defined at RCW 18.64.011(9).

(6) "Preferred drug" means a drug selected by the appointing authority for inclusion in the preferred drug list used by applicable state agencies for state purchased health care programs.

(7) "Preferred drug list" or "PDL" means the list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

(8) "Prescription" has the meaning set forth in RCW 18.64.011(8).

(9) "Refill" means the continuation of therapy with the same drug (including the renewal of a previous prescription or adjustments in dosage) when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(10) "State purchased health care" has the meaning set forth in RCW 41.05.011(2).

(11) "Therapeutic alternatives" are drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.

(12) "Therapeutic interchange" means to dispense, with the endorsing practitioner's authorization, a therapeutic alternative to the prescribed drug.

AMENDATORY SECTION (Amending Order 03-02, filed 2/23/04, effective 3/25/04)

WAC 182-50-200 Endorsing practitioner therapeutic interchange program; effect of practitioner's endorsing status; dispense as written instructions. (1) When filling prescriptions for participating state purchased health care programs, pharmacists shall dispense a preferred drug in place of a drug not included in the preferred drug list in a given therapeutic class whenever pharmacists receive a prescription from an endorsing practitioner except:

(a) If the endorsing practitioner determines the nonpreferred drug is medically necessary by indicating "dispense as written" on the prescription; or

(b) If the prescription is a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of a immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(2) When a therapeutic interchange is made, the pharmacist shall notify the endorsing practitioner of the specific drug and dose dispensed.

(3) When a nonendorsing practitioner issues a prescription for a drug not included in the preferred drug list, the pharmacist shall dispense the prescribed drug in accordance with the requirements of RCW 69.41.100 through 69.41.180.

WSR 07-14-039
PROPOSED RULES
FOREST PRACTICES BOARD
[Filed June 27, 2007, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-17-150.

Title of Rule and Other Identifying Information: Small forest landowner long-term forest practices applications: The rule would authorize the department of natural resources to grant approvals of small forest landowners' forest practices applications for terms of up to fifteen years.

Hearing Location(s): Ramada Spokane Airport, 8909 West Airport Drive, Spokane, (509) 838-5211, on Tuesday, August 7, 2007, at 6:00 p.m.; at the Grays Harbor Community College, 1620 Edward P. Smith Drive, Aberdeen, (360) 532-9020, on Thursday, August 9, 2007, at 6:00 p.m.; and at the Holiday Inn, 3105 Pine Street, Everett, (425) 993-2000, on Tuesday, August 14, 2007, at 6:00 p.m.

Date of Intended Adoption: September 11, 2007.

Submit Written Comments to: Patricia Anderson, Forest Practices Board Rules Coordinator, Department of Natural Resources, P.O. Box 47012, 1111 Washington Street S.E., Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by 5 p.m. on August 15, 2007.

Assistance for Persons with Disabilities: Contact Forest Practices Division at (360) 902-1400 or TTY (360) 902-1125, by July 20, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The forest practices board proposes to amend forest practices rules (Title 222 WAC). The rules would authorize the department of natural resources to grant approvals of small forest landowners' forest practices applications for longer terms than are currently authorized - up to fifteen years. Currently applications are approved for a two-year term, or up to five years in the case of "multiyear permits." Landowners would submit these applications in two steps as described in new language in proposed WAC 222-20-016.

This rule proposal also provides for an analysis of active small forest landowner long-term applications when the board is considering new rule making. The board recognizes that new forest practices rules for fish and wildlife species and habitat protection may be necessary during the longer effective term. Examples are when the forest practices adaptive management process (as described in existing WAC 222-12-045) results in recommendations for new rules, or when there are new listings of threatened or endangered species. The purpose of the analysis would be to determine how the new rule would affect the existing approved long-term applications, and determine whether to direct the department of natural resources to place new conditions on active approved applications.

Reasons Supporting Proposal: The intent of allowing for longer terms is to provide landowners the flexibility to conduct management activities at the most advantageous times for their specific circumstances.

Statutory Authority for Adoption: RCW 76.09.010 (2)(d), 76.09.040.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Gretchen Robinson, 1111 Washington Street S.E., Olympia, (360) 902-1705; Implementation: Gary Graves, 1111 Washington Street S.E., Olympia, (360) 902-1483; and Enforce-

ment: Lenny Young, 1111 Washington Street S.E., Olympia, (360) 902-1744.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

INTRODUCTION

This is an analysis of the economic impacts of a forest practices board rule proposal. If adopted, the proposed rule would authorize the department of natural resources (DNR) to approve small forest landowners' forest practices applications for terms of up to fifteen years. Included are the cost-benefit analysis required by the Administrative Procedure Act (chapter 34.05 RCW) and the small business economic impact statement required by the Regulatory Fairness Act (chapter 19.85 RCW).

The purpose of the cost-benefit analysis (CBA) is to:

. . . (d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule . . . that the rule being adopted is the least burdensome alternative for those required to comply with it . . .

A preliminary CBA must be completed before the rule is distributed for public review, and a final CBA must be available when the rule is adopted.

The purpose of the small business economic impact statement (SBEIS) is to reduce ". . . the disproportionate impact of state administrative rules on small business . . ." An agency must complete an SBEIS prior to distributing a rule proposal for public comment.

RULE PROPOSAL

Need for Proposed New Rule: Under existing forest practices rules, approved applications are effective for two years, or up to five years if the activities are within an area of an approved watershed analysis (WAC 222-20-015 and 222-20-080). Small forest landowners have expressed that these short effective terms do not give them adequate flexibility to adjust the timing of forest practices based on unforeseen changes in market, personal or other conditions.

In order to facilitate flexibility in the timing of their forest practices activities, the forest practices board is considering forest practices application effective terms of up to fifteen years for small forest landowners as defined in WAC 222-21-010(13).

Summary of Proposal Relevant to Economic Analysis[1]: WAC 222-12-035 is a new WAC that authorizes the department of natural resources (DNR) to receive, and approve or disapprove long-term forest practices applications from small forest landowners for activities on any portion of their ownerships. Landowners who intend to convert land use to anything other than commercial timber production would not be eligible for this option. An approved long-term application would be effective for a term of three to fifteen years at the discretion of the landowner. As is true for applications with two to five year effective terms, long-term applications may include alternate plans. (A description of the alternate plan process can be seen in WAC 222-12-0401. The proposed rule making does not change the alternate plan process.)

WAC 222-20-016 is a new WAC that describes a two-step application process, stipulates a five-day notice requirement prior to conducting approved activities, and describes circumstances under which approved long-term applications may be amended. When the forest practices board considers new or amended forest practices rules to achieve resource protection objectives, DNR, in consultation with the departments of ecology, fish and wildlife, and affected Indian tribes, will review and analyze the effects of existing approved long-term applications on the public resources the proposed rules are intended to protect. DNR will report the results to the board prior to rule adoption. The proposed rule is explicit that the board may (or may not) condition existing approved long-term applications to protect said resources. This is not a change from the board's current authority for approved applications with shorter terms.

All other rule amendments in the proposal either support the new application option for small forest landowners or are included to provide clarity in existing rules and processes.

ECONOMIC ANALYSIS

Economic analysis of the effects of the proposal focuses entirely on direct effects. Secondary and subsequent effects, for example, changes in the demand for goods and services resulting from the direct effects, may be positive or negative and are highly speculative, and therefore have not been included in the analysis.

This analysis evaluates the expected economic change from existing rules to the proposed rule. The proposal provides an alternative or option to small forest landowners not currently available. It does not place a new requirement on landowners, and does not impose additional costs on them.

Preliminary Cost-Benefit Analysis: Costs for the user community, i.e., small forest landowners and agencies, are described separately below.

Costs for Small Forest Landowners: There are two types of potential costs that should be considered for landowners who will utilize long-term application opportunity: Changes in cost of the application process and lost sales or revenue.

Changes in Costs of Application Process: It is expected that landowners will include more lands in fifteen-year applications than they would in two to five year applications. More lands and longer-term planning will require more extensive and complex resource assessments and prescriptions for conducting activities. It is likely that these landowners will feel a greater need to hire one or more consultants for long-term planning. These additional costs, however, cannot be quantified or estimated for this analysis because of a variety of variables. Depending on a landowner's level of expertise and the natural resources involved in the application, the landowner may feel it's necessary to have expert opinions on, for example, water typing, appropriate riparian zone delineation, or slope stability. Landowners not willing to pay such costs will have the option to operate under the existing short-term rules if they determine that to do so is in their own best interest.

The cost of submitting long-term applications should be no more than the sum of the costs of submitting individual applications under existing rule. Furthermore, there may be economies of scale, i.e., net savings, to submitting forest practices applications under one rather than multiple short-term applications. Regardless, any additional costs landowners incur under the long-term application option are not mandatory requirements.

Lost Sales or Revenue: The proposed new rule does not modify or restrict a landowner's ability to harvest and therefore is not expected to have a negative impact on sales or revenues. Furthermore, income potential may be greater because of the additional flexibility afforded to landowners in the timing of conducting activities. This should allow the landowner to take advantage of changes in market conditions.

Costs for Agencies: DNR, the department of ecology (DOE) and the department of fish and wildlife (DFW) will have additional program development and training costs in the startup phases of this program. The legislature has appropriated approximately $2 million for fiscal years 2007-2009 for program development, coordination, outreach, and training activities targeting regulatory staff and landowners.

For routine application review there may initially be higher costs in staff time and travel. The application review process is divided into two steps: Review of the resource assessment and review of the management strategies proposed by the landowner. While reviewing the resource assessment, DNR, in consultation with DOE, DFW and affected tribes, will ensure all resources are appropriately identified. Also, some applications may include alternate plans which require interdisciplinary (ID) team review including representatives from these entities. While an influx of long-term applications is expected initially after the rule is adopted, it is unknown how many and for how long. Regardless, any higher costs for regulatory and reviewing agencies in the short-term probably won't, in the long-term, exceed the sum of the costs of reviewing individual short-term applications and alternate plans under existing rule.

The proposal also includes an analysis prior to the board adopting new or amended rules. It directs DNR, in consultation with DOE, DFW and affected tribes, to review and analyze the effects of existing approved long-term applications on the public resources the proposed new forest practices rules are designed to protect. This analysis will result in additional staff time during the rule-making process. If the board determines that approved long-term applications must be conditioned to protect resources, additional DNR staff time will be required to notify landowners in writing of those conditions.

Expected Benefit of Proposal: The primary benefit from this proposal is the increased flexibility available to landowners by allowing more time for responses to favorable market or other conditions. This flexibility should result in reduced cost and increased benefit to landowners.

The proposed new rule does not reduce the protection to public resources and therefore is not expected to impact the public benefits provided by those resources.

Least Burdensome Alternative: RCW 34.05.328 [(5)](e) instructs agencies to determine in a cost-benefit analysis, after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it and that it will achieve the general goals and specific objectives of the statute that the rule implements. In addition, the Forest Practices Act states that the forest practices rules must "promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies (in the rules) . . ." (RCW 76.09.-010 (2)(d)).

The purpose of the proposed rule is to reduce a small forest landowner's burden by reducing frequency of paper work, and increasing flexibility to conduct activities when market or other conditions are favorable. Alternatives to this approach could be to not provide longer application terms, or to restrict the terms to fewer than fifteen years.

The small forest landowner user group has identified the shorter application terms of the existing rules as one of many disincentives to continuing forest management rather than selling their forest lands for other uses. The forest practices board decided to provide this opportunity as an incentive to this group. The small forest landowners have expressed that fifteen years is desirable for long-term planning. The board has agreed to the fifteen-year term for the rule proposal.

As stated above, this rule would result in additional short-term costs to the state for program development, coordination and training, of which the legislature will have provided approximately $2 million by 2009. The initial increased costs to landowners for long-term planning, and to regulatory and reviewing agencies for application review are unknown. However, over time these costs should not exceed the sum of the costs of planning for or reviewing individual short-term applications under existing rule.

The proposed rules were developed in collaborative discussions which included affected landowners, regulatory agencies, and tribes. Based on the nature of the collaborative rule development process, and the board's intent to achieve the goal of decreasing the regulatory burden for small forest landowners, it is reasonable to conclude that the proposal is the desired, and "least burdensome" alternative for those required to comply with the new rule, that will achieve the general goals and specific objectives set by the forest practices board.

Small Business Economic Impact Statement: The legislative intent of the Regulatory Fairness Act is to reduce "the disproportionate impact of state administrative rules on small business" (RCW 19.85.011). The concern is that rules that require reporting or other fixed compliance costs will have a disproportionate impact on small firms.

In this case, the cost to the business is related to the land ownership rather than the business size. The law defines "small business" as one having less than fifty employees, but there is no readily available information on the ownership of forest lands potentially impacted by the proposed rule. One useful designation for which information on ownership patterns is known is "small forest landowner," defined in the forest practices rules as one who harvests from their land an average of less than two million board feet per year.[3] Although there are small businesses that own large acreages of forest land in Washington state, it is believed that there is a high correlation between small businesses and small forest landowners.

The possible costs to small business, i.e., small forest landowners, have been described above in the cost-benefit analysis. It is reasonable to conclude that the rule proposal does not adversely impact small businesses because it provides added flexibility to small landowners when it is in their self-interest, and it does not impose a mandatory requirement on small landowners.

CONCLUSIONS

The following conclusions can be drawn from this analysis:

1. **Costs of Proposal:** The proposed rule requires program development, coordination, training and additional analysis by DNR, other state agencies, and affected tribes. The cost of program development, coordination, and training will be approximately $2 million. No attempt was made to determine the specific magnitude of the cost of additional analysis, but it is not believed to be significant. It is also reasonable to conclude that the rule proposal does not adversely impact landowners because it provides added flexibility to small landowners when it is in their self-interest, and it does not impose a mandatory requirement on landowners.

2. **Benefits of Proposal:** The primary benefit of the proposal is the increased flexibility for small forest landowners. It is anticipated that this flexibility should reduce costs to landowners and has the potential to increase revenues, although no attempt was made to analyze the magnitude [of] these benefits.

3. **Comparison of Benefits and Cost of Proposal:** While the probable benefits associated with the proposed rules are not quantifiable, the impact on landowners is expected to be positive. The rule adds an alternative for small forest landowners which they will only exercise when it is in their own best interest.

Most of the identified new cost, approximately $2 million, would be in program development, coordination and training. Most other costs are in added staff time and travel for regulatory and reviewing agencies due to a possible increase in application review. However, any higher costs in the short-term probably will not exceed the sum of the costs for these activities in the long-term.

Based on this analysis it is reasonable to conclude that the expected benefits of the proposed rules are greater than the expected costs.

4. **Least Burdensome Alternative:** Based on the nature of the collaborative rule development process, and the forest practices board's intent to achieve the goal of decreasing the regulatory burden for small forest landowners, it is reasonable to conclude that the proposal is the desired, "least burdensome" alternative for those required to comply with the new rule, and that will achieve the general goals and specific objectives set by the forest practices board.

5. **Small Businesses Impact:** Small businesses are not expected to be disproportionately impacted as a result of the proposal than are businesses as a whole. The impact is expected to be positive because it provides added flexibility to small forest landowners when it is in their self-interest, and it does not impose a mandatory requirement on landowners.

[1] This summary is provided for the convenience of the reader and should not be relied upon as a complete list of all changes.

[No footnote 2 is supplied by agency.]

[3] For a full definition, see WAC 222-21-0010(13).

A copy of the statement may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, 1111 Washington Street S.E., Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, Department of Natural Resources, P.O. Box 47012, 1111 Washington Street S.E., Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

June 27, 2007
Victoria Christiansen
Chairman

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-20-010 Applications and notifications—Policy. (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND RULES AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Except as provided in subpart (4) below, applications and notifications** shall be signed by the landowner, the timber owner and the operator, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)).

(4) In lieu of a landowner's signature, where the timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign a forest practices application or notification for operations not converting to another use and the statement of intent not to convert for a set period of time. The holder of perpetual timber rights shall serve the signed forest practices application or notification and the signed statement of intent on the forest landowner. The forest practices application shall not be considered complete until the holder of perpetual timber rights has submitted evidence acceptable to the department that such service has occurred.

(5) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications

for the development or maintenance of utility rights of way shall not be considered to be conversions.

(6) **Transfer of the** approved application or notification to a new landowner, timber owner or operator requires written notice by the ((~~original~~)) former landowner or ((~~applicant~~)) timber owner to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices rules as determined necessary by the department. If an application or notification indicates that the landowner or timber owner is also the operator, or an operator signed the application, no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record.

(7) ((~~**Applications and notifications** must be delivered to the department at the appropriate region office. Delivery should be in person or by registered or certified mail.~~

~~(8)~~)) **Applications and notifications**, if complete shall be considered officially received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. The department will immediately provide a dated receipt to the applicant. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application.

(a) A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the CRGNSA special management area guidelines is necessary information for an application or notification within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Service received a complete plan application and failed to act within ((~~45~~)) forty-five days.

(b) An environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications.

(c) A local governmental entity clearing and/or grading permit is necessary information for all Class IV applications on lands that have been or will be converted to a use other than commercial timber production or on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW, if the local governmental entity has jurisdiction and has an ordinance requiring such permit.

(d) A checklist road maintenance and abandonment plan is necessary information for all small forest landowners' applications or notifications for timber harvest (including salvage), unless exempt under WAC 222-24-0511, or unless the application is a small forest landowner long-term application which requires a roads assessment. ((~~If a notification or application is delivered in person to the department by the operator or the operator's authorized agent, the department shall immediately provide a dated receipt. In all other cases, the department shall immediately mail a dated receipt to the applicant.~~

~~(9)~~)) (8) **An operator's name,** if known, must be included on any forest practices application or notification. The landowner or timber owner must provide notice of hiring or change of operator to the department within ((~~48~~)) forty-eight hours. The department shall promptly notify the landowner if the operator is subject to a notice of intent to disapprove under WAC 222-46-070. Once notified, the landowner will not permit the operator, who is subject to a notice of intent to disapprove, to conduct the forest practices specified in the application or notification, or any other forest practices until such notice of intent to disapprove is removed by the department.

((~~(10)~~)) (9) **Financial assurances** may be required by the department prior to the approval of any future forest practices application or notification to an operator or landowner under the provisions of WAC 222-46-090.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-20-015 Multiyear permits. (1) Where a watershed analysis has been approved for a WAU under WAC 222-22-080, landowner(s) may apply for a multiyear permit. The information provided and level of detail must be comparable to that required for a two-year permit. At a minimum, the application must include:

(a) A description of the forest practices to be conducted during the period requested for the permit, and a map(s) showing their locations; and

(b) Prescriptions must be identified where operations are proposed within or include areas of resource sensitivity.

(2) A landowner with an approved road maintenance and abandonment plan (other than a checklist) may apply for a multiyear permit to perform road maintenance((~~,~~)), road abandonment, and/or associated right of way timber harvest, if the schedule for implementing the plan is longer than two years.

(3) A landowner may apply for a multiyear permit to perform an approved alternate plan.

NEW SECTION

WAC 222-20-016 Small forest landowner long-term applications. (1) **Application.** A small forest landowner may submit a forest practices application that includes planned forest practices activities on all or part of a landowner's ownership within one of the department's geographic region boundaries. The application can be for terms of three to fifteen years at the discretion of the landowner. The landowner will submit the application to the department in two steps.

(2) **Review of proposed application.**

(a) **Step 1: Resource and roads assessment review.** The landowner will submit the resource and roads assessment portion of the application. As part of the review, the department will determine any additional known resources or threats to public safety and initiate one or more site reviews in consultation with the department of ecology, the department of fish and wildlife, and the affected Indian tribes. The

department will notify the landowner and the landowner's representative to attend the site review(s). Within forty-five days of receiving the complete assessment, the department will notify the landowner in writing of its validation or rejection of the assessment. If rejected, the department will provide a written statement to the landowner explaining why the assessment was rejected.

(b) **Step 2: Resource protection strategies review.** The department will accept for review the resource protection strategies portion of the long-term application after the department validates Step 1. The required elements of Step 2 will include a description of proposed forest practices activities and strategies for protection of all resources identified in Step 1. The department will approve, condition, or disapprove Step 2 within forty-five days of receiving the complete Step 2 portion. If disapproved, the department will provide a written statement to the landowner explaining why the proposed strategies were disapproved.

(3) **Activity notice.** At least five business days before a landowner starts an approved forest practices activity the landowner will submit to the department an activity notice in a format acceptable to the department.

(4) **Amendments to long-term applications.**

(a) The department may authorize nonsubstantial amendments as authorized in WAC 222-20-060.

(b) If the board considers new or amended rules to achieve resource protection objectives, the department and the board will do the following regarding existing approved long-term applications:

(i) The department, in consultation with the departments of ecology, fish and wildlife, and affected Indian tribes will review, and if necessary analyze the effects of approved long-term applications on the public resources the proposed rules are intended to protect.

(ii) The department will report the results of its review and/or analysis to the board prior to rule adoption.

(iii) Upon rule adoption, the board may direct the department to condition existing approved long-term applications to protect resources.

(iv) The department will notify impacted landowners in writing of the board's decision.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-020 Application time limits. (1) ((~~**A properly completed application**~~ ~~shall be approved, conditioned or disapproved~~)) **When the department officially receives an application,** the department will approve, condition or disapprove it within ((~~30~~)) thirty calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For "Class IV" applications when the department or the lead agency has determined that a detailed environmental statement must be made, the application must be approved, conditioned or disapproved within ((~~60~~)) sixty days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least ((~~10~~)) ten days before promulgation of such an order extending the time, the applicant shall be given written notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands described in (c)(i) through (iv) of this subsection, the applicable time limit shall be no less than ((~~14~~)) fourteen business days from transmittal to the local governmental entity unless the local governmental entity has waived its right to object or has consented to approval of the application:

(i) Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(ii) Lands that have been or are being converted to another use;

(iii) Lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-24-050); or

(iv) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW.

(d) Applications for multiyear permits will be approved, conditioned, or disapproved within forty-five days of the department receiving a complete application.

(e) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016. The department will review Step 1 and issue a decision within forty-five days of receiving a complete resource and roads assessment. The department will review and approve, condition, or disapprove Step 2 within forty-five days of receiving a complete resource protection strategies portion of the long-term application.

(2) **Unless the local governmental entity** has waived its rights under the act or consents to approval, the department shall not approve an application involving lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands that have been or are being converted to another use until at least ((~~14~~)) fourteen business days from the date of transmittal to the local governmental entity.

(3) **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices rules, no penalty should be imposed for those operations which occurred prior to the enforcement action: Provided, That no damage to a public resource resulted from such operations, and the operations commenced more than ((~~5~~)) five days from receipt by the department of the notification.

(4) **If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may commence except that this provision shall not apply where:

(a) The local governmental entity objects and the application involves lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or lands that have been or are being converted where the county's right of objection is

((~~14~~)) fourteen business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

(5) **If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

((~~(6) An application for a multiyear permit must be approved, conditioned or disapproved by the department within 45 days of receiving a complete application.~~))

AMENDATORY SECTION (Amending Order 551, Resolution No. 88-1, filed 9/21/88, effective 11/1/88)

WAC 222-20-030 Delivery of notifications and applications—Receipts—File numbers. (1) **Notifications and applications** should be delivered ((~~in person or by registered or certified mail~~)) to the department at the appropriate region office. Notifications and applications actually received at the appropriate region office by other means may be accepted or returned to the applicant.

(2) **Upon delivery of** a complete notification or application ((~~to the appropriate region office,~~)) the department will provide a written receipt ((~~for such notification or application shall be issued by the department as follows:~~

~~(a) If delivery is in person, a dated receipt shall be issued immediately to the applicant.~~

~~(b) If delivery is by registered or certified mail, a dated receipt shall be mailed immediately to the applicant.~~

~~(c) If delivery is by other means, a receipt dated on the day the department begins processing the application shall be mailed to the applicant~~)) to the landowner, timber owner, and operator.

(3) **Each receipt will** indicate the file number assigned to the notification or application.

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-20-040 Approval conditions. (1) **Whenever an approved** application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department ((~~2~~)) two business days before the commencement of actual operations.

(2) **All approvals are** subject to any conditions stipulated on the approved application and to any subsequent additional requirements set forth in a stop work order or a notice to comply.

(3) **Local governmental entity conditions.**

(a) RCW 76.09.240(4) allows a local governmental entity to exercise limited land use planning or zoning authority on certain types of forest practices. This subsection is designed to ensure that local governmental entities exercise this authority consistent with chapter 76.09 RCW and the rules in Title 222 WAC. The system provided for in this subsection is optional.

(b) This subsection only applies to Class IV general applications on lands that have been or are being converted to a use other than commercial timber production or to Class IV general applications on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW.

(c) The department shall transmit the applications to the appropriate local governmental entity within two business days from the date the department officially receives the application.

(d) The department shall condition the application consistent with the request of the local governmental entity if:

(i) The local governmental entity has adopted a clearing and/or grading ordinance that addresses the items listed in (e) of this subsection and requires a permit;

(ii) The local governmental entity has issued a permit under the ordinance in (i) that contains the requested conditions; and

(iii) The local governmental entity has entered into an interagency agreement with the department consistent with WAC 222-50-030 addressing enforcement of forest practices.

(e) The local governmental entity conditions may only cover:

(i) The location and character of open space and/or vegetative buffers;

(ii) The location and design of roads;

(iii) The retention of trees for bank stabilization, erosion prevention, and/or storm water management; or

(iv) The protection of critical areas designated pursuant to chapter 36.70A RCW.

(f) Local governmental entity conditions shall be filed with the department within twenty-nine days of the ((~~filing of the application with the~~)) department's official receipt of the application or within fourteen business days of the transmittal of the application to the local governmental entity or one day before the department acts on the application, whichever is later.

(g) The department shall incorporate local governmental entity conditions consistent with this subsection as conditions of the forest practices approval.

(h) Any exercise of local governmental entity authority consistent with this subsection shall be considered consistent with the forest practices rules in this chapter.

(4) **Lead agency mitigation measures.**

(a) This subsection is designed to specify procedures for a mitigated DNS process that are consistent with chapters 76.09 and 43.21C RCW and the rules in Title 222 WAC and chapter 197-11 WAC.

(b) This subsection applies to all Class IV applications in which the department is not the lead agency under ((~~SEPA~~)) the State Environmental Policy Act. (See WAC 197-11-758.)

(c) The department shall transmit the application to the lead agency within two business days from the date the department officially receives the application.

(d) The lead agency may specify mitigation measures pursuant to WAC 197-11-350.

(e) The lead agency threshold determination and any mitigation measures must be filed with the department within

the later of ((~~(i)~~)) twenty-nine days of the official receipt of the application by the department, ((~~(ii)~~)) fourteen business days of the transmittal of the application to the lead agency if the lead agency is a local governmental entity; or ((~~(iii)~~)) one day before the department acts on the application.

(f) Unless the applicant clarifies or changes the application to include mitigation measures specified by the lead agency, the department must ((~~deny~~)) disapprove the application or require an ((~~EIS~~)) environmental impact statement. (See WAC 197-11-738.)

(g) If the department does not receive a threshold determination from the lead agency by the time it must act on the application, the department shall ((~~deny~~)) disapprove the application.

(5) **Small forest landowner approval conditions.** The department shall not disapprove a small forest landowner's application((~~/~~)) or notification on the basis that fish passage barriers have not been removed or replaced if the landowner has committed to participate in the department's family forest fish passage program for:

((~~•~~)) (a) Any barriers on their forest roads located within the boundaries of their application/notification; and

((~~•~~)) (b) Any barriers on their forest roads needed for their proposed forest practice, but located outside the boundaries of the application/notification.

(6) **CRGNSA special management area.**

(a) **Policy.** The states of Oregon and Washington have entered into a Compact preauthorized by Congress to implement the CRGNSA Act, 16 U.S.C. §§ 544, et seq. chapter 43.97 RCW, 16 U.S.C. § 544c. The purposes of the CRGNSA Act are:

(i) To establish a national scenic area to protect and provide for the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge; and

(ii) To protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent with paragraph (1). 16 U.S.C. § 544a.

The forest practices rules addressing forest practices in the CRGNSA special management area recognize the intent of Congress and the states expressed in the CRGNSA Act and Compact and the intent of the Washington state legislature in the Forest Practices Act. These rules are designed to recognize the public interest in sound natural resource protection provided by the Act and the Compact, including the protection to public resources, recreation, and scenic beauty. These rules are designed to achieve a comprehensive system of laws and rules for forest practices in the CRGNSA special management area which avoids unnecessary duplication, provides for interagency input and intergovernmental and tribal coordination and cooperation, considers reasonable land use planning goals contained in the CRGNSA management plan, and fosters cooperation among public resources managers, forest landowners, tribes and the citizens.

(b) The CRGNSA special management area guidelines shall apply to all forest practices within the CRGNSA special management area. Other forest practices rules also apply to these forest practices. To the extent these other rules are inconsistent with the guidelines, the more restrictive requirement controls. To the extent there is an incompatibility between the guidelines and another rule, the guidelines control. Copies of the guidelines can be obtained from the department's Southeast and Pacific Cascade regional offices and Olympia office, as well as from the Columbia River Gorge commission and the U.S. Forest Service.

(c) The department shall review and consider the U.S. Forest Service review statement and shall consult with the U.S. Forest Service and the Columbia River Gorge commission prior to making any determination on an application or notification within the CRGNSA special management area.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-050 Conversion to nonforest use. (1) If an application to harvest signed by the landowner indicates that within ((~~3~~)) three years after completion, the forest land will be converted to a specified active use which is incompatible with timber growing, the reforestation requirements of these rules shall not apply and the information relating to reforestation on the application form need not be supplied. However, if such specified active use is not initiated within ((~~3~~)) three years after such harvest is completed, the reforestation requirements (see chapter 222-34 WAC) shall apply and such reforestation shall be completed within ((~~1~~)) one additional year.

(2) For Class II, III, and IV special forest practices, if a landowner wishes to maintain the option for conversion to a use other than commercial timber ((~~operation~~)) growing, the landowner may request the appropriate local governmental entity to approve a conversion option harvest plan. This plan, if approved by the local governmental entity and followed by the landowner, shall release the landowner from the six-year moratorium on future development, but does not create any other rights. The conversion option harvest plan shall be attached to the application or notification as a condition. Violation of the conversion option harvest plan will result in the reinstatement of the local governmental entity's right to the six-year moratorium. Reforestation requirements will not be waived in the conversion option harvest plan. Reforestation rules shall apply at the completion of the harvest operation as required in chapter 222-34 WAC. Nothing herein shall preclude the local governmental entity from charging a fee to approve such a plan. (See RCW 76.09.060 (3)(b)(i).)

(3) If the application or notification does not state that any land covered by the application or notification will be or is intended to be converted to a specified active use incompatible with commercial timber ((~~operations~~)) growing, or if the forest practice takes place without a required application or notification, then the provisions of RCW 76.09.060 (3)(b)(i) regarding the six-year moratorium apply.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-20-060 Deviation from prior application or notification. Substantial deviation from a notification or an approved application requires a ((~~revised~~)) new notification or application. Other deviations may be authorized by a supplemental directive, notice to comply or stop work order.

The department shall notify the departments of fish and wildlife, and ecology, and affected Indian tribes and the appropriate local governmental entity of any supplemental directive, notice to comply or stop work order involving a deviation from a prior notification or approved application, except where such notice has been waived.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-080 Application and notification expiration. (1) The approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval, with the following exceptions ((~~of multiyear permits.~~)):

(a) Multiyear permits are effective for ((~~up~~)) three to five years. ((~~The~~)) A multiyear permit for lands included in a watershed analysis pursuant to chapter 222-22 WAC is not renewable if a five-year watershed analysis review is found necessary by the department and has not been completed.

(b) Small forest landowner long-term applications are effective for terms of three to fifteen years.

(2) A notification is ((~~also~~)) effective for a term of two years beginning five days from the date ((~~of receipt~~)) it is officially received.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-20-100 Notice to parks and ((~~OAHP~~)) DAHP. (1) **Notice to parks.** The department shall send to the affected agency, within ((~~2~~)) two business days of receipt, a copy of any notification or application for forest practices within ((~~500~~)) five hundred feet of the boundary of any park entity registered according to subsection (2) of this section.

(2) **Parks register.** The department shall establish and update every ((~~5~~)) five years a parks register listing all publicly owned parks where the affected owner has filed a written request with the department for inclusion on such register. The department shall notify owners of all public parks inventoried on the state comprehensive outdoor recreation plan (SCORP) of the opportunity to register.

(3) **DNR to provide information to ((~~OAHP~~)) DAHP.** The department shall provide the ((~~office~~)) department of archaeology and historic preservation (((~~OAHP~~)) DAHP) with copies of all applications and notifications for forest practices to be conducted on lands known to contain historic sites or archaeological resources as identified by ((~~OAHP~~)) DAHP.

AMENDATORY SECTION (Amending Order 535, filed 11/16/87, effective 1/1/88)

WAC 222-20-120 Notice of forest practices to affected Indian tribes. (1) The department shall notify affected Indian tribes of all applications of concern to such tribes, including those involving cultural resources, identified by the tribes.

(2) Where an application involves cultural resources the landowner shall meet with the affected tribe(s) with the objective of agreeing on a plan for protecting the archaeological or cultural value. The department may condition the application in accordance with the plan.

(3) Affected Indian tribes shall determine whether plans for protection of cultural resources will be forwarded to the ((~~office~~)) department of archaeological and historic preservation (((~~OAHP~~)) DAHP).

AMENDATORY SECTION (Amending WSR 06-17-128, filed 8/21/06, effective 9/21/06)

WAC 222-16-010 *General definitions. Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within

unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

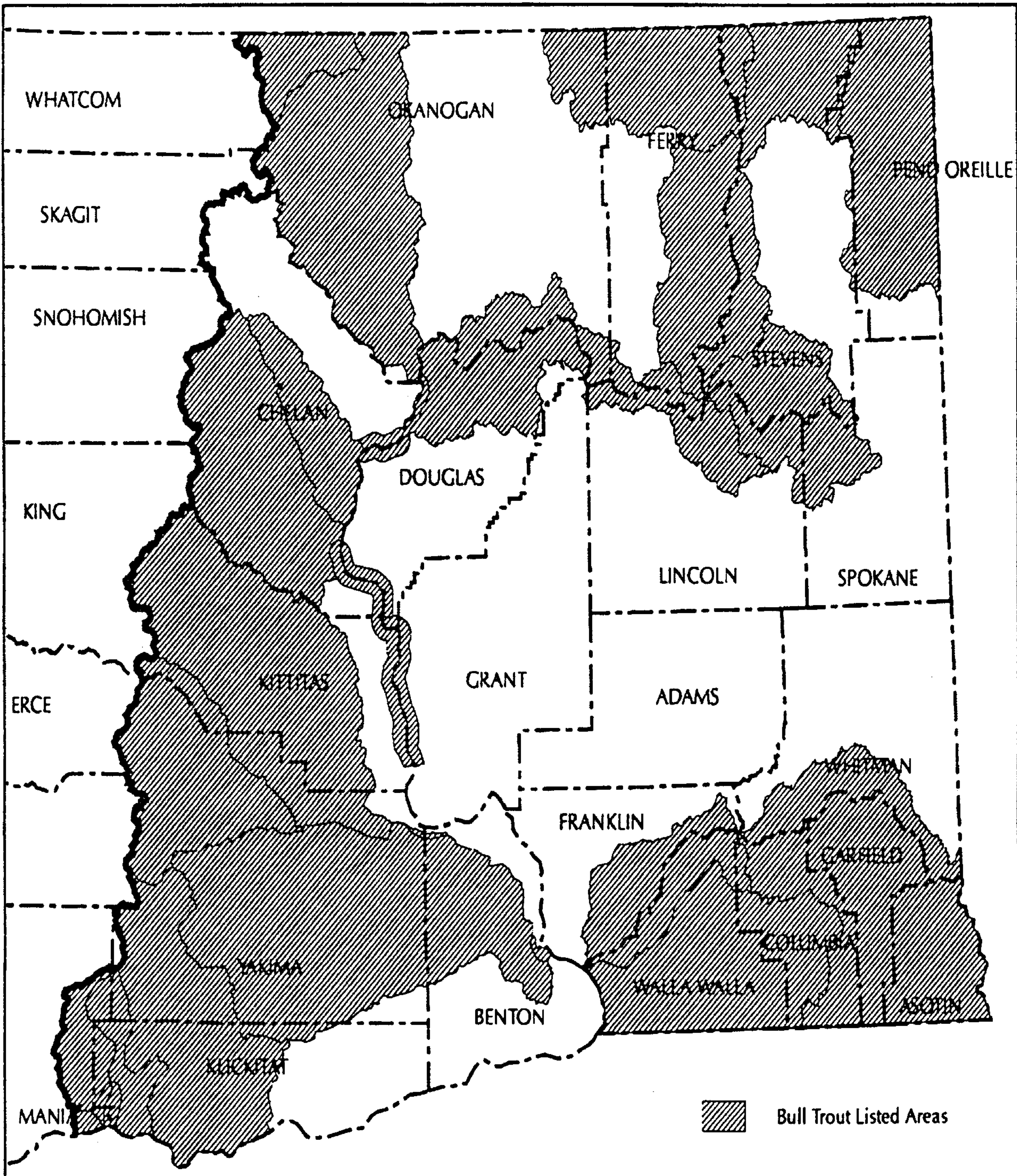
"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map

"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting

green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

• Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

• Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

• Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;
Harvesting, final and intermediate;
Precommercial thinning;
Reforestation;
Fertilization;
Prevention and suppression of diseases and insects;
Salvage of trees; and
Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than

15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Horizontal distance" means the distance between two points measured at a ((~~0%~~)) zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

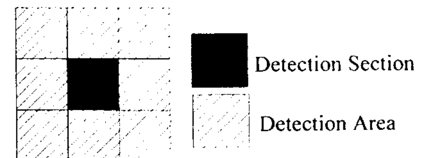
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means:

(1) Until June 30, 2007, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After June 30, 2007, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long con-

tinued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	**Mixed conifer habitat type**
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) **For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels,** a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington,** the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington,** the ((~~30~~)) thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington,** the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington,** the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

(a) Establishing any new forest road;

(b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

(a) All road work located within an existing forest road prism;

(b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:

• Maintaining, replacing, and installing drainage structures;

• Controlling road-side vegetation;

• Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	**50-year site index range** (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) **For Eastern Washington**

Site class	**100-year site index range** (state soil survey)	**50-year site index range** (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least ((~~40%~~)) forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.-035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 06-11-112, filed 5/18/06, effective 6/18/06)

WAC 222-16-050 *Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices rules.

(1) **"Class IV - special."** Except as provided in WAC 222-16-051, application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as critical habitat (state) of threatened or endangered species.

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the bound-

aries of any national park, state park, or any park of a local governmental entity, except harvest of less than ((~~5~~)) five MBF within any developed park recreation area and park managed salvage of merchantable forest products.

*(d) Timber harvest, or construction of roads, landings, gravel pits, rock quarries, or spoil disposal areas, on potentially unstable slopes or landforms described in (i) below that has the potential to deliver sediment or debris to a public resource or that has the potential to threaten public safety, and which has been field verified by the department (see WAC 222-10-030 SEPA policies for potential unstable slopes and landforms).

(i) For the purpose of this rule, potentially unstable slopes or landforms are one of the following: (See the board manual section 16 for more descriptive definitions.)

(A) Inner gorges, convergent headwalls, or bedrock hollows with slopes steeper than ((~~35~~)) thirty-five degrees (((~~70%~~)) seventy percent);

(B) Toes of deep-seated landslides, with slopes steeper than ((~~33~~)) thirty-three degrees (((~~65%~~)) sixty-five percent);

(C) Ground water recharge areas for glacial deep-seated landslides;

(D) Outer edges of meander bends along valley walls or high terraces of an unconfined meandering stream; or

(E) Any areas containing features indicating the presence of potential slope instability which cumulatively indicate the presence of unstable slopes.

(ii) The department will base its classification of the application((~~/~~)) or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation maps and reports or other information provided by the applicant.

(iii) An application would not be classified as Class IV-Special for potentially unstable slopes or landforms under this subsection if:

(A) The proposed forest practice is located within a WAU that is subject to an approved watershed analysis;

(B) The forest practices are to be conducted in accordance with an approved prescription from the watershed analysis (or as modified through the ((~~5~~)) five-year review process); and

(C) The applicable prescription is specific to the site or situation, as opposed to a prescription that calls for additional analysis. The need for an expert to determine whether the site contains specific landforms will not be considered "additional analysis," as long as specific prescriptions are established for such landforms.

*(e) Timber harvest, in a watershed administrative unit not subject to an approved watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation and local government, as high avalanche hazard where there is the potential to deliver sediment or debris to a public resource, or the potential to threaten public safety.

(f) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state ((~~office~~)) department of archaeology and historic preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.

*(g) Forest practices subject to an approved watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

*(h) Filling or draining of more than 0.5 acre of a wetland.

(2) **"Class IV - general."** Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special."

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(b) Forest practices (other than those in Class I) on lands that have been or are being converted to another use;

(c) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development (see WAC 222-16-060 and 222-34-050); or

(d) Forest practices involving timber harvesting or road construction on lands that are contained within urban growth areas, designated pursuant to chapter 36.70A RCW, except where the forest landowner provides one of the following:

(i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest products operations for ten years accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(ii) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application.

Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the ((~~State Environmental Policy Act~~)) SEPA pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037 (2). Such applications are subject to a ((~~30~~)) thirty-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with the ((~~State Environmental Policy Act~~)) SEPA.

(3) **"Class I."** Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*(b) Road maintenance except: (((~~i~~))) Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or (((~~ii~~))) movement of material that has a direct

potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

*(c) Construction of landings less than ((~~1~~)) one acre in size, if not within a shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(d) Construction of less than ((~~600~~)) six hundred feet of road on a sideslope of ((~~40~~)) forty percent or less if the limits of construction are not within the shoreline area of a Type S Water, the riparian management zone of a Type F Water, the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type S Water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than ((~~5,000~~)) five thousand board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any ((~~12~~)) twelve-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding ((~~40~~)) forty percent or off-road use of tractors within the shorelines of a Type S Water, the riparian management zone of any Type F Water, or the bankfull width of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

*(p) Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than ((~~40~~)) forty contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within ((~~100~~)) one hundred feet of lands used for farming, or within ((~~200~~)) two hundred feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

*(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type S Water or the riparian management zone of a Type F Water, the bankfull width of a Type Np Water or flowing Type Ns Water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than ((~~40~~)) forty percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on forest roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: Provided, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 77.55.100) or is within a "shorelines of the state," or involves owner of perpetual timber rights subject to RCW 76.09.067 (other than renewals). Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, as provided in chapter 58.17 RCW, or on lands that have been or are being converted to another use. No forest practice enumerated below involving timber harvest or road construction may be conducted as a "Class II" if it takes place within urban growth areas designated pursuant to chapter 37.70A RCW. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practices application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

(iv) Renewal of a previously approved multiyear permit for forest practices within a WAU with an approved watershed analysis requires completion of a necessary ((~~5~~)) five-year review of the watershed analysis.

*(c) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than ((~~1~~)) one acre.

*(d) Salvage of logging residue if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than ((~~40~~)) forty percent.

*(e) Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type F Water, within the bankfull width of a Type Np Water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than ((~~40~~)) forty percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of ((~~40~~)) forty percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of ((~~5,000~~)) five thousand board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than ((~~40~~)) forty percent of the total timber volume is removed in any ((~~12~~)) twelve-month period.

(iv) Any harvest on less than ((~~40~~)) forty acres.

(v) Construction of ((~~600~~)) six hundred or more feet of road, provided that the department shall be notified at least ((~~2~~)) two business days before commencement of the construction.

(5) **"Class III."** Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 77.55.100).

*(b) Those within the shorelines of the state other than those in a Class I forest practice.

*(c) Aerial application of insecticides, except where classified as a Class IV forest practice.

*(d) Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

*(e) Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

*(f) All road construction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

*(h) Road maintenance involving:

(i) Replacement of bridges or culverts across Type S, F or flowing Type Np Waters; or

(ii) Movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

(i) Operations involving owner of perpetual timber rights subject to RCW 76.09.067.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:

(i) On or are eligible for listing on the National Register of Historic Places; or

(ii) Have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding ((~~19~~)) nineteen acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

*(n) Any filling of wetlands, except where classified as Class IV forest practices.

*(o) Multiyear permits.

*(p) Small forest landowner long-term applications.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-030 Classes of forest practices. Forest practices are divided into four classes as specified by RCW 76.09.050. In certain emergencies, as defined in RCW 76.09.060(7), the application or notification may be submitted within ((~~48~~)) forty-eight hours after commencement of the practice.

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices rules.

(2) **Class II forest practices** require a notification to the department, and may begin ((~~5~~)) five calendar days (or such lesser time as the department may determine) after receipt of a notification by the department.

(3) **Class III forest practices** must be approved or disapproved within ((~~30~~)) thirty or fewer calendar days of receipt of an application by the department. The department is directed to approve or disapprove within ((~~14~~)) fourteen calendar days Class III applications not requiring additional field review. Exceptions are:

(a) Multiyear applications must be approved or disapproved within ((~~45~~)) forty-five days of receipt of an application by the department.

(b) Small forest landowner long-term applications will be reviewed in two steps as described in WAC 222-20-016.

(4) **Class IV forest practices** are divided into "Class IV - special," and "Class IV - general," and must be approved or disapproved within ((~~30~~)) thirty calendar days of receipt of an application by the department, except that if a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

NEW SECTION

WAC 222-12-035 *Small forest landowner long-term applications. In order to facilitate flexibility for small forest landowners in the timing of their forest practices activities, the department will receive, and approve or disapprove, long-term forest practices applications. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications unless proposing a conversion to a use other than commercial timber production. An approved long-term application will be effective for a term of three to fifteen years at the discretion of the landowner. These applications may contain alternate plans for all or portions of the forest land area included in the long-term application. Alternate plan portions of long-term applications will be reviewed according to the alternate plan process described in WAC 222-12-0401. The process for small forest landowner long-term applications is described in WAC 222-20-016.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-0401 *Alternate plans—Process. (1) Application. A landowner may submit an alternate plan that departs from the specific provisions of chapters 222-22 through 222-38 WAC for any or all of the activities described in the application. Alternate plans must be submitted with ((~~either~~)) a two-year ((~~or~~)), multiyear, or small forest landowner long-term application. Alternate plans may support a single forest practices application or multiple applications if the sites included in the plan have sufficient common physical characteristics and elements to justify being considered together. See board manual section 21.

(2) Plan preparation. The landowner is responsible for preparing and submitting an alternate plan. Small forest landowners may wish to seek the assistance of the small forest landowner office. See WAC 222-12-0402.

(3) Contents of alternate plans. Alternate plans must contain all of the following:

(a) A map of the area covered, at a scale acceptable to the department showing the location of any affected streams and other waters, wetlands, unstable slopes, and existing roads. The map must also show the location of proposed road construction, timber harvest, and other forest practices;

(b) A description of how the alternate plan provides public resource protection to meet the approval standard, including a description of the proposed alternate management strategy, prescriptions, and where applicable, aquatic resource enhancements;

(c) A list of the forest practices rules that the alternate management plan is intended to replace;

(d) Where applicable, descriptions of monitoring and adaptive management strategies, including landowner plans for annual performance reviews;

(e) Where applicable, descriptions of an implementation schedule; and

(f) When multiple forest practices applications are submitted with the same alternate plan or when an alternate plan has been used for previous applications, justification that the sites included in the plan share sufficient common physical characteristics and elements to be considered together.

(4) Review of proposed plan. Upon receipt of a forest practices application together with an alternate plan, the department will do all of the following:

(a) Appoint an interdisciplinary team.

(b) Establish a deadline for completion of the interdisciplinary team review that is consistent with the requirements of subsection (5) of this rule; and

(c) Within ((~~5~~)) five business days of receipt of an application with an alternate plan, provide copies of the application and alternate plan to the departments of ecology and fish and wildlife, affected Indian tribes, the National Marine Fisheries Service, the United States Fish and Wildlife Service, and other parties that have expressed an interest in alternate plans in the area of the application. If the landowner is a small forest landowner under WAC 222-21-010((~~(11)~~)) (13), copies should also be provided to the small forest landowners office.

(5) Interdisciplinary team.

(a) The department will determine the members invited to participate on an interdisciplinary team. Teams will include members with the qualifications necessary to evaluate the alternate plan. A representative of any affected Indian tribe, and departments of ecology and fish and wildlife will be invited to participate. Each team will include a representative of the landowner and a professional forester employed by the department and shall be led by a department employee.

(b) The interdisciplinary team will conduct a site visit and submit a recommendation to the department at least ((~~3~~)) three days prior to the expiration of the application time limit in WAC 222-20-020. The interdisciplinary team may submit a recommendation without a site visit if a small forest landowner under WAC 222-21-010((~~(11)~~)) (13) submitted the alternate plan using a template contained in ((~~the~~)) board manual section 21 and is a low impact alternate plan and the team determines a visit is not necessary to evaluate the site specific application of a template or a low impact alternate plan.

(c) The recommendation of the interdisciplinary team shall indicate whether the alternate plan meets the approval standard, or what revisions are necessary to meet the approval standard. The team is intended to work with the landowner in an attempt to reach consensus on the efficacy of the alternate plan. In the absence of consensus, the team will forward reports reflecting the majority and minority opinions, or the landowner may elect to withdraw or revise the proposal.

(6) Approval standard. An alternate plan must provide protection for public resources at least equal in overall effectiveness to the protection provided in the act and rules.

(7) Approval, conditions, or disapproval. Upon receipt of the interdisciplinary team's recommendation, the department shall determine whether to approve, disapprove, or condition the application based on the approval standard. The department shall give substantial weight to the recommendations of the interdisciplinary team in cases where a consensus recommendation is forwarded. If the department disapproves or conditions a forest practices application with an alternate plan, the department will provide a written statement to the landowner explaining why the application was conditioned or denied.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-0402 *Assistance available for small forest landowners. (1) The small forest landowner office has been established within the department to be a resource and focal point for small forest landowner concerns and policies. A small forest landowner is defined in WAC 222-21-010 ((~~(11)~~)) (13). The legislature recognized that the further reduction in harvestable timber owned by small forest landowners would further erode small forest landowner's economic viability and willingness or ability to keep the lands in forestry use, and, therefore, reduced the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature has directed that office to assist small forest landowners in preparing alternate plans

appropriate to small forest landowners. See RCW 76.13.100 and 76.13.110(3).

(2) Small forest landowners interested in alternate plans are encouraged to contact the small forest landowner office for assistance in preparing an alternate plan. The office may provide technical assistance in understanding and using ((~~the~~)) board manual section 21 for alternate plans ((~~(section 21)~~)), assistance in developing an individualized alternate plan for the small forest landowner and facilitation of small forest landowner interactions with the department, other state agencies, federal agencies, affected Indian tribes and the interdisciplinary team that may review the small forest landowner's alternate plan.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-12-090 Forest practices board manual. When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.

(2) Standards for identifying channel migration zones and bankfull channel features.

(3) **Guidelines** for forest roads.

(4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.

(5) **Guidelines** for landing location and construction.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) **Guidelines** for determining fish use for the purpose of typing waters under WAC 222-16-031.

(14) **Survey protocol for marbled murrelets.** The Pacific Seabird [Group] survey protocol dated January 6, 2003, and formally [titled] [filed on] *on Methods for Surveying Marbled Murrelets in Forests: A Revised Protocal for Land Management and Research*, shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board[-]recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for ((~~riparian open space program~~)) small forest landowner long-term applications.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.

(26) **Guidelines** for placement strategy for woody debris in streams.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 07-14-041
PROPOSED RULES
DAIRY PRODUCTS COMMISSION
[Filed June 27, 2007, 12:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-04-088.

Title of Rule and Other Identifying Information: WAC 142-30-010, the purpose of the rule is to increase the current

level of assessment on milk produced in Washington state by .00375 (3/8 cent).

Hearing Location(s): WA State Dairy Center, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, (425) 672-0687, on August 7, 2007, at 10:30 a.m.; and at the WA State Department of Agriculture Building, 21 North First Avenue, 2nd Floor Conference Room, Yakima, WA 98902, (509) 225-2650, on August 8, 2007, at 10:30 a.m.

Date of Intended Adoption: September 26, 2007.

Submit Written Comments to: Steve Matzen, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, e-mail celeste@havemilk.com, fax (425) 672-0674, by August 17, 2007, 4:30 p.m. at agency.

Assistance for Persons with Disabilities: Contact Virginia Walsh by August 1, 2007, TDD (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule amendment is to increase the amount of the maximum authorized assessment rate on milk produced in Washington state as allowed under RCW 15.44.080(2) by adding an additional assessment of three-eighths (0.00375) of one cent per hundredweight. This increased assessment is needed to more effectively carry out the powers, duties, and purposes of the Washington dairy products commission under RCW 15.44.060 and 15.44.080(2). These activities include the following: To participate in federal and state agency hearings, meetings and other proceedings in relation to the regulation of the production, manufacture, distribution, sale or use of dairy products; to develop and engage in research for developing better and more efficient production, marketing, and utilization of agricultural products; and, to protect the interest of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality.

Statutory Authority for Adoption: RCW 15.44.060, 15.44.130, 15.44.080(2).

Statute Being Implemented: RCW 15.44.080.

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: Adoption of the rule is subject to approval by the commission following hearings conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The increase in the current assessment level will not exceed the maximum authorized assessment rate as established by producers at the most recent referendum (1.0% of the class I price for 3.5% butterfat milk conducted March 24, 1983).

Name of Proponent: Washington state dairy products commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Steve Matzen, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, (425) 672-0687; and Enforcement: Celeste Piette, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, (425) 672-0687.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Overview of Analysis: This study analyzes the compliance costs associated with a proposed rule that will increase the current assessment rate on milk. The purpose of this analysis is to comply with state legislative requirements that each prospective rule be evaluated to minimize potential disproportionate impacts on small business.

Analysis Results: As shown in Table 2 of the report, the compliance cost for a representative small business over the analysis period is estimated to be approximately $.03 per $100.00 of sales. The compliance cost for a large business over the same time period is estimated to be $.03 per $100.00 of sales. Therefore, the compliance cost burden, from rule revisions, is equal for both large and small business, and no disproportionate compliance burden exists for small businesses. In addition, the compliance cost burden for producers, based on farm production, is in proportion to the level of production of each producer as shown in Table 3. The large producers/businesses will pay more based on their higher production levels while the small producers/businesses will pay proportionally less. There will be no additional equipment, supplies, labor, or administrative costs imposed on dairy producers as well as indirectly affected businesses. Presently assessments are being collected and staff is in place to compute and satisfy all reporting requirements. Affected parties are currently in compliance with the existing requirements.

Mitigation: As indicated above, the proposed rule revisions are not anticipated to result in a disproportionate compliance cost burden for small Washington businesses required to pay the assessment. As a result, mitigating measures are not required to reduce impacts on small businesses affected by the rule revisions.

I. Proposed Rule Revisions: This study analyzes the compliance costs associated with a proposed assessment increase and estimates whether the revised rule would place a disproportionate economic burden on Washington small businesses. The purpose of this analysis is to comply with state legislative requirements that each prospective rule be evaluated to minimize potential disproportionate impacts on small business.

A. Regulatory Context:

Regulatory Fairness Act: The purpose of this study is to ensure that the proposed revisions to WAC 142-30-010 comply with the Regulatory Fairness Act (chapter 19.85 RCW). The Regulatory Fairness Act (RFA) requires that rules promulgated by state agencies under the Administrative Procedure Act be examined for their impact on small businesses (fifty or fewer employees). The purpose of the RFA is to ensure that proposed rules do not place a disproportionate burden on small businesses relative to the burden they place on large businesses. RFA compliance analysis must be documented in a small business economic impact statement (SBEIS). This SBEIS documents the analysis and results for proposed revisions to WAC 142-30-010. Appendix A contains additional discussion of RFA requirements.

B. Summary of Rule Revisions: Chapter 15.44 RCW grants the Washington state dairy products commission (WDPC) the authority to increase or decrease the current assessment on milk provided that the current level of assessment established does not exceed the maximum authorized assessment rate established by producers in the most recent referendum. The maximum assessment rate was established

by producer referendum on March 24, 1983 (1% of the class I price for 3.5% butterfat milk).

The purpose of this rule amendment is to increase the amount of the maximum authorized assessment rate on milk produced in Washington state as allowed under RCW 15.44.080(2) by adding an additional assessment of three-eighths (0.00375) of one cent per hundredweight. This increased assessment is needed to more effectively carry out the powers, duties, and purposes of the Washington dairy products commission under RCW 15.44.060 and 15.44.080(2). These activities include the following: To participate in federal and state agency hearings, meetings and other proceedings in relation to the regulation of the production, manufacture, distribution, sale or use of dairy products; to develop and engage in research for developing better and more efficient production, marketing, and utilization of agricultural products; and, to protect the interests of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality.

C. Potentially Affected Industries: Compliance costs will be incurred by businesses operating within the agricultural production of livestock. Primary impacts would be borne by dairy producers/farms. These businesses are involved in the production of milk.

Dairy producers are categorized in the North American Industry Classification System (NAICS) and the code for this industry is 112120. According to Washington state employment security department (ESD) data from 4th quarter 2006 there are 396 business establishments in this NAICS classification within Washington.[1] Of these establishments **388** are classified as small businesses with fifty or fewer employees. **2%** would be classified as large businesses. In addition to dairy farms which bear the primary impact of the rule revision, a few related businesses may be indirectly affected (see Appendix B for full industry list). These businesses include producer handlers, processors/manufacturers, cooperatives or dealer/handlers of dairy products (**only** those businesses purchasing milk directly from the dairy producer).

[1] These businesses include those with employment covered by unemployment compensation programs. Consistent with intent of RFA, only Washington businesses are reported and analyzed in this study.

II. Approach to Estimating Differential Economic Impacts on Small vs. Large Businesses: The WDPC determined that an analysis of compliance costs should be conducted for the proposed rule revisions and documented in an SBEIS, consistent with chapter 19.85 RCW. An SBEIS analysis was performed for the rule revisions and is described below.

A. Likely Industry Response to Proposed Rule: The first step was to anticipate how the industry would respond to the rule revisions. The Washington dairy products commission coordinated a series of informational meetings to provide dairy farmers an opportunity to provide input and voice their opinions on the proposed assessment increase. Dairy commission representatives and board members provided background information on the proposal and answered producer questions. The producer input was overwhelmingly supportive at the informational meetings; however, some producers questioned whether the amount of the requested increase was enough.

B. Data from Small and Large Businesses in Affected Industries: Once affected industries were identified data was computed to estimate impacts. Data was provided through the following sources: WDPC, Washington state employment security department, National Agricultural Statistics Service (NASS), and the United States Department of Agriculture AMS, Dairy Division. WDPC provided a variety of information, including related background information on the proposed rule, current requirements for assessment reporting and calculation and stakeholder information. Employment security provided employment information by business within the designated NAICS codes. NASS provided average milk production per cow for Washington and percent of production by group size. United States Department of Agriculture AMS, Dairy Division provided milk-pricing information.

C. Differential Compliance Cost for Small Versus Large Businesses: To differentiate between impacts on small versus large businesses, compliance costs were evaluated per one hundred dollars of sales. In addition, costs were evaluated for various levels of farm production within the affected industry. These costs were based on the average cow production for Washington state as well as various herd sizes. Comparison of compliance costs for various levels of farm production as well as per hundred dollars of sales were used to determine whether a disproportionate economic burden would exist for small businesses and to estimate the magnitude of any disproportionate burden.

III. Analysis Results:

A. Overview: Over the analysis period, the proposed rule revisions are not anticipated to have a disproportionate economic impact on small businesses in the affected industry. As Table 2 shows, cost impacts of proposed rule revisions are equal for both small and large businesses. The cost burden to businesses both small and large is the amount of the proposed assessment increase .00375 (three-eighths of one cent) per hundredweight. In addition, the compliance cost burden for businesses/producers, based on farm production, is in proportion to the level of production of each business/producer. The large businesses/producers will pay more based on their higher production levels while the small businesses/producers will pay proportionally less. For those businesses purchasing milk from the dairy producer (indirectly affected establishments) there will be no additional equipment, supplies, labor, or administrative costs. Presently assessments are being collected and staff is in place to compute and satisfy all reporting requirements. These indirectly affected businesses are currently in compliance with the existing requirements. A discussion of analysis methodology and assumptions is contained in Appendix A.

The analysis period for the study was chosen to be one year. Estimates for the uniform statistical milk price are forecasted out through December 2007. All businesses bear the same cost burden for the study. Compliance with the proposed rule is not likely to cause a substantive loss of sales revenues for large or small businesses.

B. Disproportionate Economic Burden Evaluation: As shown in Table 2, the compliance cost for a representative small business over the analysis period is estimated to be approximately $.03 per $100 of sales. The compliance cost

for a large business over the same time period is estimated to be approximately $.03 per $100 of sales. Therefore, the compliance cost burden is equal for both small and large businesses, and no disproportionate compliance burden exists for small businesses. 2% of the farms would be classified as large businesses in Washington. All dairy farmers regardless of business size receive the same minimum uniform price for deliveries of milk to the federal order market. All Washington businesses/producers are part of the Pacific Northwest Order No. 124. The statistical uniform price is the Class III price, plus the producer price differential. This reflects a weighted average reflecting not only class prices, but the proportion of milk under the order in each class. These prices are announced on the 14th of each month. The only cost to businesses/producers is the amount of the proposed assessment increase itself ($.00375). The amended rule will impose no additional equipment, supplies, labor, or administrative costs on small or large dairy businesses/producers to comply with the rule. The assessment is collected from the first handler of the milk. In addition, the compliance cost burden for businesses/producers, based on farm production, is in proportion to the level of production of each business/producer as shown in Table 3. The large producers/businesses will pay more based on their higher production levels while the small producers/businesses will pay proportionally less.

Those businesses purchasing milk from dairy producers (indirectly affected establishments) will realize no additional equipment, supplies, labor, or administrative costs. Presently assessments are being collected and staff is in place to compute and satisfy all reporting requirements. These indirectly affected businesses are currently in compliance with the existing requirements.

IV. Mitigation: As the above analysis demonstrates, the proposed rule amendment will not result in a disproportionate impact on small Washington businesses. As a result, mitigating measures are not required to reduce impacts on small businesses affected by the proposed rule.

Appendix A: Background Information and Assumptions:

Regulatory Fairness Act: The RFA (chapter 19.85 RCW) requires that rules promulgated by state agencies under the Administrative Procedure Act be examined for their impact on small businesses. The purpose of the RFA is to ensure that proposed rules do not place a disproportionately high burden on small businesses, relative to the burden they place on large businesses. A small business is defined by the RFA as an independent, for-profit Washington business entity with fifty or fewer employees, RCW 19.85.020 (1).

The RFA requires all rules that impose "more than minor costs" on industry businesses be evaluated and, if necessary, altered to minimize their impact on small business. An analysis of compliance costs must be completed and documented in a small business economic impact statement (SBEIS) if: (1) A proposed rule meets or exceeds this "more than minor" criterion, or if (2) the joint administrative rules review committee (JARRC) requests an SBEIS for a proposed rule. A state agency may independently decide to complete an SBEIS.

The RFA establishes specific analyses and necessary elements for inclusion in an SBEIS. Among other requirements, the SBEIS must include a brief description of the reporting, recordkeeping, and other compliance requirements of the rule, a description of the professional services needed by small businesses to comply with the rule, an analysis of the compliance cost for small business, and a comparison of the compliance cost for small businesses and the 10% of businesses that are the largest businesses required to comply with the proposed rule. A basis of comparison must be chosen from: Cost per employee, cost per hour of labor, cost per $100 of sales, or any combination of these three measures.

Based upon the extent any disproportionate impact is anticipated to occur for small businesses from the proposed rule, the agency must reduce the costs on small businesses (where legal and feasible in meeting the stated objective of the statutes upon which the rule is based). Mitigation can be accomplished in a number of ways, such as establishing differing compliance or reporting requirements for small businesses, clarifying or simplifying the compliance requirements for small businesses, delaying compliance timetables, exempting small businesses from any or all of the rule requirements, or similar measures.

Conservative Approach: The analysis undertaken to estimate compliance cost impacts was generally "conservative" in its approach. Specific assumptions implementing this conservative approach included (but were not limited to):

- **Timing:** Affected industries will be required to comply with the assessment increase January 1, 2008, when the rule takes effect.
- **Public and Industry Involvement:** Potentially affected businesses, including small businesses, were involved throughout the rule-making process. A number of informational meetings provided opportunities for businesses of all sizes to provide input, as described below.

Affected businesses will have the opportunity to testify at the legislative hearings to be held August 7 and 8, 2007.

Dairy producers were given the opportunity to attend informational meetings where WDPC explained the proposed assessment increase. Background information was given regarding the proposed assessment increase and producer input was gathered and questions addressed. Additional informational letters were sent to dairy producers and affected businesses. The proposed assessment increase was initiated by a request from the Washington State Dairy Federation, a group representing producers throughout the state.

- **Data Characteristics:** As noted in the body of the SBEIS, data used to estimate compliance costs for affected businesses came from the following sources: WDPC, ESD, National Agricultural Statistics Service (NASS), and the U.S. Department of Agriculture AMS, Dairy Division.

Appendix B: SIC Codes for Dairy-Related Industries
List of Potentially Affected Industries

NAICS	Industry/NAICS Category
	Direct Impacts
112120	Dairy cattle and milk production
	Indirect Impacts
311512	Creamery butter manufacturing
311513	Cheese manufacturing
311514	Dry, condensed, evaporated dairy products
311520	Ice cream and frozen dessert manufacturing
311511	Fluid milk manufacturing
311510	Dairy product (ex. Frozen) manufacturing
422430	Dairy product (except dried or canned)

Appendix C: Glossary of Abbreviations

Abbreviation	Abbreviated Term
JARRC	Joint Administrative Rules Review Committee
RCW	Revised Code of Washington
RFA	Regulatory Fairness Act
Abbreviation	**Abbreviated Term**
SBEIS	Small Business Economic Impact Statement
NAICS	North American Industry Classification System
WDPC	Washington Dairy Products Commission
WAC	Washington Administrative Code
ESD	Employment Security Department
NASS	National Agriculture Statistics Service
WSDA	Washington State Department of Agriculture

A copy of the statement may be obtained by writing to Steve Matzen, Washington Dairy Products Commission, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, phone (425) 672-0687, fax (425) 672-0674.

Table 1
Cost of Compliance for Small and Large Businesses
Washington Dairy Farmers/Pacific Northwest Order No. 124

Month and Year	Statistical Uniform Price Per CWT	Producer Lbs. Equivalent to $100 in sales	Current Assessment Rate $.10625CWT - Producer Cost per $100 sales	Proposed Assessment Rate $.11CWT - Producer Cost per $100 sales	Cost Difference
Jan-06	**$ 13.44**	744	0.79	0.82	0.03
Feb-06	**12.60**	794	0.84	0.87	0.03
Mar-06	**11.86**	843	0.90	0.93	0.03
Apr-06	**11.35**	881	0.94	0.97	0.03
May-06	**11.30**	885	0.94	0.97	0.03
Jun-06	**11.30**	885	0.94	0.97	0.03
Jul-06	**11.29**	886	0.94	0.97	0.03
Aug-06	**11.48**	871	0.93	0.96	0.03
Sep-06	**11.89**	841	0.89	0.93	0.03
Oct-06	**12.52**	799	0.85	0.88	0.03
Nov-06	**12.85**	778	0.83	0.86	0.03
Dec-06	**12.99**	770	0.82	0.85	0.03
Avg.	$12.07	831	$0.88	$0.91	$0.03

Table 2
Estimated Cost of Compliance for Small and Large Businesses
Washington Dairy Farmers/Pacific Northwest Order No. 124

Month and Year	Statistical Uniform Price Per CWT*	Producer Lbs. Equivalent to $100 in sales	Current Assessment Rate $.10625CWT - Producer Cost per $100 sales	Proposed Assessment Rate $.11 CWT - Producer Cost per $100 sales	Cost Difference
Jan-07	**13.63**	734	0.78	0.81	0.03

Month and Year	Statistical Uniform Price Per CWT*	Producer Lbs. Equivalent to $100 in sales	Current Assessment Rate $.10625CWT - Producer Cost per $100 sales	Proposed Assessment Rate $.11 CWT - Producer Cost per $100 sales	Cost Difference
Feb-07	**13.81**	724	0.77	0.80	0.03
Mar-07	**14.84**	674	0.72	0.74	0.03
Apr-07	**16.24**	616	0.65	0.68	0.02
May-07	**17.87**	560	0.59	0.62	0.02
Jun-07	20.12	497	0.53	0.55	0.02
Jul-07	21.46	466	0.50	0.51	0.02
Aug-07	21.35	468	0.50	0.52	0.02
Sep-07	21.48	466	0.49	0.51	0.02
Oct-07	20.80	481	0.51	0.53	0.02
Nov-07	20.20	495	0.53	0.54	0.02
Dec-07	20.42	490	0.52	0.54	0.02
Avg.	$18.52	556	$0.59	$0.61	$0.02

BOLD = Actual Announced Federal Order Prices

Federal Order: Classifies milk according to its use, establishes minimum class prices monthly, determines a uniform price monthly, conducts impartial audits, verifies weights and tests milk, and provides market information.

Class III Milk: All skim milk and butterfat used to produce cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled; plastic cream; anhydrous milkfat; and butteroil.

Class III Price: The Class III price is based on the NASS surveys for cheese, butter and whey. The price is announced on or before the 5th day of the following month.

Producer Price and Statistical Uniform Price: The statistical uniform price is the Class III price, plus the producer price differential. This value represents the minimum price received by producers and cooperative associations for deliveries to a federal order market. This reflects a weighted average reflecting not only class prices, but the proportion of milk under the order in each class. These prices are announced on or before the 14th of each month.

*Estimated statistical uniform price based on futures market-data obtained from USDA AMS, Dairy Division Federal Orders 124.
Data only forecasted out through December 2007.

Table 3
Annual Production and Associated Costs of Proposed Rule
Various Herd Sizes WA 2007

Herd Size	Annual Avg Milk Produced Per Cow (Lbs) 2006 WA*	Total Annual Avg Farm Production (Lbs)	Current Assessment Rate $.10625CWT - Annual Producer Cost	Proposed Assessment Rate $.11 CWT - Annual Producer Cost	Total Annual Cost Difference
25	23,055	576,375	$612.40	$634.01	$21.61
50	23,055	1,152,750	1,224.80	1,268.03	43.23
75	23,055	1,729,125	1,837.20	1,902.04	64.84
100	23,055	2,305,500	2,449.59	2,536.05	86.46
125	23,055	2,881,875	3,061.99	3,170.06	108.07
150	23,055	3,458,250	3,674.39	3,804.08	129.68
175	23,055	4,034,625	4,286.79	4,438.09	151.30
200	23,055	4,611,000	4,899.19	5,072.10	172.91
225	23,055	5,187,375	5,511.59	5,706.11	194.53
250	23,055	5,763,750	6,123.98	6,340.13	216.14
275	23,055	6,340,125	6,736.38	6,974.14	237.75
300	23,055	6,916,500	7,348.78	7,608.15	259.37
325	23,055	7,492,875	7,961.18	8,242.16	280.98
350	23,055	8,069,250	8,573.58	8,876.18	302.60
375	23,055	8,645,625	9,185.98	9,510.19	324.21
400	23,055	9,222,000	9,798.38	10,144.20	345.83

Herd Size	Annual Avg Milk Produced Per Cow (Lbs) 2006 WA*	Total Annual Avg Farm Production (Lbs)	Current Assessment Rate $.10625CWT - Annual Producer Cost	Proposed Assessment Rate $.11 CWT - Annual Producer Cost	Total Annual Cost Difference
425	23,055	9,798,375	10,410.77	10,778.21	367.44
450	23,055	10,374,750	11,023.17	11,412.23	389.05
475	23,055	10,951,125	11,635.57	12,046.24	410.67
500	23,055	11,527,500	12,247.97	12,680.25	432.28
525	23,055	12,103,875	12,860.37	13,314.26	453.90
550	23,055	12,680,250	13,472.77	13,948.28	475.51
575	23,055	13,256,625	14,085.16	14,582.29	497.12
600	23,055	13,833,000	14,697.56	15,216.30	518.74
625	23,055	14,409,375	15,309.96	15,850.31	540.35
650	23,055	14,985,750	15,922.36	16,484.33	561.97
675	23,055	15,562,125	16,534.76	17,118.34	583.58
700	23,055	16,138,500	17,147.16	17,752.35	605.19
725	23,055	16,714,875	17,759.55	18,386.36	626.81
750	23,055	17,291,250	18,371.95	19,020.38	648.42
775	23,055	17,867,625	18,984.35	19,654.39	670.04
800	23,055	18,444,000	19,596.75	20,288.40	691.65
825	23,055	19,020,375	20,209.15	20,922.41	713.26
850	23,055	19,596,750	20,821.55	21,556.43	734.88
875	23,055	20,173,125	21,433.95	22,190.44	756.49
900	23,055	20,749,500	22,046.34	22,824.45	778.11
925	23,055	21,325,875	22,658.74	23,458.46	799.72
950	23,055	21,902,250	23,271.14	24,092.48	821.33
975	23,055	22,478,625	23,883.54	24,726.49	842.95
1000	23,055	23,055,000	24,495.94	25,360.50	864.56
1500	23,055	34,582,500	36,743.91	38,040.75	1,296.84
2000	23,055	46,110,000	48,991.88	50,721.00	1,729.13
2500	23,055	57,637,500	61,239.84	63,401.25	2,161.41
3000	23,055	69,165,000	73,487.81	76,081.50	2,593.69
3500	23,055	80,692,500	85,735.78	88,761.75	3,025.97
4000	23,055	92,220,000	97,983.75	101,442.00	3,458.25
4500	23,055	103,747,500	110,231.72	114,122.25	3,890.53
5000	23,055	115,275,000	122,479.69	126,802.50	4,322.81

*annual avg milk produced per cow-data obtained from NASS

A copy of the statement may be obtained by contacting Steve Matzen, Washington Dairy Products Commission, 4201 198th Street S.W., Suite 101, Lynnwood, WA 98036, phone (425) 672-0687, fax (425) 672-0674, e-mail smatzen @havemilk.com.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington dairy products commission is not a listed agency in RCW 34.05.328 (5)(a)(i).

June 26, 2007
Steve Matzen
General Manager

AMENDATORY SECTION (Amending WSR 01-21-054, filed 10/16/01, effective 1/1/02)

WAC 142-30-010 Declaration of purpose—Effective date. To effectuate the purposes of chapter 15.44 RCW there is hereby levied upon all milk produced in this state an assessment of:

(1) 0.75 percent of the Class I price for 3.5% butterfat milk, as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; or

(2) While the Federal Dairy and Tobacco Adjustment Act of 1983, Title I, Subtitle B-Dairy Promotion Program, is in effect:

(a) An assessment rate not to exceed the rate approved at the most recent referendum that would achieve a ten cent per hundredweight credit to local, state or regional promotion

organizations provided by Title I, Subtitle B of the Federal Dairy and Tobacco Adjustment Act of 1983; and

(b) An additional assessment of .00625 (five-eights of one cent) per hundredweight; and

(3) An additional assessment of .00375 (three-eights of one cent) per hundredweight as allowed under RCW 15.44.080(2) and the referendum dated March 24, 1983.

WSR 07-14-059
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 29, 2007, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-02-005.

Title of Rule and Other Identifying Information: WAC 308-124H-039, changes and updates in approved courses.

Hearing Location(s): 2000 4th Avenue, 2nd Floor Conference Room, Olympia, WA, on August 8, 2007, at 10:00 a.m.

Date of Intended Adoption: September 18, 2007, or after.

Submit Written Comments to: Jerry McDonald, P.O. Box 2445, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Marjorie Hatfield by August 1, 2007, TTY (360) 664-8885 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ensure that course material contain up-to-date information.

Reasons Supporting Proposal: The practice of real estate is very dynamic. Course information and material for continuing education must be up to date to be meaningful.

Statutory Authority for Adoption: RCW 18.85.040 (1) and (4).

Statute Being Implemented: RCW 18.85.040(4).

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact on business enterprises - only affect individual licensees that are required to take continuing education to meet the renewal requirements.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes have no financial impact on the department.

June 27, 2007
Jerry McDonald
Assistant Administrator

AMENDATORY SECTION (Amending WSR 00-08-035, filed 3/29/00, effective 7/1/00)

WAC 308-124H-039 Changes and updates in approved courses. (1) Course materials shall be updated no later than thirty days after the effective date of a change in federal, state, or local statutes or rules. Course materials shall also be updated no later than thirty days after changes in forms, procedures or other revisions to the practice of real estate which affect the validity or accuracy of the course material or instruction.

(2) ((~~Any change in course content or material other than updating for statute or rule changes, shall be submitted to the department prior to the date of using the changed course content material, for approval by the director.~~

~~(3)~~)) Changes in course instructors may be made only if the substitute instructors are currently approved to teach the topic area pursuant to chapter 308-124H WAC.

WSR 07-14-060
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 29, 2007, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-02-006.

Title of Rule and Other Identifying Information: WAC 308-124H-013 Application process for previously approved courses.

Hearing Location(s): 2000 4th Avenue, 2nd Floor Conference Room, Olympia, WA, on August 7, 2007, at 1:00 p.m.

Date of Intended Adoption: September 18, 2007, or after.

Submit Written Comments to: Jerry McDonald, P.O. Box 2445, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Marjorie Hatfield by August 1, 2007, TTY (360) 664-8885 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ensure that course material contain up-to-date information.

Reasons Supporting Proposal: The practice of real estate is very dynamic. Course information and material for continuing education must be up to date to be meaningful.

Statutory Authority for Adoption: RCW 18.85.040 (1) and (4).

Statute Being Implemented: RCW 18.85.040(4).

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact on business

enterprises - only affect individual licensees that are required to take continuing education to meet the renewal requirements.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes have no financial impact on the department.

June 27, 2007
Jerry McDonald
Assistant Administrator

AMENDATORY SECTION (Amending WSR 00-08-035, filed 3/29/00, effective 7/1/00)

WAC 308-124H-013 Application process for previously approved courses. (1) If there are no changes for a previously approved course in the course content or in the original course approval application ((~~for a previously approved course~~)) or WAC 308-124H-025 affecting the topic areas or criteria for approval, the course will be approved upon receipt of a course renewal application and payment of the required fee for one renewal cycle only.

(2) If there are changes in course content or in the original course approval application for a previously approved course, other than updating for changes required by WAC 308-124H-039, the application will not be processed as a renewal, and will require completion of a course approval application and payment of the required fee.

(3) If a course renewal application or a course approval application is submitted at least thirty days prior to the current course expiration date, the previous course approval shall remain in effect until action is taken by the director.

WSR 07-14-061
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 29, 2007, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-02-007.

Title of Rule and Other Identifying Information: WAC 308-124H-025 General requirements for course approval.

Hearing Location(s): 2000 4th Avenue, 2nd Floor Conference Room, Olympia, WA, on August 13, 2007, at 10:00 a.m.

Date of Intended Adoption: September 18, 2007, or after.

Submit Written Comments to: Jerry McDonald, P.O. Box 2445, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Marjorie Hatfield by August 1, 2007, TTY (360) 664-8885 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Reorganize for easier reading; (2) ensure that courses contain up-to-date information; and (3) ensure current topic areas are related to the practice of real estate.

Reasons Supporting Proposal: Update topic areas, ensure that the topic areas are related to the practice of real estate, clarification of courses that will not be approved for continuing education and better organization to find approved topic areas.

Statutory Authority for Adoption: RCW 18.85.040 (1) and (4).

Statute Being Implemented: RCW 18.85.040(4).

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact on business enterprises - only affect individual licensees that are required to take continuing education to meet the renewal requirements.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes have no financial impact on the department.

June 27, 2007
Jerry McDonald
Assistant Administrator

AMENDATORY SECTION (Amending WSR 03-02-001, filed 12/19/02, effective 1/19/03)

WAC 308-124H-025 General requirements for course approval. Courses shall meet the following requirements:

(1) Be offered by a private entity approved by the director to operate as a school;

(2) Be offered by a tax-supported, public technical or community college or other institution of higher learning that certifies clock hours as indicated in RCW 18.85.010(9), consistent with the approval standards prescribed by the director and this chapter;

(3) Be offered by the Washington real estate commission;

(4) Have a minimum of three hours of course work or instruction for the student. A clock-hour is a period of fifty minutes of actual instruction;

(5) Provide practical information related to the practice of real estate in any of the following real estate topic areas: ((~~Fundamentals, practices, principles/essentials, real estate law, legal aspects, brokerage management, business management, taxation, appraisal, evaluating real estate and business opportunities, property management and leasing, construction and land development, ethics and standards of practice, real estate closing practices, current trends and issues, finance, hazardous waste and other environmental issues, commercial, real estate sales and marketing, instructor development or the use of computers and/or other technologies as applied to the practice of real estate;~~

~~(6)~~)) (a) Department prescribed curricula:

(i) Fundamentals

(ii) Practices

(A) Residential
(B) Commercial
(iii) Real estate law
(iv) Brokerage management
(v) Business management
(vi) Core curriculum
(A) Residential
(B) Commercial
(C) Property management
(b) Open curricula:
(i) Legal aspects
(ii) Taxation
(iii) Appraisal
(iv) Evaluating real estate and business opportunities
(v) Property management and leasing
(vi) Construction and land development
(vii) Ethics and standards of practice
(viii) Real estate closing practices
(ix) Current trends and issues
(x) Principles/essentials
(xi) Finance
(xii) Hazardous waste and other environmental issues
(xiii) Commercial
(xiv) Real estate sales and marketing
(xv) Instructor development
(xvi) Consumer protection
(xvii) Cross cultural communication
(xviii) Advanced management practices
(xix) Use of computers and/or other technologies as applied to the practice of real estate

(6) Be under the supervision of an instructor approved to teach the topic area, who shall, at a minimum, be available to respond to specific questions from students on an immediate or reasonably delayed basis;

(7) The following types of courses will not be approved for clock hours: ((~~Course offerings in mechanical office and business skills, such as, keyboarding, speed-reading, memory improvement, language, and report writing; orientation courses for licensees, such as those offered by trade associations; and personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business. Clock hours will not be awarded for any course time devoted to meals or transportation;~~

~~(8)~~)) (a) Mechanical office and business skills, such as, keyboarding, speed-reading, memory improvement, grammar, and report writing;

(b) Standardized software programs such as word processing, e-mail, spreadsheets or data bases; an example: A course using spreadsheet program to demonstrate investment analysis would be acceptable, but a course teaching how to use a spreadsheet would not be acceptable;

(c) Orientation courses for licensees, such as those offered by trade associations;

(d) Personal and sales motivation courses or sales meetings held in conjunction with a licensee's general business;

(e) Courses that are designed or developed to serve other professions, unless each component of the curriculum and content specifically shows how a real estate licensee can utilize the information in the practice of real estate;

(f) Personal finance, etiquette, or motivational type courses;

(g) Courses that are designed to promote or offer to sell specific products or services to real estate licensees such as warranty programs, client/customer data base systems, software programs or other devices. Services or products can be offered during nonclock hour time, such as breaks or lunch time. Letterhead, logos, company names or other similar markings by itself, on course material are not considered promotional;

(h) Clock hours will not be awarded for any course time devoted to meals or transportation;

(8) Courses of thirty clock hours or more which are submitted for approval shall include a comprehensive examination(s) and answer key(s) of no fewer than three questions per clock hour with a minimum of ninety questions, and a requirement of passing course grade of at least seventy percent; essay question examination keys shall identify the material to be tested and the points assigned for each question;

(9) Include textbook or instructional materials approved by the director, which shall be kept accurate and current;

(10) Not have a title which misleads the public as to the subject matter of the course;

(11) The provider's course application shall identify learning objectives and demonstrate how these are related to the practice of real estate;

(12) Courses offering the prescribed core curriculum shall meet the requirements of WAC 308-124A-605;

(13) Only primary providers shall be approved to teach the prescribed core curriculum; and

(14) Course providers offering core curriculum within a course exceeding three clock hours must clearly indicate in the application for approval where the core curriculum elements are met in the course.

WSR 07-14-062

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 29, 2007, 9:13 a.m.]

The department is formally withdrawing its proposed new section regarding in-state movement of livestock. The new section was proposed in WSR 07-10-085 on May 1, 2007. Public hearings to accept comments on the new section were held on June 12 and 14, 2007. After reviewing public comments on the proposed new rule, the department has decided to withdraw the proposal.

Leonard E. Eldridge
State Veterinarian

WSR 07-14-082
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed June 29, 2007, 1:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-09-084.

Title of Rule and Other Identifying Information: Chapter 388-76 WAC, Adult family homes minimum licensing requirements.

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 September 4, 2007, at 10:00 a.m.; and at the Division of Developmental Disabilities, Region 1 Headquarters, 1611 West Indiana Avenue, Spokane, WA 99205-4221, on September 6, 2007, at 10:00 a.m.

Date of Intended Adoption: Not before September 7, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, 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 September 6, 2007.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS Rules Consultant, by August 28, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules are to:

(1) Comply with the governor's executive order 05-03 plain talk;

(2) Simplify language, eliminate the question and answer format, reorganize and renumber the chapter so that the requirements are clearer for adult family home providers to understand;

(3) Clarify issues that have been brought to the attention of the department; and

(4) Update rules to comply with statute changes.

Reasons Supporting Proposal: These changes make the rule:

(1) Easier to read and understand and enforce;

(2) Easier to find information by changing the format;

(3) Easier to comply with by clarifying issues that have been brought to the attention of the department; and

(4) Up-to-date with statute changes.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapters 70.128 and 74.34 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: Roger Woodside, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-3204; Implementation and Enforcement: Pat Bossert, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCS analyzed the proposed rule amendments and concludes that costs to small businesses will be minor, if there are any costs at all. The primary purpose of the proposed amendments are to clarify preexisting requirements and to update existing rules to conform to changes in procedures, Washington state statutes, or rules of other Washington state agencies. As a result, the preparation of a small business economic impact statement is not required. A copy of the statement may be obtained by contacting Roger Woodside, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail WoodsR@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Roger Woodside, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail WoodsR@dshs.wa.gov.

June 22, 2007
Stephanie E. Schiller
Rules Coordinator

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 07-16 issue of the Register.

WSR 07-14-089
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed June 29, 2007, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-057.

Title of Rule and Other Identifying Information: WAC 388-535-1065 Coverage limits for dental-related services provided under the General assistance—Unemployable (GA-U) and Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) programs.

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 August 7, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 8, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, 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 August 7, 2007.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS Rules Consultant, by July 31, 2007,

TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is striking "for clients through age twenty" that was inadvertently added in WAC 388-535-1065(4). The corrected rule will read: "Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC."

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050 and 74.08.090.

Statute Being Implemented: RCW 74.04.050 and 74.08.090.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Dr. John Davis, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1748.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not create more than minor costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department has determined that the proposed rule does not meet the definition of "significant legislative rule" under RCW 34.05.328, and therefore a cost-benefit analysis is not required. A preliminary cost-benefit analysis may be obtained by contacting Dr. John Davis, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1748, TYY/TDD 1-800-848-5429, fax (360) 586-1590, e-mail davisjd@dshs.wa.gov.

June 27, 2007
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-06-041, filed 3/1/07, effective 4/1/07)

WAC 388-535-1065 Coverage limits for dental-related services provided under the GA-U and ADATSA programs. (1) Clients who receive medical care services under the following programs may receive the dental-related services described in this section:

(a) General assistance unemployable (GA-U); and

(b) Alcohol and drug abuse treatment and support act (ADATSA).

(2) The department covers the following dental-related services for a client eligible under the GA-U or ADATSA program:

(a) Services provided only as part of dental treatment for:

(i) Limited oral evaluation;

(ii) Periapical or bite-wing radiographs that are medically necessary to diagnose only the client's chief complaint;

(iii) Palliative treatment to relieve dental pain;

(iv) Pulpal debridement to relieve dental pain; or

(v) Endodontic (root canal only) treatment for maxillary and mandibular anterior teeth (cuspids and incisors) when prior authorized).

(b) Tooth extraction when at least one of the following apply:

(i) The tooth has a radiograph apical lesion;

(ii) The tooth is endodontically involved, infected, or abscessed;

(iii) The tooth is not restorable; or

(iv) The tooth is not periodontally stable.

(3) Tooth extractions require prior authorization when:

(i) The extraction of a tooth or teeth results in the client becoming edentulous in the maxillary arch or mandibular arch; and

(ii) A full mouth extraction is necessary because of radiation therapy for cancer of the head and neck.

(4) Each dental-related procedure described under this section is subject to the coverage limitations listed in chapter 388-535 WAC ((~~for clients through age twenty~~)).

(5) The department does not cover any dental-related services not listed in this section for clients eligible under the GA-U or ADATSA program, including any type of removable prosthesis (denture).

WSR 07-14-101
PROPOSED RULES
COLUMBIA RIVER GORGE COMMISSION
[Filed July 2, 2007, 9:30 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Commission Rule 350-81, Land Use Ordinance.

Hearing Location(s): Hood River County Administration Building, 601 State Street, Hood River, OR, on September 11, 2007, at 9:00 a.m. (Note this is the beginning of the commission's regular meeting. The actual hearing time may be later).

Date of Intended Adoption: September 11, 2007.

Submit Written Comments to: Jill Arens, Executive Director, Columbia River Gorge Commission, P.O. Box 730, White Salmon, WA 98672, e-mail crgc@gorge.net, fax (509) 493-2229, by September 10, 2007.

Assistance for Persons with Disabilities: Contact Nancy Andring by September 4, 2007, (509) 493-3323.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to put into effect recent amendments to the management plan for the Columbia River Gorge Commission. This rule making will incorporate the recent amendments into the commission's land use ordinance for scenic area land within Klickitat County. The commission is not proposing any substantive changes the provisions already adopted into the management plan.

Reasons Supporting Proposal: The land use ordinance must be amended to make the plan amendments effective.

Statutory Authority for Adoption: 16 U.S.C. 544e(c), 544f(1); RCW 434.97.015; ORS 196.150.

Statute Being Implemented: 16 U.S.C. 544e(c), 544f(1); RCW 434.97.015; ORS 196.150.

Rule is necessary because of federal law, see above federal law citations.

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jill Arens, Executive Director, Columbia River Gorge Commission, White Salmon, Washington, (509) 493-3323.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is exempt pursuant to RCW 19.85.025(3) and 34.05.310 (4)(c) and (e).

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt pursuant to RCW 34.05.328 (5)(b)(iii) and (v).

June 27, 2007
Nancy Andring
Rules Coordinator

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 07-16 issue of the Register.

WSR 07-14-102
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed July 2, 2007, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-06-082.

Title of Rule and Other Identifying Information: WAC 180-18-030, 180-18-040, and 180-18-050.

Hearing Location(s): Wenatchee ESD, 430 Old Station Road, P.O. Box 1847, Wenatchee, 98801, on September 18, 2007, at 10:00 a.m.

Date of Intended Adoption: September 18, 2007.

Submit Written Comments to: Edie Harding, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail edie.harding@k12.wa.us, fax (360) 586-2357, by September 18, 2007.

Assistance for Persons with Disabilities: Contact Loy McColm by September 11, 2007, (360) 725-6027.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Technical amendments necessitated to note updated WAC references.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 28A.150.220.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Edith Harding, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

June 29, 2007
Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 01-24-092, filed 12/4/01, effective 1/4/02)

WAC 180-18-030 Waiver from total instructional hour requirements. A district desiring to ((~~implement a local restructuring plan to provide an effective educational system to enhance~~)) improve student achievement by enhancing the educational program for all students may apply to the state board of education for a waiver from the total instructional hour requirements. The state board of education may grant said waiver requests pursuant to RCW 28A.305.140 and WAC 180-18-050 for up to three school years.

AMENDATORY SECTION (Amending WSR 95-20-054, filed 10/2/95, effective 11/2/95)

WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement and student-to-teacher ratio requirement. (1) A district desiring to ((~~implement a local restructuring plan to provide an effective educational system to enhance~~)) improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW 28A.150.220(5) and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The state board of education may grant said initial waiver requests for up to three school years.

(2) A district desiring to ((~~implement a local restructuring plan to provide an effective educational system to enhance~~)) improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the student-to-teacher ratio requirement pursuant to RCW 28A.150.250 and WAC 180-16-210, which requires the ratio of the FTE students to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. The state board of education may grant said initial waiver requests for up to three school years.

AMENDATORY SECTION (Amending WSR 04-04-093, filed 2/3/04, effective 3/5/04)

WAC 180-18-050 ((~~Local restructuring plan requirements~~)) Procedure to obtain waiver. (1) State board of education approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 shall occur at a state board meet-

ing prior to implementation. A district's waiver application shall be in the form of a resolution adopted by the district board of directors ((~~which includes a request for the waiver and a plan for restructuring the educational program of one or more schools which consists of at least the following information:~~

~~(a) Identification of the requirements to be waived;~~

~~(b) Specific standards for increased student learning that the district expects to achieve;~~

~~(c) How the district plans to achieve the higher standards, including timelines for implementation;~~

~~(d) How the district plans to determine if the higher standards are met;~~

~~(e) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan; and~~

~~(f) Evidence that opportunities were provided for families, parents, and citizens to be involved in the development of the plan.~~

~~(2) The district plan for restructuring the educational program of one or more schools in the district may consist of the school improvement plans required under WAC 180-16-220, along with the requirements of subsection (1)(a) through (d) of this section.~~

~~(3)~~)). The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution shall be accompanied by information detailed in the guidelines and application form available on the state board of education's web site.

(2) The application for a waiver and all supporting documentation must be received by the state board of education at least thirty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 180-18-060 Waiver renewal procedure.

WSR 07-14-111

PROPOSED RULES

OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2007-01—Filed July 2, 2007, 5:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-105.

Title of Rule and Other Identifying Information: prohibition of unfair and abusive sales practices of life insurance to armed forces personnel and their dependents.

Hearing Location(s): Insurance Commissioner's Office, 5000 Capital Boulevard, Room TR-120, Tumwater, WA 98504-0255, on August 7, 2007, at 11:00 a.m.

Date of Intended Adoption: August 9, 2007.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0258, e-mail Kacys@oic.wa.gov, fax (360) 586-3109, by August 6, 2007.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by August 6, 2007, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rules define unfair sales practices involving military personnel that are considered false, misleading, or deceptive. The rules will include a requirement that selling agents must determine the appropriateness of any sale of insurance to a member of the armed forces or his or her dependent.

Reasons Supporting Proposal: The 109th Congress enacted the Military Personnel Financial Services Protection Act (Public Law 109-290) "to protect members of the Armed Forces from unscrupulous practices regarding the sale of insurance, financial and investment products." The act requires states to adopt a model regulation jointly developed by the Department of Defense (DOD) and the National Association of Insurance Commissioners (NAIC) not later than September 29, 2007. The act extends state laws or rules with respect to regulating the business of insurance or securities to military installations, except to the extent that such laws or rules directly conflict with applicable federal laws or rules.

Statutory Authority for Adoption: RCW 48.02.060, 48.30.010.

Statute Being Implemented: RCW 48.30.010.

Rule is necessary because of federal law, Public Law 109-290.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Melodie Bankers, P.O. Box 40260, Olympia, WA 98604-0260 [98504-0260], (360) 725-7039; Implementation: John Hamje, P.O. Box 40255, Olympia, WA 98604-0255 [98504-0255], (360) 725-7262; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98604-0255 [98504-0255], (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Pursuant to RCW 19.85.061, because these proposed rules are solely for the purpose of conformity with federal statute, the office of insurance commissioner (OIC) is not required to prepare a small business economic statement.

Pursuant to RCW 19.85.030, the OIC is required by the Miliary Personnel Financial Services Protection Act (Public Law 109-290) (act) to adopt rules jointly written and adopted as a model regulation by the NAIC in consultation with the United States DOD. These rules are intended to protect active duty members of the United States armed forces from unfair and misleading sales practices and unfair methods of

competition by insurers, agents, brokers, and solicitors on and off military installations.

Section 9(a) of the act states, in pertinent part: "Congress intends that — (1) the States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices . . .; and (2) each State [adopt the model regulation] in a uniform manner, not later than 12 months after the date of enactment of this Act [September 29, 2006]." The act further requires the NAIC, the Secretary of Defense, and the Securities and Exchange Commission to report jointly to Congress by September 29, 2007, on the extent to which the states have adopted the model regulation and thereafter meet not less frequently than twice a year to take any further actions to implement the act and to monitor its enforcement.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(b)(iii), the requirements of RCW 34.05.328 for a probable cost benefit analysis do not apply to the proposed military sales rule because the proposed rules adopt by reference without material change federal statues and regulations.

July 2, 2007
Mike Kreidler
Insurance Commissioner

MILITARY SALES PRACTICES

NEW SECTION

WAC 284-30-850 Authority, purpose, and effective date. In order to prevent unfair methods of insurance sales to active duty service members of the United States armed forces, unfair competition, and unfair or deceptive acts or practices by insurers, fraternal benefit societies, agents, brokers or solicitors, WAC 284-30-850 through 284-30-872 are adopted. These rules may be called the "military sales practices" rules.

(1) The Military Personnel Financial Services Protection Act (P.L. 109-290) was enacted by the 109th Congress to protect members of the United States armed forces from unscrupulous practices regarding the sale of insurance, financial, and investment products on and off military installations. The act requires this state to adopt rules that meet sales practice standards adopted by the National Association of Insurance Commissioners to protect members of the United States armed forces from dishonest and predatory insurance sales practices both on and off of a military installation.

(2) Based on the commissioner's authority under RCW 48.30.010 to define by rule methods of competition and other acts and practices in the conduct of the business of insurance found by the commissioner to be unfair or deceptive, after evaluation of the acts and practices of insurers, fraternal benefit societies, agents, brokers, or solicitors that informed the need for P.L. 109-290, and because the commissioner is required by that act to adopt rules that meet the sales practice standards adopted by the National Association of Insurance Commissioners and federal law, the commissioner finds the acts or practices set forth in WAC 284-30-850 through 284-30-872 to be unfair or deceptive methods of competition or unfair or deceptive acts or practices in the business of insurance.

(3) These military sales practices rules are effective for all benefit contracts, insurance policies and certificates solicited, issued, or delivered in this state on and after (the effective date of these rules).

NEW SECTION

WAC 284-30-855 Scope. WAC 284-30-850 through 284-30-872 affect all life insurance policies and certificates solicited or sold to an active duty service member of the United States armed forces or his or her dependent.

NEW SECTION

WAC 284-30-860 Exemptions. (1) The following life insurance solicitations or sales are exempt from the requirements of WAC 284-30-850 through 284-30-872:

(a) Credit life insurance, as defined in RCW 48.34.-030(1).

(b) Group life insurance where there is no in-person face-to-face solicitation of individuals by a licensed agent, broker, or solicitor or where the policy or certificate does not include a side fund.

(c) An application to the insurer that issued the existing policy or certificate when a contractual change or a conversion privilege is being exercised; or when the existing insurance policy or certificate is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term life conversion privilege is exercised among corporate affiliates.

(d) Individual, stand-alone policies of health or disability income insurance.

(e) Contracts offered by Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI), as authorized by 38 U.S.C. section 1965 et seq.

(f) Life insurance policies or certificates offered through or by a nonprofit military association, qualifying under section 501 (c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer.

(g) Contracts used to fund any of the following:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the IRC, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the IRC;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Prearranged funeral contracts.

(2) Nothing in WAC 284-30-850 through 284-30-872 shall be construed to restrict the ability of nonprofit organizations or other organizations to educate members of the United

States armed forces in accordance with federal Department of Defense Instruction 1344.07 "Personal Commercial Solicitation on DOD Installations," or any successor directive.

(3)(a) For purposes of the military sales practices rules, general advertisements, direct mail and internet marketing do not constitute "solicitation." Telephone marketing does not constitute "solicitation" only if the caller explicitly and conspicuously discloses that the product being solicited is life insurance and the caller makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation.

(b) Nothing in this section shall be construed to exempt an insurer, agent, broker, or solicitor from the military sales practices rules in any in-person face-to-face meeting established as a result of the solicitation exemptions listed in this section.

NEW SECTION

WAC 284-30-865 Definitions. The following definitions apply to the military sales practices rules, unless the context clearly requires otherwise:

(1) "Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component, such as national guard or reserve, while serving under published orders for active duty or full-time training. This term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of fewer than thirty-one calendar days.

(2) "Department of Defense (DOD) personnel" means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

(3) "Door-to-door" means a solicitation or sales method whereby an agent, broker, or solicitor proceeds randomly or selectively from household to household without a prior specific appointment.

(4) "General advertisement" means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance or the promotion of an insurer, agent, broker, or solicitor.

(5) "Insurer" means an insurance company, as defined in RCW 48.01.050, that provides life insurance products for sale in this state. The term "insurer" also includes fraternal benefit societies, as defined at RCW 48.36A.010. Whenever the term "insurer," "policy," or "certificate" is used in these military sales practices rules, it includes insurers and fraternal benefit societies and applies to all insurance policies, benefit contracts, and certificates of life insurance issued by them.

(6) "Known" or "knowingly" means, depending on its use in WAC 284-30-870 and 284-30-872, that the insurer or agent, broker, or solicitor had actual awareness, or in the exercise of ordinary care should have known at the time of the act or practice complained of that the person being solicited is either:

(a) A service member; or

(b) A service member with a pay grade of E-4 or below.

(7) "Life insurance" has the meaning set forth in RCW 48.11.020.

(8) "Military installation" means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(9) "MyPay" means the Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(10) "Service member" means any active duty officer (commissioned and warrant) or any enlisted member of the United States armed forces.

(11) "Side fund" means a fund or reserve that is part of or is attached to a life insurance policy or certificate (except for individually issued annuities) by rider, endorsement, or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(a) Accumulated or cash value or secondary guarantees provided by a universal life policy;

(b) Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or

(c) A premium deposit fund which:

(i) Contains only premiums paid in advance which accumulate at interest;

(ii) Imposes no penalty for withdrawal;

(iii) Does not permit funding beyond future required premiums;

(iv) Is not marketed or intended as an investment; and

(v) Does not carry a commission, either paid or calculated.

(12) "Specific appointment" means a prearranged appointment that has been agreed upon by both parties and is definite as to place and time.

(13) "United States armed forces" means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

NEW SECTION

WAC 284-30-870 Practices declared to be unfair or deceptive when committed on a military installation. (1) The following acts or practices by an insurer, agent, broker, or solicitor are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance when committed on a military installation and solicited in-person face-to-face:

(a) Knowingly soliciting the purchase of any life insurance policy or certificate door to door or without first establishing a specific appointment for each meeting with the prospective purchaser.

(b) Soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary.

(c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

(d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing, or other areas where the installation commander has prohibited solicitation.

(e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

(f) Posting unauthorized bulletins, notices, or advertisements.

(g) Failing to present DD Form 2885 Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.

(h) Knowingly accepting an application for life insurance or issuing a policy or certificate of life insurance on the life of an enlisted member of the United States armed forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement related to the sale of life insurance established by regulations, directives, or rules of the DOD or any branch of the United States armed forces.

(2) The following acts or practices by an insurer, agent, broker, or solicitor are found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance or improper influences or inducements when committed on a military installation:

(a) Using DOD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members.

(b) Using an agent, broker, or solicitor to participate in any education or orientation program sponsored by United States armed forces.

NEW SECTION

WAC 284-30-872 Practices declared to be unfair or deceptive regardless of where they occur. (1) The following acts or practices by an insurer, agent, broker, or solicitor are found by the commissioner and declared to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance or improper influences or inducements regardless of the location where they occur:

(a) Submitting, processing, or assisting in the submission or processing of any allotment form or similar device used by the United States armed forces to direct a service member's pay to a third party for the purchase of life insurance. For example, the using or assisting in the use of a service member's "MyPay" account or other similar internet or electronic medium to pay for life insurance is prohibited. For purposes of these military sales practices rules, assisting a service member by providing insurer or premium information necessary to complete any allotment form is not an unfair, deceptive, or prohibited practice.

(b) Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(i) Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and regulations promulgated thereunder; and

(ii) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(c) Employing any device or method, or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's leave and earnings statement (or equivalent or successor form) as "savings" or "checking" and where the service member has no formal banking relationship.

(d) Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship.

(e) Using DOD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to their family members.

(f) Offering or giving anything of value, directly or indirectly, to DOD personnel to procure their assistance in encouraging, assisting, or facilitating the solicitation or sale of life insurance to another service member.

(g) Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

(h) Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income in order to purchase life insurance.

(2) The following acts or practices by an insurer, agent, broker, or solicitor may lead to confusion regarding the source, sponsorship, approval, or affiliation of the insurer or any agent, broker or solicitor. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation, or using any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, agent, broker, or solicitor, or the policy or certificate offered is affiliated, connected, or associated with, endorsed, sponsored, sanctioned, or recommended by the U.S. government, the United States armed forces, or any state or federal agency or governmental entity.

(i) For example, the use of the following titles, including but not limited to the following is prohibited: Battalion insurance counselor, unit insurance advisor, Servicemen's Group Life Insurance conversion consultant, or veteran's benefits counselor.

(ii) A person is not prohibited from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Examples include, but are not limited to the following: Chartered life under-

writer (CLU), chartered financial consultant (ChFC), certified financial planner (CFP), master of science in financial services (MSFS), or masters of science financial planning (MS).

(b) Soliciting the purchase of any life insurance policy or certificate through the use of or in conjunction with any third-party organization that promotes the welfare of or assists members of the United States armed forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, agent, broker, solicitor, or the insurance policy or certificate is affiliated, connected, or associated with endorsed, sponsored, sanctioned, or recommended by the U.S. government, or the United States armed forces.

(3) The following acts or practices by an insurer, agent, broker, or solicitor lead to confusion regarding premiums, costs, or investment returns. They are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid.

(b) Misrepresenting the mortality costs of a life insurance policy or certificate (except for individually issued annuities), including stating or implying that the policy or certificate costs nothing or is free.

(4) The following acts or practices by an insurer, agent, broker, or solicitor regarding Servicemembers Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI) are each found by the commissioner to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Making any representation regarding the availability, suitability, amount, cost, exclusions, or limitations to coverage provided to service members or dependents by SGLI or VGLI, which is false, misleading, or deceptive.

(b) Making any representation regarding conversion requirements, including the costs of coverage, exclusions, or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading, or deceptive.

(c) Suggesting, recommending, or encouraging a service member to cancel or terminate his or her SGLI policy, or issuing a life insurance policy or certificate which replaces an existing SGLI policy unless the replacement takes effect upon or after separation of the service member from the United States armed forces.

(5) The following acts or practices regarding disclosure by an insurer, agent, broker, or solicitor are declared to be false, misleading, unfair, or deceptive methods of competition or unfair or deceptive acts or practices in the conduct of the business of insurance regardless of the location where the act occurs:

(a) Deploying, using, or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an agent, broker, or solicitor, if that is the case, for the purpose of soliciting the purchase of life insurance.

(b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person face-to-face meeting with a prospective purchaser.

(c) Except for individually issued annuities, failing to clearly and conspicuously disclose the fact that the policy or certificate being solicited is life insurance.

(d) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the Military Personnel Financial Services Protection Act (P.L. 109-290), p. 16.

(e) Except for individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time of application is taken:

(i) An explanation of any free look period with instructions on how to cancel any policy or certificate issued by the insurer; and

(ii) Either a copy of the application or a written disclosure. The copy of the application or the written disclosure must clearly and concisely set out the type of life insurance, the death benefit applied for, and its expected first year cost. A basic illustration that meets the requirements of this state will be considered a written disclosure.

(6) The following acts or practices by an insurer, agent, broker, or solicitor are each found by the commissioner to be false, misleading, unfair or deceptive methods of competition or unfair or deceptive or acts or practices in the conduct of the business of insurance regardless of the location where they occur:

(a) Except for individually issued annuities, recommending the purchase of any life insurance policy or certificate which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(b) Offering for sale or selling a life insurance policy or certificate which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(i) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate, survivors, or dependents.

(ii) Other military survivor's benefits include, but are not limited to: The death gratuity, funeral reimbursement, transition assistance, survivor and dependents' educational assistance, dependency and indemnity compensation, TRICARE healthcare benefits, survivor housing benefits and allowances, federal income tax forgiveness, and Social Security survivor benefits.

(c) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which includes a side fund:

(i) Unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(ii) Unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined policy or certificate. For this disclosure, the effective rate of return must consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule must be provided for at least each policy year from year one to year ten and for every fifth policy year thereafter, ending at age one hundred, policy maturity, or final expiration; and

(iii) Which by default diverts or transfers funds accumulated in the side fund to pay, reduce, or offset any premiums due.

(d) Except for individually issued annuities, offering for sale or selling any life insurance policy or certificate which after considering all policy benefits, including but not limited to endowment, return of premium, or persistency, does not comply with standard nonforfeiture law for life insurance.

(e) Selling any life insurance policy or certificate to a person known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service, except for accidental death coverage (for example, double indemnity) which may be excluded.

WSR 07-14-118
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed July 3, 2007, 11:57 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-327 Must an employer grant leave without pay for other miscellaneous reasons?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on August 16, 2007, at 8:30 a.m.

Date of Intended Adoption: August 16, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 10, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 10, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal creates WAC 357-31-327 to support SSB 5511 that was passed during the 2007 legislative session. This bill requires employers to grant leave without pay to employees who are volunteer firefighters and are called to respond to a fire, natural disaster, or medical emergency.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: This addition is necessary to implement SSB 5511 which was passed during the legislative session.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

June 28, 2007
Eva N. Santos
Director

NEW SECTION

WAC 357-31-327 Must an employer grant leave without pay for other miscellaneous reasons? An employer must grant leave without pay when an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency.

WSR 07-14-119
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed July 3, 2007, 11:58 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave?, 357-31-445 What happens to leave that was donated under the state leave sharing program and was not used by the recipient?, and 357-31-405 What documentation may an employee seeking shared leave be required to submit?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on August 16, 2007, at 8:30 a.m.

Date of Intended Adoption: August 16, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 10, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 10, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments is to add language to the shared leave rules which is in line with HB 2281 which was passed during the 2007 legislative session. This bill addresses employees using shared leave if a state of emergency is declared and the employee has the needed skills to assist in responding to the emergency. This bill also adds language to the shared leave law that says before an employer returns any unused leave back to the donor(s) the employer must receive from the affected employee a statement from the employee's doctor verifying that the illness or injury is resolved.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: These changes are necessary to implement HB 2281 which was passed during the 2007 legislative session.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

June 28, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature; ((~~or~~))

(b) The employee has been called to service in the uniformed services((~~.~~)); or

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers his/her services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area.

(2) The illness, injury, impairment, condition, ((~~or~~)) call to service, or emergency volunteer service has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete his or her:

(a) Personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section((~~.~~)); or

(c) Personal holiday and accrued vacation leave if the employee qualifies under (1)(c) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-445 What happens to leave that was donated under the state leave sharing program and was not used by the recipient? (1) Any shared leave not used by the recipient during each incident/occurrence as determined by the employer must be returned to the donor(s).

If shared leave has been granted under WAC 357-31-390 (1)(a), before the employer makes a determination to return the unused leave to the donor(s) the employer must receive from the affected employee's licensed physician or health care practioner a statement verifying that the employee is released to return to work.

The remaining shared leave must be returned to the donors and reinstated to the respective donors' appropriate leave balances based on each employee's current salary rate at the time of the reversion. The shared leave returned must be returned in accordance with office of financial management policies.

(2) Unused shared leave may not be cashed out by a recipient.

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

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? (1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a

medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition before the employer approves or disapproves the request.

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required absence before the employer approves or disapproves the request.

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

WSR 07-14-120
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed July 3, 2007, 11:59 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on August 16, 2007, at 8:30 a.m.

Date of Intended Adoption: August 16, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 10, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 10, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal amends WAC 357-13-025 to reflect the statutory language in RCW 41.06.152 and to better address agency requests for revisions or salary adjustments to the classification plan in accordance with HB 1671 which passed during the 2007 legislative session.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: This amendment is necessary to implement HB 1671 which passed during the 2007 legislative session.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

June 28, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan? (1) The following three criteria must be met for the director to adopt revisions or salary adjustments to the classification plan:

(a) Implementation of the proposed revision or salary adjustment will result in net cost savings, increased efficiencies, or improved management of personnel or services;

(b) The office of financial management has reviewed the fiscal impact statement of the affected employer and concurs that the biennial cost of the revision or salary adjustment is absorbable within the employer's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia; and

(c) The revision or salary adjustment is due to one of the following causes, as defined by the director in the classification and pay guidelines:

((~~d) Documented recruitment or retention difficulties.~~))

(i) Documented recruitment or retention difficulties;

((~~(i)~~)) (ii) Salary compression or inversion;

(iii) Classification plan maintenance;

((~~(ii)~~)) (iv) ((~~Increased~~)) Higher level duties and responsibilities; or

(v) Inequities.

((~~(iii) Salary inequities caused by similar work assigned to different job classes with a salary disparity greater than 7.5%.~~))

(2) The provisions of subsection (1)(b) and (1)(c) of this section do not apply to the higher education hospital special pay plan or to any adjustments to the classification plan that are due to emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 07-14-121
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed July 3, 2007, 11:59 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-16-025 How must employers and the department inform prospective applicants of recruitments?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on August 16, 2007, at 8:30 a.m.

Date of Intended Adoption: August 16, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 10, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 10, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this amendment is to clarify the language in WAC 357-16-025. The current language gives the impression that job seekers do not have to apply for specific positions. To be an applicant a job seeker must express interest in the job. The proposed modification repeals the language that causes this confusion.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

June 28, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 06-19-065, filed 9/19/06, effective 10/20/06)

WAC 357-16-025 How must employers and the department inform prospective applicants of recruitments? ((~~Employers and the department may recruit without notice by searching for job seekers who have registered in the talent pool maintained by the department. If the department or employer does not recruit job seekers from the central talent pool, notice of recruitment must be issued publicly.~~)) Notice of recruitment must be issued publicly. The notice must specify the period of recruitment.

WSR 07-14-122
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed July 3, 2007, 12:01 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-640 What is the purpose of the uniformed service shared leave pool?, 357-31-645 Who will administer the uniformed service shared leave pool?, 357-31-650 What definitions apply to the uniformed service shared leave pool?, 357-31-655 Must employers have a written policy regarding the uniformed service shared leave pool?, 357-31-660 Is participation in the uniformed service shared leave pool voluntary?, 357-31-665 What criteria does an employee have to meet to be eligible to request leave from the uniformed service shared leave pool?, 357-31-670 How must employees who are receiving leave from the uniformed service shared leave pool be treated during their absence?, 357-31-675 Is shared leave received under the uniformed service shared leave pool included in the 261 day total specified in RCW 41.04.665?, 357-31-680 May employees donating leave direct the donation to a specific individual?, 357-31-685 What types of leave can an employee donate for the purposes of the uniformed service shared leave pool?, 357-31-690 How much leave may an employee withdraw from the uniformed service shared leave pool?, 357-31-695 How is the maximum shared leave pay, which will be granted from the uniformed service shared leave pool calculated?, 357-31-700 What documentation is required to verify military salary and status?, 357-31-705 What rate of pay is paid to the employee receiving leave under the uniformed service shared leave pool?, 357-31-710 What happens if the uniformed service shared leave pool does not have sufficient balance to cover all leave requests?, 357-31-715 May employers establish restrictions on the amount of leave an employee may receive under this section?, 357-31-720 May an employer establish restrictions on the amount of leave an employee may donate under this section?, and 357-31-725 When an employer has determined that abuse of the uniformed service shared leave pool has occurred will the employee have to repay the shared leave drawn from the pool?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on August 16, 2007, at 8:30 a.m.

Date of Intended Adoption: August 16, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 10, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 10, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal creates new rules in accordance with HB 1507 which passed during the 2007 legislative session. This bill creates the uniformed service shared leave pool. This leave pool allows

employees to donate leave for any employee who has been called to service in the uniformed services and who meets the requirements of RCW 41.04.665.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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: This amendment is necessary to implement HB 1507 which passed during the 2007 legislative session.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

June 28, 2007
Eva N. Santos
Director

NEW SECTION

WAC 357-31-640 What is the purpose of the uniformed service shared leave pool? The uniformed service shared leave pool was created so that state employees who are called to service in the uniformed services will be able to maintain a level of compensation and employee benefits consistent with the amount they would have received had they remained in active state service. The pool was also created to allow general government and higher education employees to voluntarily donate their leave to be used by any eligible employee who has been called to service in the uniform services for the purpose set forth herein.

NEW SECTION

WAC 357-31-645 Who will administer the uniformed service shared leave pool? The military department, in consultation with the department of personnel and the office of financial management, shall administer the uniformed service shared leave pool.

NEW SECTION

WAC 357-31-650 What definitions apply to the uniformed service shared leave pool? The following definitions apply to the uniformed service shared leave pool:

(1) "Employee" means any employee who is entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained. This does not include employees of school districts and educational service districts.

(2) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty, and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(3) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency.

(4) "Military salary" means the base, specialty, and other pay, but does not include allowances such as the basic allowance for housing.

(5) "Monthly salary" means the monthly salary and special pay and shift differential, or the monthly equivalent for hourly employees. Monthly salary does not include overtime pay, callback pay, standby pay or performance bonuses.

NEW SECTION

WAC 357-31-655 Must employers have a written policy regarding the uniformed service shared leave pool? Each employer must have a written policy which at a minimum addresses:

(1) Eligibility requirements for use of the uniformed service shared leave pool;

(2) Donation of leave;

(3) Use of pool leave; and

(4) Abuse of pool.

NEW SECTION

WAC 357-31-660 Is participation in the uniformed service shared leave pool voluntary? Participation in the uniformed service shared leave pool, must at all times, be voluntary on the part of the donating and receiving employee.

NEW SECTION

WAC 357-31-665 What criteria does an employee have to meet to be eligible to request leave from the uniformed service shared leave pool? Employees are eligible to request leave from the uniformed service shared leave pool if they are called to service in one of the uniformed services and eligible for shared leave under RCW 41.04.665.

NEW SECTION

WAC 357-31-670 How must employees who are receiving leave from the uniformed service shared leave pool be treated during their absence? An employee using shared leave under these rules continues to be classified as a state employee and receives the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued vacation leave or sick leave.

NEW SECTION

WAC 357-31-675 Is shared leave received under the uniformed service shared leave pool included in the 261 day total specified in RCW 41.04.665? Shared leave received under the uniformed service shared leave pool is not included in the 261 day total specified in RCW 41.04.665.

NEW SECTION

WAC 357-31-680 May employees donating leave direct the donation to a specific individual? Leave donated under this section is "pooled" and is withdrawn from the pool by eligible_employees according to priorities established by the military department. Leave donated cannot be directed to a specific individual.

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

NEW SECTION

WAC 357-31-685 What types of leave can an employee donate for the purposes of the uniformed service shared leave pool? An employee may donate vacation leave, sick leave, or all or part of a personal holiday for purposes of the uniformed service shared leave pool under the following conditions:

(1) Vacation leave: The donating employee's employer approves the employee's request to donate a specified amount of vacation leave to the uniformed service shared leave pool and the full-time employee's request to donate leave will not cause his/her vacation leave balance to fall below eighty hours after the transfer. For part-time employees, requirements for vacation leave balances are prorated.

(2) Sick leave: The donating employee's employer approves the employee's request to donate a specified amount of sick leave to the uniformed service shared leave pool and the employee's request to donate leave will not cause his/her sick leave balance to fall below one hundred seventy-six hours after the transfer.

(3) Personal holiday: The donating employee's employer approves the employee's request to donate all or part of his/her personal holiday to an employee authorized to receive leave under the uniformed service shared leave pool.

NEW SECTION

WAC 357-31-690 How much leave may an employee withdraw from the uniformed service shared leave pool? Shared leave paid under this section, in combination with military salary, as defined in WAC 357-31-580(4), shall not exceed the level of the employee's state monthly salary as defined in WAC 357-31-580(5). However, up to eight (8) hours per month of shared leave under this section may be withdrawn and used to continue coverage under the Public Employees' Benefit Board, regardless of the employee's monthly salary and military salary.

NEW SECTION

WAC 357-31-695 How is the maximum shared leave pay, which will be granted from the uniformed service shared leave pool calculated? The basis for calculating the maximum shared leave pay granted from the uniformed service shared leave pool is the greater of:

(1) The difference between the employee's current monthly salary (as defined in WAC 357-31-580(5)) and his/her monthly military salary (as defined in WAC 357-31-580(4)) or;

(2) The dollar value associated with the number of hours required to maintain eligibility for employee benefits.

NEW SECTION

WAC 357-31-700 What documentation is required to verify military salary and status? Employees must provide the military department earnings statements verifying military salary and a copy of their orders of service. Employees must notify the military department of any changes to orders of service or military salary and shall submit updated copies of their earnings statements and orders of service when requested by the military department.

NEW SECTION

WAC 357-31-705 What rate of pay is paid to the employee receiving leave under the uniformed service shared leave pool? The receiving employee is paid his/her regular rate of pay. Therefore, the value of one (1) hour of donated shared leave may cover more or less than one (1) hour of the recipient's salary.

NEW SECTION

WAC 357-31-710 What happens if the uniformed service shared leave pool does not have sufficient balance to cover all leave requests? The uniformed service shared leave pool cannot grant more leave than the leave balance available at the time a request is received.

NEW SECTION

WAC 357-31-715 May employers establish restrictions on the amount of leave an employee may receive under this section? Except in the event of a violation of rule or statute, an employer is required to permit an eligible employee to receive leave from the uniformed service shared leave pool.

NEW SECTION

WAC 357-31-720 May an employer establish restrictions on the amount of leave an employee may donate under this section? An employer may limit the amount of leave an employee may donate under this section, if authorization of such donation would be in violation of rule or statute.

NEW SECTION

WAC 357-31-725 When an employer has determined that abuse of the uniformed service shared leave pool has occurred will the employee have to repay the shared leave drawn from the pool? Employers shall investigate any alleged abuse of the uniformed service shared leave pool and on a finding of wrongdoing the employee may be required to repay all of the shared leave received from the uniformed service shared leave pool. The only time an employee will have to repay leave credits is when there is a finding of wrongdoing.

WSR 07-14-123
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed July 3, 2007, 12:03 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-19-183 Must DEL conduct background checks on all employees in covered positions and individuals being considered for a covered position?, 357-19-184 Besides the DEL, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees?, 357-19-185 What is a covered position for purposes of WAC 357-19-183, 357-19-187, and 357-19-191?, 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by DEL and what are the results of the background check used for?, 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize the director of the DEL or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization?, 357-19-188 What happens when a permanent DEL employee is disqualified because of a background check?, 357-19-189 What are the responsibilities of the director of the DEL in carrying out the requirement to conduct background checks?, and 357-19-191 Does a permanent employee of DEL who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on August 16, 2007, at 8:30 a.m.

Date of Intended Adoption: August 16, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 10, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 10, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is due to ESSB 5774 which requires the department of personnel (DOP) to adopt rules in cooperation with the department of early learning (DEL) for background investigations for current employees and persons being considered for positions who will or may have unsupervised access to children. This bill also removed the requirement for DOP to have background check rules for the department of social and health services (DSHS).

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The purpose of these amendments is to meet the requirements of ESSB 5774 which passed during the 2007 legislative session.

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

June 28, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by ((~~DSHS~~)) DEL and what are the results of the background check used for? (1) The background check information considered by the ((~~secretary of the DSHS~~)) director of the DEL will include but not be limited to conviction records, pending charges, and disciplinary board final decisions.

(2) The results of the background check must be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or ((~~applicant~~)) individual being considered for a covered position authorize the ((~~secretary of the department of social and health services~~)) director of the DEL or designee to conduct a background check and what happens if the employee or ((~~applicant~~)) individual being considered for a covered position does not provide authorization? An employee and/or ((~~applicant~~)) individual applying for or being considered to remain in a covered position must authorize the ((~~secretary of the~~)) department of social and health services director of the DEL

or designee to conduct a background check ((~~which may include fingerprinting~~)).

Failure to authorize the ((~~secretary of the DSHS~~)) director of the DEL or designee to conduct a background check disqualifies an employee or ((~~applicant~~)) individual from consideration for any covered position including their current covered position.

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 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-188 What happens when a permanent ((~~DSHS~~)) DEL employee is disqualified because of a background check? (1) A permanent employee with a background check disqualification may be subject to any of the following actions in no specific order:

(a) Voluntary demotion;

(b) Job restructuring;

(c) Voluntary resignation;

(d) Job reassignment;

(e) Nondisciplinary separation in accordance with WAC 357-46-195; or

(f) Disciplinary action in accordance with WAC 357-40-010.

(2) An appointing authority may use the following interim measures while exploring the availability of actions (not to exceed 30 calendar days except in cases where there are investigations of pending charges):

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time;

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or

(c) Reassignment to another work location.

(d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated due to a background check disqualification, the search for a noncovered position will occur over a period of thirty calendar days.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-183 Must ((~~DSHS~~)) DEL conduct background checks on all employees in covered positions and ((~~applicants under final consideration~~)) individuals being considered for a covered position? (1) The ((~~secretary of the department of social and health services (DSHS)~~)) director of the Department of Early Learning (DEL) or designee must conduct background checks((~~, which may include fingerprinting as authorized by statute,~~)) on all employees in covered positions and ((~~applicants under final consideration~~)) individuals being considered for a covered position.

(2) The requirement for background checks must include the following:

(a) Current employees in covered positions.

(((~~a~~))) (b) Any employee ((~~seeking~~)) considered for a covered position because of a layoff, reallocation, transfer, promotion or demotion, or other actions that result in the employee being in a covered position.

(c) Any individual being considered for positions which are covered positions. ((~~applicant prior to appointment into a covered position, except when appointment is made on a conditional basis in accordance with agency procedures authorized by WAC 357-19-189.~~))

(3) ((~~Applicant means any person who has applied for work or serves in a covered position, including current employees requesting transfer, promotion, demotion, or otherwise requesting a move to a covered position.~~)) Considered for positions includes decisions about:

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-184 Besides the ((~~department of social and health services~~)) DEL, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees? (1) Employers may conduct background checks on applicants and/or employees if required by state or federal law, or if the employer identifies the need for a background check to verify that the applicant or employee satisfies the position requirements.

(2) Employers who conduct background checks must develop procedures regarding how and when background checks will be conducted. The procedures must include notification to applicants and/or employees if a background check is required.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-185 What is a covered position for purposes of WAC 357-19-183, WAC 357-19-187, and WAC 357-19-191? For purposes of WAC 357-19-183, WAC 357-19-187 and WAC 357-19-191 a covered position is one in which a person will or may have unsupervised access to children. ((~~, vulnerable adults, or individuals with mental illness or developmental disabilities~~)).

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

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-189 What are the responsibilities of the ((~~secretary of the DSHS~~)) director of the DEL in carrying out the requirement to conduct background checks? (1) In order to implement the requirements of WAC 357-19-183, the ((~~secretary of the DSHS~~)) director of the DEL or designee must:

(a) Notify employees and ((~~applicants~~)) individuals being considered for covered positions that a background check is required for covered positions; and

(b) ((~~Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and~~)) Develop policies and procedures pertaining to background checks.

((~~(c) Develop policies and procedures pertaining to background checks.~~))

(2) Information contained in background checks must be used solely for the purpose of determining the character, suitability and competence of the ((~~applicant and/or employee~~)) employee and/or individual being considered for covered positions. The information must not be disseminated further. Dissemination and use of such information is governed by the criminal records privacy act, chapter 10.97 RCW. Unlawful dissemination of information protected by the criminal records privacy act is a criminal offense and may result in prosecution and/or disciplinary action as provided in chapter 357-40 WAC. However, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

AMENDATORY SECTION (Amending WSR 05-12-097, filed 5/27/05, effective 7/1/05)

WAC 357-19-191 Does a permanent employee of ((~~DSHS~~)) DEL who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A permanent employee of ((~~DSHS~~)) DEL who is disqualified from a covered position as a result of a background check has the right to present to the ((~~secretary of the DSHS~~)) director of the DEL or designee evidence that mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

(1) The employee's background check authorization and disclosure form;

(2) The employee's age at the time of conviction, charge, or disciplinary board final decision;

(3) The nature and severity of the conviction, charge, or disciplinary board final decision;

(4) The length of time since the conviction, charge, or disciplinary board final decision;

(5) The nature and number of previous offenses;

(6) Vulnerability of the child((~~, vulnerable adult, or individual with mental illness or developmental disabilities~~)) to which the employee will or may have unsupervised access; and

(7) The relationship between the potentially disqualifying event and the duties of the employee.

WSR 07-14-124
PROPOSED RULES
DEPARTMENT OF PERSONNEL
[Filed July 3, 2007, 12:04 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-01-072 Child, 357-31-565 May employers grant paid leave for purposes of recognition?, 357-46-010 What are the reasons for layoff?, and 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth?

Hearing Location(s): Department of Personnel, 2828 Capitol Boulevard, Tumwater, WA, on August 16, 2007, at 8:30 a.m.

Date of Intended Adoption: August 16, 2007.

Submit Written Comments to: Connie Goff, Department of Personnel, P.O. Box 47500, e-mail connieg@dop.wa.gov, fax (360) 586-4694, by August 10, 2007. FOR DOP TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact department of personnel by August 10, 2007, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes are housekeeping in nature.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: Department of personnel, governmental.

Name of Agency Personnel Responsible for Drafting: Connie Goff, 521 Capitol Way South, Olympia, WA, (360) 664-6250; Implementation and Enforcement: Department of personnel.

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

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

June 28, 2007
Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 07-03-054, filed 1/12/07, effective 2/15/07)

WAC 357-01-072 Child. A biological, adopted, or foster child, or a stepchild, a legal ward, or a child of a person standing in loco parentis((~~[.]~~)).

AMENDATORY SECTION (Amending WSR 06-23-091, filed 11/14/06, effective 12/18/06)

WAC 357-31-565 May employers grant paid leave for purposes of recognition? Employers who have received performance management confirmation may grant employees up to five days of paid leave within a twelve-month

period to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Leave granted under this provision:

(1) Is not payable upon layoff, dismissal, separation, or resignation or transferable between employers;

(2) Must be used within twelve months of the leave being granted((~~; and~~)).

((~~(3)~~))

AMENDATORY SECTION (Amending WSR 05-19-004, filed 9/8/05, effective 10/10/05)

WAC 357-46-010 What are the reasons for layoff? (1) Employees may be laid off without prejudice according to layoff procedures that are consistent with these rules. The reasons for layoff include, but are not limited to, the following:

(a) Lack of funds;

(b) Lack of work; or

(c) Organizational change.

(2) Examples of layoff actions due to lack of work may include, but are not limited to:

(a) Termination of a project or special employment;

(b) Availability of fewer positions than there are employees entitled to such positions;

(c) Employee's ineligibility to continue in a position following its reallocation to a class with a higher salary range maximum; or

(d) Employee's ineligibility to continue, or choice not to continue, in a position following its reallocation to a class with a lower salary range maximum.

((~~[(e)]~~)) (e) Elimination of a position due to the work of the position being competitively contracted.

AMENDATORY SECTION (Amending WSR 05-08-140 [07-11-094], filed 4/6/05 [5/16/07], effective 7/1/05 [7/1/07])

WAC 357-31-480 Is parental leave in addition to any leave for sickness or temporary disability because of pregnancy and/or childbirth? Under ((~~RCW 49.78.005~~)) RCW 49.78.390, the family leave required by U.S.C. 29.2612 (a)(1)(A) and (B) of the federal family and medical leave act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6) must be in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as provided in WAC 357-31-500.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

WSR 07-14-127
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 3, 2007, 12:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-14-153, 05-14-152, and 05-14-155.

Title of Rule and Other Identifying Information: Naturopathic Physicians: WAC 246-836-210 Authority to use, prescribe, dispense and order, 246-836-211 Education and training requirements regarding controlled substances, and 246-836-220 Intramuscular, intravenous, subcutaneous, and intradermal injections.

Hearing Location(s): Holiday Inn, 1 South Grady Way, Renton, WA 98055, on August 17, 2007, at 11:00 a.m.

Date of Intended Adoption: August 17, 2007.

Submit Written Comments to: Susan Gragg, Program Manager, Department of Health, Naturopathy Program, P.O. Box 47866, Olympia, WA 98504-7866, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2406, by August 3, 2007.

Assistance for Persons with Disabilities: Contact Susan Gragg by August 3, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement chapter 158, Laws of 2005 (HB 1546), codified in part as RCW 18.36A.020 and 18.36A.040, which expands the scope of practice of naturopathic physicians to include legend drugs, controlled substances, codeine and testosterone products, and deletes other outdated language. The proposed rules also describe the requirements for authorization to administer, prescribe, or dispense codeine and testosterone products. Finally, the proposed rules identify the routes by which medical substances may be administered, as well as establishing the education and training requirements for including intramuscular, intravenous, subcutaneous, and intradermal injections into naturopathic practice.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 18.36A.060.

Statute Being Implemented: RCW 18.36A.020, 18.36A.040, section 3, chapter 158, Laws of 2005.

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

Name of Proponent: Department of health, naturopathy program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Gragg, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4941.

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 proposed rules:

- Revise WAC 246-836-210 Authority to use, prescribe, dispense and order, to include legend drugs, the two authorized controlled substances, codeine and testosterone products, and deletes outdated language.
- Creates WAC 246-836-211 Authorization regarding controlled substances, which describes the process by which naturopathic physicians are approved to add codeine and testosterone products into their practice.

- Creates WAC 246-836-220 Intramuscular, intravenous, subcutaneous, and intradermal injections, which identifies how medical substances are administered and establishes the education and training requirements for naturopathic physicians who include intravenous therapy into their practice.

2. Is a small business economic impact statement (SBEIS) required for this rule? Yes.

3. Which industries are affected by this rule? The proposed rules impact naturopathic physicians who add codeine and testosterone products or intravenous therapy into their practice. To estimate costs to businesses, each licensee is assumed to be a business. Most practitioners have either one or no employees (this information was determined by a series of random telephone calls to licensed practitioners coupled with information obtained through internet searches).

SIC Industry Code and Title	# of Businesses	# of Employees
8049 Offices and Clinics of Health Care Practitioners, Not Elsewhere Classified	837	867

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? All businesses that must comply are considered small businesses. Costs incurred for those providers who add services to their practices are estimated as follows:

1.	$0		Those choosing not to add controlled substances codeine and testosterone products to their practice.
2.	$0		Those choosing not to add intravenous therapy to their practice.
3.	Low $65	High $250	Those choosing to add codeine and testosterone products to their practice by completing additional training.
4.	Low $150	High $500	Those choosing to add intravenous therapy to their practice.

To obtain or transfer registration from the Federal Drug Enforcement Agency (DEA) those practitioners adding codeine and testosterone products would pay a DEA registration fee, currently $551.

5. Does the rule impose a disproportionate impact on small businesses? No.

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: The proposed rules do not impose a disproportionate impact on small businesses.

7. How are small businesses involved in the development of this rule? Department staff worked closely with the naturopathy advisory committee, the Washington Association of Naturopathic Physicians, and practitioners.

A copy of the statement may be obtained by contacting Susan Gragg, Department of Health, Naturopathy Program, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, Department of Health, Naturopathy Program, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

July 3, 2007
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending Order 247, filed 2/25/92, effective 3/27/92)

WAC 246-836-210 Authority to use, prescribe, dispense and order. ((~~Licensed naturopaths may use, prescribe, dispense, and order certain medicines of mineral, animal, and botanical origin including the following:~~)) (1) Naturopathic medical practice includes the prescription, administration, dispensing, and use of:

(a) Nutrition and food science, physical modalities, minor office procedures, homeopathy, hygiene, and immunizations/vaccinations;

(b) Nondrug contraceptive devices;

(c) Nonlegend medicines ((~~derived from animal organs, tissues, and oils, minerals, and plants administered orally and topically~~)) including vitamins, minerals, botanical medicines, homeopathic medicines, and hormones;

(d) Legend drugs as defined under RCW 69.41.010 with the exception of Botulinum Toxin (commonly known as, among other names, Botox, Vistabel, Dysport, or Neurobloc) and inert substances used for cosmetic purposes; and

(e) Codeine and testosterone products that are contained within Schedules III, IV, and V in RCW 69.50.010 (2)(d).

(2) In accordance with RCW 69.41.010(13), all prescriptions must be hand-printed, typewritten, or generated electronically.

(3) Prior to being allowed to administer, prescribe, dispense, or order controlled substances, a naturopathic physician must meet the requirements in WAC 246-836-211 and have obtained the appropriate registration issued by the Federal Drug Enforcement Administration.

((~~(2) Legend topical ointments, creams, and lotions containing antiseptics.~~

~~(3) Legend topical, local anesthetics applied to superficial structures for use during minor office procedures as appropriate. Topical local anesthetic means the local application of anesthetic which may be injected into the intradermal subcutaneous layers of the skin only to the extent necessary to care for superficial lacerations, abrasions and the removal of foreign bodies located in superficial structures not to include the eye.~~

~~(4) Legend vitamins, minerals, trace minerals, and whole gland thyroid.~~

~~(5) Nondrug contraceptive devices except intrauterine devices.~~

~~(6) All homeopathic preparations.~~

~~(7) Intramuscular injections limited to vitamin B-12 preparations and combinations when clinical or laboratory evaluation has indicated vitamin B-12 deficiency.~~

~~(8) Immunizing agents approved by the Bureau of Biologics, United States Food and Drug Administration and listed in the current *Recommendations of the United States Public Health Services Immunizations Practices Advisory Committee* (ACIP) or the *Report of the Committee of Infectious Diseases* published by the American Academy of Pediatrics.~~

~~(9) Legend substances as exemplified in traditional botanical and herbal pharmacopeia as identified by a list of substances to be developed by the secretary.~~)) (4) Naturopathic physicians may not treat malignancies and neoplastic diseases except in collaboration with a practitioner licensed under chapter 18.57 or 18.71 RCW.

NEW SECTION

WAC 246-836-211 Authorization regarding controlled substances. (1) Upon approval by the department, naturopathic physicians may obtain a current Federal Drug Enforcement Administration registration. The department may approve naturopathic physicians who have:

(a) Provided documentation of a current Federal Drug Enforcement Administration registration from another state; or

(b) Submitted an attestation of at least four hours of instruction. Instruction must be part of a graduate level course from a school approved under chapter 18.36A, 18.71, 18.57, or 18.79 RCW. Instruction must include the following:

(i) Principles of medication selection;

(ii) Patient selection and therapeutics education;

(iii) Problem identification and assessment;

(iv) Knowledge of interactions, if any;

(v) Evaluation of outcome;

(vi) Recognition and management of complications and untoward reactions; and

(vii) Education in pain management and drug seeking behaviors.

(2) The naturopathic physician must retain training documentation at least five years from attestation date.

NEW SECTION

WAC 246-836-220 Intramuscular, intravenous, subcutaneous, and intradermal injections. Naturopathic physicians may administer substances consistent with the practice of naturopathic medicine as indicated in WAC 246-836-210 through the means of intramuscular, intravenous, subcutaneous, and intradermal injections.

(1) Naturopathic physicians may use intravenous therapy when they have submitted an attestation of training. Training must be at least sixteen hours of instruction. At least eight hours must be part of a graduate level course from a school approved under chapter 18.36A, 18.71, 18.57, or 18.79 RCW. Instruction must include the following:

(a) Indications;

(b) Contraindications;

(c) Formularies;

(d) Emergency protocols;

(e) Osmolarity calculation;

(f) Aseptic technique; and

(g) Proper documentation.

(2) The naturopathic physician must retain training documentation at least five years from attestation date.

(3) Intravenous chelation therapy is limited to use for heavy metal toxicity.

(4) All naturopathic physicians who use injection therapy must have a plan to manage adverse events including sensitivity, allergy, overdose, or other unintended reactions.

WSR 07-14-129
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed July 3, 2007, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-076.

Title of Rule and Other Identifying Information: Retired Volunteer Medical Workers: WAC 246-12-400 Who qualifies for an initial retired volunteer medical worker license?, 246-12-410 How to obtain an initial retired volunteer medical worker license, 246-12-420 When can you practice and what can you do?, 246-12-430 How to renew your retired volunteer medical worker license, 246-12-440 Continuing competency, and 246-12-450 How to return to active status.

Hearing Location(s): Department of Health, Rooms 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on August 10, 2007, at 9:00 a.m.

Date of Intended Adoption: August 10, 2007.

Submit Written Comments to: Susan Gragg, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, e-mail susan.gragg@doh.wa.gov, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2406, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Susan Gragg by August 1, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules create a retired volunteer medical worker license classification; set conditions limiting when licensee may practice under this license; set requirements to obtain and renew the license and establish continuing competency requirements.

Reasons Supporting Proposal: Chapter 72, Laws of 2006 (passed as ESHB 1850 and codified as RCW 18.130.-360) requires the department of health to create rules establishing enforceable standards for this new license category.

Statutory Authority for Adoption: RCW 18.130.050 and 18.130.360.

Statute Being Implemented: Chapter 72, Laws of 2006.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Gragg, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4941.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules would not impose more than minor costs to businesses, if any. A copy of the statement may be obtained by contacting: Susan Gragg, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

July 3, 2007
Mary C. Selecky
Secretary

PART 12
RETIRED VOLUNTEER MEDICAL WORKERS

NEW SECTION

WAC 246-12-400 Who qualifies for an initial retired volunteer medical worker license? (1) To be eligible for a retired volunteer medical worker license, a person must:

(a) Have held a license issued by a disciplining authority under RCW 18.130.040 that was in active status within the ten years prior to an initial application for a retired volunteer medical worker license;

(b) Have no restrictions on their ability to obtain an active license; and

(c) Be currently registered as a volunteer emergency worker with a local organization for emergency services or management.

(2) A person is not eligible for a retired volunteer medical worker license if they hold any current license issued by a disciplining authority under RCW 18.130.040.

NEW SECTION

WAC 246-12-410 How to obtain an initial retired volunteer medical worker license. (1) To obtain an initial retired volunteer medical worker license, a person must:

(a) Meet the requirements in WAC 246-12-400;

(b) Submit an application on forms approved by the secretary; and

(c) Submit proof of current registration as a volunteer emergency worker with a local organization for emergency services or management.

(2) There is no application fee.

(3) The retired volunteer medical worker's initial license expires on the person's third birthday after issuance and may be renewed as provided in WAC 246-12-430.

NEW SECTION

WAC 246-12-420 When can you practice and what can you do? (1) A retired volunteer medical worker can practice only when:

(a) There is a declared emergency, disaster, or authorized training event that has been given a mission number by the department of emergency management; and

(b) The local organization for emergency services or management, or designee, has activated the retired volunteer medical worker.

(2) A retired volunteer medical worker can only:

(a) Work the duties assigned;

(b) Work up to, but not exceed the scope of practice under their prior active license; and

(c) Work under an assigned supervisor.

(3) A health care facility is not obligated to use any retired volunteer medical worker.

NEW SECTION

WAC 246-12-430 How to renew your retired volunteer medical worker license. (1) To renew a retired volunteer medical worker license, you must:

(a) Submit a written declaration stating you have met the continuing competency requirements defined in WAC 246-12-440; and

(b) Submit proof of current registration as a volunteer with a local organization for emergency services or management.

(2) There is no renewal fee.

(3) A retired volunteer medical worker license must be renewed every three years.

(4) Prior to the expiration date, courtesy renewal notices are mailed to the address on file. Practitioners should return the renewal notice when renewing their license. Failure to receive a courtesy renewal notice does not relieve or exempt the retired volunteer medical worker license renewal requirement.

NEW SECTION

WAC 246-12-440 Continuing competency. (1) A retired volunteer medical worker must complete the following requirements every three years to renew their license:

(a) Basic first-aid course;

(b) Bloodborne pathogens course; and

(c) CPR course.

(2) A retired volunteer medical worker must submit a signed declaration to verify they meet the continuing competency education requirements.

(3) Local organizations for emergency services or management that register retired volunteer medical workers may require additional training, such as incident command system (ICS) or national incident management system (NIMS).

NEW SECTION

WAC 246-12-450 How to return to active status. A licensed retired volunteer medical worker may return to active status as provided in WAC 246-12-040.

WSR 07-14-133
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed July 3, 2007, 12:33 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-826-990 Health care assistant fees and renewal cycle, this proposal will clarify when a health care assistant applicant is required to pay the expired credential reissuance fee and the late penalty fee.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on August 15, 2007, at 10:00 a.m.

Date of Intended Adoption: September 14, 2007.

Submit Written Comments to: Karen Kelley, P.O. Box 47869, Olympia, WA 98504-7869, karen.kelley@doh.wa.gov, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-4918, by August 15, 2007.

Assistance for Persons with Disabilities: Contact Karen Kelley by August 8, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will clarify when a health care assistant who leaves a specific facility/practitioner and more than two years later returns to this same facility/practitioner, that they will not be required to pay the expired credential reissuance fee or the late renewal fee as long they hold an active credential with another facility/practitioner. In these circumstances health care assistants will be required to submit a new application and pay the first certification fee only. This proposal will eliminate confusion on what fees need to be paid.

Reasons Supporting Proposal: The department received a petition in September 2004 requesting changes to the costs health care assistants (HCA) have to pay. The department denied the petition because rule making had been initiated in chapter 246-12 WAC. The CR-101 to amend chapter 246-12 WAC was withdrawn January 12, 2007, because the amendment is more appropriate for the HCA fee rule. This proposed amendment will clarify when a HCA will have to pay the expired credential reissuance fee and the late renewal penalty fee. HCA credentials are not transferable between facilities.

Statutory Authority for Adoption: RCW 18.135.030.

Statute Being Implemented: RCW 18.135.055, 43.70.-250, and 43.70.280.

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

Name of Proponent: Department of health, health care assistant program, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Kelley, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4950; Implementation and Enforcement: Tracey Hansen, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4915.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business [economic] impact statement is not required per RCW 34.05.310 (4). The proposed rule language clarifies the current rule language without changing the effect of the rule.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5)(b). The proposed rule language clarifies the current rule language without changing the effect of the rule.

July 3, 2007
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-826-990 Health care assistant fees and renewal cycle. (1) Certificates must be renewed every two years as provided in WAC 246-826-050 and chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) If a health care assistant who holds a current active credential leaves employment with a facility or practitioner and returns to employment with a former facility or practitioner, and more than two years has passed since that health care assistant's employment with the former facility ended, the health care assistant must complete a new credential application and pay the application fee. However, that health care assistant is not required to pay the late renewal penalty and the expired credential reissuance fee.

(3) The following nonrefundable fees will be charged:

Title of Fee	Fee
First certification	$60.00
Renewal	60.00
Expired ((~~certificate~~)) credential reissuance	50.00
Recertification	60.00
Late renewal penalty	50.00
Duplicate	15.00

WSR 07-14-135
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Order 07-01—Filed July 3, 2007, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-09-034.

Title of Rule and Other Identifying Information: PEBB rules related to enrollment in chapter 182-08 WAC; eligibil-

ity in chapter 182-12 WAC; and appeals in chapter 182-16 WAC.

Hearing Location(s): Health Care Authority, The Sue Crystal Center, 676 Woodland Square Loop S.E., Olympia, WA, on August 8, 2007, at 10:00 a.m.

Date of Intended Adoption: August 10, 2007.

Submit Written Comments to: Barbara Scott or Ashley DeMoss, PEBB Benefit Services Program, P.O. Box 42684, Olympia, WA 98504-2684, e-mail Barbara.scott@hca.wa.gov, fax (360) 923-2606, by August 8, 2007.

Assistance for Persons with Disabilities: Contact Nikki Johnson by August 1, 2007, TTY (888) 923-5622 or (360) 923-2805.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to implement legislation enacted by the 2007 legislature (chapters 156, 302, and 488, Laws of 2007); implement the PEBB's policy decision to expand eligibility to include domestic partners barred from a legal marriage; make technical corrections; and continue to enhance the clarity of PEBB rules. Most of the proposed amendments only affect the structure and readability of the rules. Notable amendments being proposed by chapter include:

Chapter 182-08 WAC:

- Describing when an employee is newly benefits-eligible and the timing for returning enrollment forms.
- Making a technical correction that mid-year plan changes that affect the pretax employee contribution will not be approved unless the change is allowable under federal regulations that govern such benefit plans.

Chapter 182-12 WAC:

- Clarifying when employees are eligible for PEBB benefits.
- Amending eligibility for part-time academic employees of community and technical colleges to implement HB 1644.
- Restructuring retiree eligibility for readability.
- Making a technical correction by removing parent-child relationship language from extended dependent eligibility.
- Adding high school to the list of schools a registered student may be attending for children over age nineteen.
- Adding eligibility criteria for domestic partners barred from a legal marriage and implementing provisions of SSB 5336 recognizing certificates issued through the secretary of state's office as satisfying eligibility for same-sex domestic partners of eligible public employees.
- Adding WSP eligibility for survivors of emergency service personnel killed in the line of duty to implement SHB 1417.

Chapter 182-16 WAC:

- Amending the deadlines and other provisions for members to appeal eligibility and certain other decisions.

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: Chapter 41.05 RCW, chapters 156, 302, and 488, Laws of 2007.

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

Name of Agency Personnel Responsible for Drafting: Barbara Scott, 676 Woodland Square Loop, Lacey, WA, (360) 923-2642; Implementation: Ashley DeMoss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2644; and Enforcement: Mary Fliss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2640.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the health care authority rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

July 3, 2007

Jason Siems

Rules Coordinator

AMENDATORY SECTION (Amending WSR 91-14-025, filed 6/25/91, effective 7/26/91)

WAC 182-16-020 Definitions. As used in this chapter the term:

((~~(1)~~)) "Administrator" ((~~shall~~)) means the administrator of the health care authority (HCA) or designee;

((~~(2)~~)) "Agency" ((~~shall~~)) means the health care authority;

((~~(3)~~)) "Agent" ((~~shall~~)) means a person, association, or corporation acting on behalf of the health care authority pursuant to a contract between the health care authority and the person, association, or corporation.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB" means the public employees benefits board.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and others as defined in RCW 41.05.011.

AMENDATORY SECTION (Amending WSR 97-21-128, filed 10/21/97, effective 11/21/97)

WAC 182-16-030 Appeals ((~~from~~)) of decisions of the agency ((~~decisions~~)) or its agent—Applicability. ((~~Any enrollee of the health care authority's administered insurance plans (the self-insured plans) aggrieved by a decision of the agency or its agent concerning any matter related to scope of coverage, denials of claims, determinations of eligibility, or cancellations or nonrenewals of coverage may obtain administrative review of such decision by filing a notice of appeal with the health care authority's appeals committee. Review of decisions made by HMOs or similar health care contractors will be pursuant to the grievance/arbitration provisions of those plans and are not subject to these rules. Except that decisions concerning eligibility determinations are reviewable only by the health care authority.~~)) Except as provided by RCW 48.43.530 and 48.43.535, any person aggrieved by a decision of the health care authority or its agent may appeal that decision.

(1) **Eligibility appeals.** Decisions concerning eligibility determinations are reviewable by the health care authority. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.

(2) **Noneligibility appeals.** Appeals of decisions made by the agency's self-insured medical plans, managed health care plans, and other agency contractors are governed by the appeal provisions of those plans. Those appeals are not subject to this chapter, except for eligibility determinations.

(3) **Dental plan appeals.** Any enrollee of the health care authority's self-administered dental plan aggrieved by a decision of the agency or its agent may appeal to the PEBB appeals manager. The PEBB appeals manager must receive the appeal within ninety days from the date of the denial notice.

(4) **Limited retiree insurance coverage reinstatement.** Reinstatement of a retiree's insurance coverage may be approved when coverage was terminated because of late payment or late paperwork, or in extraordinary circumstances such as the retiree's impaired decision-making which adversely affects eligibility. No retiree's insurance coverage may be reinstated more than three times. Reinstatement may be approved only if:

(a) The retiree or a representative acting on their behalf submits a written appeal within sixty days after the notice of termination was mailed; and

(b) The retiree agrees to make payment in accordance with the terms of an agreement with the HCA.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-16-040 Appeals—Notice of appeal contents. Except as provided by RCW 48.43.530 and 48.43.535 and WAC 182-16-030(2), any person aggrieved by a decision of the health care authority((~~'s PEBB program~~)) or its agent may appeal that decision by filing a notice of appeal with the PEBB ((~~program's~~)) appeals manager. The notice of appeal must contain:

(1) The name and mailing address of the enrollee;

(2) The name and mailing address of the appealing party;

(3) The name and mailing address of the appealing party's representative, if any;

(4) A statement identifying the specific portion of the decision being appealed making it clear what ((~~it is that~~)) is believed to be unlawful or unjust;

(5) A clear and concise statement of facts in support of appealing party's position;

(6) Any ((~~and all~~)) information or documentation that the ((~~aggrieved person~~)) appealing party would like considered and ((~~feels~~)) substantiates why the decision should be reversed ((~~(~~)). Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision((~~)~~));

(7) A copy of the ((~~PEBB program's~~)) health care authority's or ((~~health carrier's~~)) its agent's response to the issue the ((~~appellant~~)) appealing party has raised;

(8) The type of relief sought;

(9) A statement that the appealing party has read the notice of appeal and believes the contents to be true((~~, followed by his or her~~));

(10) The appealing party's signature and the signature of his or her representative, if any;

((~~(10)~~)) (11) The appealing party shall file the original notice of appeal with the PEBB benefits services program using hand delivery, electronic mail or United States Postal Service mail. The notice of appeal must be received by the PEBB benefits services program within ((~~sixty~~)) ninety days after the decision of the PEBB staff was mailed to the appealing party. The PEBB appeals manager shall acknowledge receipt of the copies filed with the PEBB benefits services program;

((~~(11)~~)) (12) The health care authority's appeals ((~~officer~~)) committee will render a written decision within thirty working days after receipt of the complete notice of appeal.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-16-050 Appeals—Hearings. (1) If the appealing party is not satisfied with the decision of the health care authority's appeals ((~~officer upholds the original denial~~)) committee, the ((~~enrollee~~)) appealing party may request an administrative hearing. The request must be made in writing to the PEBB ((~~program's~~)) appeals manager. The appeal is not effective unless the PEBB ((~~benefit services must~~)) appeals manager receives the written request for a hearing within ((~~fifteen~~)) thirty days of the date the appeals decision was mailed to the ((~~appellant~~)) appealing party.

(2) The agency shall set the time and place of the hearing and give not less than ((~~seven~~)) twenty days notice to all parties and persons who have filed written petitions to intervene.

(3) The administrator or his or her designee shall preside at all hearings resulting from the filings of appeals under this chapter.

(4) All hearings ((~~shall~~)) must be conducted in compliance with these rules, chapter 34.05 RCW and chapter 10-08 WAC as applicable.

(5) Within ninety days ((~~of~~)) after the hearing record is closed, the administrator or his or her designee shall render a

decision which shall be the final decision of the agency. A copy of that decision accompanied by a written statement of the reasons for the decision shall be served on all parties and persons who have intervened.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-108 Purpose. The purpose of this chapter is to establish eligibility criteria for and effective date of enrollment in the public employees((~~'~~)) benefits board (PEBB) approved benefits.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Administrator" means the administrator of the HCA or designee.

"Board" means the public employees((~~'~~)) benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB ((~~sponsored~~)) medical ((~~coverage~~)) insurance by a retiree or ((~~surviving dependent~~)) eligible survivor.

"Dependent" means a person who meets eligibility requirements ((~~set forth~~)) in WAC 182-12-260.

"Effective date of enrollment" means the first date ((~~on which~~)) when an enrollee is entitled to receive covered benefits.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

((~~"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.~~

~~"Health carrier" has the meaning set forth at RCW 43.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and the uniform dental plan.~~))

"Health plan" or "plan" means a medical ((~~and dental coverages~~)) or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, ((~~or~~)) long-term care insurance, long-term disability insurance ((~~plan~~)), or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer ((~~and~~)), life insurance offered to employees on an optional basis, and retiree life insurance.

"Open enrollment" means a time period designated by the administrator ((~~during which enrollees~~)) when subscribers may apply to transfer their enrollment from one health ((~~carrier~~)) plan to another, enroll in medical ((~~coverage~~)) if the enrollee had previously waived such insurance coverage or add dependents.

((~~"PEBB plan" or~~)) "PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverage((~~s approved~~)) or other employee benefit administered by the ((~~public employees' benefits board for eligible enrollees and their dependents~~)) PEBB benefits services program within HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and other as defined in RCW 41.05.011.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or ((~~surviving dependent~~)) eligible survivor who has been designated by the HCA as the individual to whom the HCA and the health ((~~carrier~~)) plan will issue all notices, information, requests and premium bills on behalf of ((~~enrolled dependents~~)) enrollees.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB ((~~sponsored~~)) health plan by an employee (as ((~~set forth~~)) defined in WAC 182-12-115) or a dependent who meets eligibility requirements ((~~set forth~~)) in WAC 182-12-260.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-111 Eligible entities and individuals. The following entities and individuals shall be eligible ((~~to participate in~~)) for PEBB insurance coverage((~~s~~)) subject to the terms and conditions set forth below:

(1) State agencies. Every department, division, or separate agency of state government, including all state higher education institutions, the higher education coordinating board, and the state board for community and technical colleges is required to participate in all PEBB ((~~approved insurance coverage~~)) benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.-270.

(a) Employees of technical colleges previously enrolled in a benefits trust may ((~~terminate~~)) end PEBB ((~~insurance coverage~~)) benefits by January 1, 1996, or the expiration of the current collective bargaining agreements, whichever is later. Employees electing to ((~~terminate~~)) end PEBB ((~~coverage~~)) benefits have a one-time reenrollment option after a five year wait. Employees of a bargaining unit may ((~~terminate~~)) end PEBB benefit participation only as an entire bar-

gaining unit. All administrative or managerial employees may ((~~terminate~~)) end PEBB participation only as an entire unit.

(b) Community and technical colleges with employees enrolled in a benefits trust shall remit to the HCA a retiree remittance as specified in the omnibus appropriations act, for each full-time employee equivalent. The remittance may be prorated for employees receiving a prorated portion of benefits.

(2) Employee organizations. Employee organizations representing state civil service employees and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for ((~~the purpose of~~)) purchasing insurance benefits, may participate in PEBB ((~~sponsored~~)) insurance coverages at the option of each employee organization provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) ((~~The~~)) PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application ((~~to participate in~~)) for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB ((~~plan~~)) insurance coverage participation ((~~for a minimum of~~)) at least one full year, and may ((~~terminate~~)) end participation only at the end of a plan year.

(e) The terms and conditions for the payment of the insurance premiums ((~~shall~~)) must be ((~~set forth~~)) in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents must be the same as the requirements for dependents of the state employees and retirees as ((~~set forth~~)) in WAC 182-12-260.

(g) The legislative authority or the board of directors ((~~shall provide~~)) must give the HCA ((~~with~~)) written notice of its intent to ((~~terminate~~)) end PEBB ((~~plan~~)) insurance coverage participation ((~~no fewer than~~)) at least thirty days ((~~prior to~~)) before the effective date of termination. If the employee organization ((~~terminates coverage in~~)) ends PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible ((~~to participate in~~)) for PEBB insurance coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(3) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB insurance coverage.

(a) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(b) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB insurance coverage.

(c) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees and retirees ((~~as set forth~~)) in WAC 182-12-260.

(4) Local governments: Employees of a county, municipality, or other political subdivision of the state may participate in PEBB insurance coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the group meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group, and the nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group.

(b) The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(c) The legislative authority or the board of directors of the entity must submit to the HCA an application together with employee census data and, if available, prior claims experience of the entity. The application ((~~to participate in~~)) for PEBB insurance coverage is subject to the approval of the HCA.

(d) The legislative authority or the board of directors must maintain its PEBB ((~~plan~~)) insurance coverage participation ((~~for a minimum of~~)) at least one full year, and may terminate participation only at the end of the plan year.

(e) The terms and conditions for the payment of the insurance premiums must be ((~~set forth~~)) in the provisions of the bargaining agreement or terms of employment and shall comply with the employer contribution requirements specified in the appropriate governing statute. These provisions, including eligibility, shall be subject to review and approval by the HCA at the time of application for participation. Any substantive changes must be submitted to HCA.

(f) The eligibility requirements for dependents of local government employees must be the same as the requirements for dependents of state employees and retirees ((~~as set forth~~)) in WAC 182-12-260.

(g) The legislative authority or the board of directors ((~~shall provide~~)) must give the HCA ((~~with~~)) written notice of its intent to ((~~terminate~~)) end PEBB ((~~plan~~)) insurance coverage participation ((~~no fewer than~~)) at least thirty days ((~~prior to~~)) before the effective date of termination. If a county, municipality, or political subdivision ((~~terminates~~)) ends coverage in PEBB insurance coverage, retired and disabled employees who began participating after September 15, 1991, are not eligible ((~~to participate in~~)) for PEBB insurance

coverage beyond the mandatory extension requirements specified in WAC 182-12-146.

(5) K-12 school districts and educational service districts: Employees of school districts or educational service districts may participate in PEBB insurance ((~~programs~~)) coverage provided all of the following requirements are met:

(a) All eligible employees of the entity must transfer to PEBB insurance coverage as a unit. If the K-12 school district or educational service district meets the minimum size standards established by HCA, bargaining units may elect to participate separately from the whole group. For ((~~the purpose of~~)) enrolling by bargaining unit, all nonrepresented employees will be considered a single bargaining unit.

(b) The school district or educational service district must submit an application together with employee census data and, if available, prior claims experience of the entity to the HCA. The application ((~~to participate in~~)) for the PEBB insurance coverage is subject to the approval of the HCA.

(c) The school district or educational service district must agree to participate in all PEBB insurance coverage. The PEBB health plans must be the only employer sponsored health plans available to eligible employees.

(d) The school district or educational service district must maintain its PEBB ((~~plan~~)) insurance coverage participation ((~~for a minimum of~~)) at least one full year, and may ((~~terminate~~)) end participation only at the end of the plan year.

(e) Beginning September 1, 2003, the HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health ((~~carrier~~)) plan and family size as would be charged to state employees for each participating school district or educational service district. Each participating school district or educational service district must agree to collect an employee premium by health ((~~carrier~~)) plan and family size that is not less than that paid by state employees. The eligibility requirements for employees will be the same as those for state employees as defined in WAC 182-12-115.

(f) The eligibility requirements for dependents of K-12 school district and educational service district employees must be the same as the requirements for dependents of the state employees and retirees ((~~as set forth~~)) in WAC 182-12-260.

(g) The school district or educational service district must ((~~provide~~)) give the HCA ((~~with~~)) written notice of its intent to ((~~terminate~~)) end PEBB ((~~plan~~)) insurance coverage participation ((~~no fewer than~~)) at least thirty days ((~~prior to~~)) before the effective date of termination, and may ((~~terminate~~)) end participation only at the end of a plan year.

(6) Eligible nonemployees:

(a) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans ((~~coverage~~)) while enrolled in that program.

(b) School board members or students eligible to participate under RCW 28A.400.350 may participate in PEBB insurance coverage as long as they remain eligible under that section.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-112 Insurance eligibility for higher education. For ((~~the purpose of~~)) insurance eligibility, the HCA considers the higher education personnel board, the council for postsecondary education, and the state board for community colleges to be higher education agencies.

AMENDATORY SECTION (Amending Order 06-01, filed 5/25/06, effective 6/25/06)

WAC 182-12-115 Eligible employees. The following employees of state government, higher education, participating K-12 school districts, educational service districts, political subdivisions and employee organizations representing state civil service workers are eligible for PEBB insurance coverage.

A person whose employment situation can be described by more than one of the eligibility categories in subsections (1) through (7) of this section shall have his or her eligibility determined solely by the criteria of the one category that most closely describes his or her employment situation.

(1) "Permanent employees." Those who work at least half-time per month and are expected to be employed for more than six months. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, insurance coverage begins on the date of employment.

(2) "Nonpermanent employees." Those who work at least half-time and are expected to be employed for no more than six months. These employees are eligible for benefits on the first day of the seventh month of half-time or more employment. Insurance coverage begins on the first day of the seventh month following the date of employment.

(3) "Career seasonal employees." Those who work at least half-time per month during a designated season for a minimum of three months but less than twelve months per year and who have an understanding of continued employment season after season. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working day of a month, insurance coverage begins on the date of employment. Career seasonal employees who work at least half-time per month for a season that extends for nine or more months are eligible for the employer contribution during the break between seasons of employment. However, career seasonal employees who work at least half-time per month for less than nine months in a season are not eligible for the employer contribution during the break between seasons of employment but may be eligible to continue insurance coverage by self-paying premiums.

(4) "Instructional year employees." Employees who work half-time or more on an instructional year (school year) or equivalent nine-month basis. These employees are eligible for benefits on their date of employment. Insurance coverage begins on the first day of the month following the date of employment. If the date of employment is the first working

day of the month, insurance coverage begins on the date of employment. These employees are eligible to receive the employer contribution for insurance coverage during the off-season following each instructional year period of employment. The provisions of this subsection do not apply to persons employed on a quarter-to-quarter or semester-to-semester contract basis.

(5)(a) "Part-time faculty" and "part-time academic employees." Employees who are employed on a quarter/semester to quarter/semester basis are eligible for insurance coverage ((~~beginning with~~)) starting the second consecutive quarter/semester of half-time or more employment at one or more state institutions of higher education including one or more college districts. These employees are eligible for benefits the first day of the second consecutive quarter/semester of half-time or more employment. Insurance coverage begins on the first day of the month following the beginning of the second quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, insurance coverage begins at the beginning of the second consecutive quarter/semester.

((~~For the purpose of determining~~)) To determine eligibility for part-time faculty and part-time academic employees, employers must:

(i) Consider spring and fall as consecutive quarters/semesters when first establishing eligibility; and

(ii) Determine "half-time or more employment" based on each institution's definition of "full-time"; and

(iii) At the beginning of each quarter/semester notify, in writing, all current and newly hired part-time faculty and part-time academic employees of their potential right to benefits under this subsection; and

(iv) Where concurrent employment at more than one state higher education institution is used to determine total employment of half-time or more, the employing institutions will arrange to prorate the cost of the employer insurance contribution based on the employment at each institution. However, if the employee would be eligible by virtue of employment at one institution, that institution will pay the entire cost of the employer contribution regardless of other higher education employment. In cases where the cost of the contribution is prorated between institutions, one institution will forward the entire contribution monthly to HCA.

Part-time faculty and part-time academic employees employed at more than one state institution of higher education are responsible for notifying each employer quarterly, in writing, of the employee's multiple employment. In no case will retroactive insurance coverage be permitted or employer contribution paid to HCA if an employee ((~~fails to~~)) does not inform all of his((~~/~~)) or her employing institutions about employment at all institutions within the current quarter.

Once enrolled, if a part-time faculty or part-time academic employee does not work at least a total of half-time in one or more state institutions of higher education, eligibility for the employer contribution ceases.

(b) Part-time academic employees of community and technical colleges who have a reasonable expectation of continued employment at one or more college districts shall be eligible for the employer contribution for benefits during the period between the end of the spring quarter and the beginning of the fall quarter, or other quarter break period, if they meet the following conditions of this subsection (5)(b).

Part-time academic employees who work half-time or more in each instructional year quarter of an academic year, or equivalent nine-month season, in a single college district or multiple college districts, as determined from the payroll records of the employing community or technical college district(s), are eligible for the employer contribution for health benefits during the quarter or off season period immediately following the end of one academic year or equivalent nine-month season.

For ((~~the purposes of~~)) this subsection (5)(b):

(i) "Academic employee" ((~~has the meaning set forth~~)) is defined in RCW 28B.50.489(3).

(ii) "Academic year" means fall, winter, and spring quarters in a community or technical college, as determined from the payroll records of the employing college district or college districts.

(iii) "Equivalent nine-month seasonal basis" means a nine consecutive month period of employment at half-time or more by a single college district or multiple college districts, as determined from the payroll records of the employing college district(s).

(iv) "Health benefits" means the particular medical and/or dental coverage in place at the end of the academic year or equivalent nine-month season. Changes to health benefits may be made only as ((~~set forth~~)) allowed in chapter 182-08 WAC or during an annual open enrollment period.

(c) Part-time academic employees who have established eligibility, as determined from the payroll records of the employing community or technical college districts, for employer contributions for benefits and who have worked an average of half-time or more in each of the two preceding academic years, through employment at one or more community or technical college districts, are eligible for continuation of employer contributions for the subsequent summer period between the end of the spring quarter and the beginning of the fall quarter.

(d) Once a part-time academic employee meets the criteria in (c) of this subsection, the employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least ((~~three of the four~~)) two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year. Benefits provided under this subsection (5)(d) cease ((~~at the end of the academic year~~)) if this criteria is not met. Continuous benefits shall be reinstated once the employee reestablishes eligibility under (c) of this subsection.

(e) As used in (c) and (d) of this subsection, "academic year" means the summer, fall, winter, and spring quarters. As used in this subsection, "academic employees" has the meaning provided in RCW 28B.50.489.

(f) To be eligible for maintenance of benefits through averaging pursuant to (c) and (d) of this subsection, part-time academic employees must notify their employers of their potential eligibility.

(6) "Appointed and elected officials." Legislators are eligible ((~~to apply for coverage~~)) for benefits on the date their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state gov-

ernment are eligible ((~~to apply for coverage~~)) for benefits on the date their term begins or they take the oath of office, whichever occurs first. Insurance coverage for legislators begins on the first day of the month following the date their term begins. If the term begins on the first working day of the month, insurance coverage begins on the first day of their term. Insurance coverage begins for all other elected and full-time appointed officials of the legislative and executive branches of state government on the first day of the month following the date their term begins, or the first day of the month following the date they take the oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of the month, insurance coverage begins on the date the term begins, or the oath of office is taken.

(7) "Judges." Justices of the supreme court and judges of courts of appeals and the superior courts become eligible ((~~to apply for coverage~~)) for benefits on the date they take the oath of office. Insurance coverage begins on the first day of the month following the date their term begins, or the first day of the month following the date they take oath of office, whichever occurs first. If the term begins, or oath of office is taken, on the first working day of a month, insurance coverage begins on the date the term begins, or the oath of office is taken.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-116 Who is eligible ((~~to participate in~~)) for the PEBB flexible spending account plan? Beginning January 1, 2006, all employees of public four-year institutions of higher education, of the state community and technical colleges and of the state board for community and technical colleges who are eligible for PEBB ((~~insurance~~)) benefits, as defined in WAC 182-12-115, are eligible ((~~to participate in~~)) for the PEBB medical flexible spending account plan. Beginning July 1, 2006, all employees of state agencies who are eligible for PEBB ((~~insurance~~)) benefits, are eligible ((~~to participate in~~)) for the PEBB medical flexible spending account plan.

If an employee terminates employment after becoming a plan participant and later on in the same plan year is hired into a new position that is eligible for PEBB ((~~insurance~~)) benefits, the employee may not resume participation in the PEBB medical flexible spending account until the beginning of the next plan year.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-123 Dual ((~~eligibility~~)) enrollment is prohibited. PEBB health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals ((~~that~~)) who have more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") are limited to one enrollment.

(2) ((~~One insurance-~~)) An eligible employee may waive medical ((~~coverage for himself or herself~~)) and enroll as a ((~~spouse or~~)) dependent on the coverage of his or her eligible spouse or qualified domestic partner as stated in WAC 182-12-128. ((~~This waiver option is not available for other insurance coverages.~~))

(3) ((~~The following examples describe typical situations of dual eligibility. These are not the only situations where dual eligibility may arise. These examples are provided as illustrations only.~~

~~(a) A husband and wife who are both insurance-eligible and employed by PEBB-participating employers, such as state agencies, may enroll only in a health plan as an employee but not also as a dependent. That is, the husband may enroll only under his employing agency and the wife may enroll only under her employing agency but not also as dependents of each other. In the alternative, one spouse may waive medical coverage as an employee and enroll as a dependent on the medical coverage of the other spouse.~~

~~(b) A dependent child that is~~)) Children eligible for ((~~coverage~~)) medical and dental under two or more parents or stepparents, who are employed by PEBB-participating employers, may be enrolled as a dependent under the health plan ((~~coverage~~)) of one parent or stepparent, but not more than one.

((~~(c)~~)) (4) An employee employed in ((~~an insurance-~~)) a benefits eligible position by more than one PEBB-participating employer may enroll only under one employer. The employee may choose to enroll in ((~~a health plan~~)) PEBB benefits under the employer that:

((~~(i)~~)) (a) Offers the most favorable cost-sharing arrangement; or

((~~(ii)~~)) (b) Employed the employee for the longer period of time.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-128 When may an employee waive ((~~enrollment in PEBB insurance coverage~~)) health plan enrollment for their self or their eligible dependent? (1) ((~~Employees eligible for PEBB insurance coverage have the option of waiving health plan coverage if they are covered by other health plan coverage. If an employee waives health plan coverage, such coverage is automatically waived for all eligible dependents. An employee may choose to enroll only himself or herself, and waive either the medical or dental portion of the health plan coverage, or both, for any or all dependents. In order to waive enrollment, the employee must complete an enrollment form and list all enrollees for whom coverage is being waived.~~)) Employees may waive medical if they have other comprehensive group medical coverage. To waive medical, the employee must complete an enrollment/change form. If an employee waives medical, then medical is automatically waived for all eligible dependents.

(2) An employee may only waive ((~~the~~)) medical ((~~portion of health plan coverage~~)). The employee must remain enrolled in ((~~the~~)) dental, life and ((~~LTD insurance coverages~~)) long-term disability.

(3) ((~~If the medical portion of the health plan coverage is waived, an otherwise eligible enrollee may not rescind the waiver and reenroll in the medical portion of the health plan coverage except during the following times:~~

~~(a) The next open enrollment period; or~~

~~(b) Within sixty days of loss of other medical coverage if proof of enrollment in other comprehensive group medical coverage is submitted and demonstrates that:~~

~~(i) Enrollment in other medical coverage was continuous from the most recent open enrollment period for which PEBB medical coverage was waived; and~~

~~(ii) The period between loss of the other medical coverage and application for PEBB medical coverage is sixty days or less.~~)) An employee may waive medical or dental, or both, for any or all eligible dependents.

(4) ((~~If the dental portion of the health plan coverage is waived, an otherwise eligible dependent may not enroll in PEBB dental coverage except~~)) Once health plan enrollment is waived, enrollment is only allowed during the following times:

(a) The next open enrollment period; or

(b) ((~~Within sixty days after loss of other dental coverage if proof of enrollment in other dental coverage is submitted and demonstrates that:~~)) After losing other health insurance. The employee must provide evidence:

(i) ((~~Enrollment in the other dental coverage was continuous from the most recent open enrollment period for which dental was waived; and~~)) Other health insurance was comprehensive group coverage;

(ii) ((~~The period between loss of the other dental and application for PEBB dental coverage is sixty days or less.~~)) Enrollment was continuous from the most recent PEBB open enrollment period; and

(iii) The date coverage was lost.

Application to enroll in a PEBB health plan must be made no later than sixty days after the date the other health insurance was lost.

((~~(5) The employee and eligible dependents may have an additional opportunity to reenroll only as a result of addition of a new dependent due to marriage, birth, adoption, or placement for adoption, provided that advice of such enrollment is provided to HCA within thirty-one days after the marriage or within sixty days after the~~)) (c) After acquiring a new dependent. Application for enrollment must be made no later than sixty days after acquiring the new dependent through marriage, establishment of a qualified domestic partnership, birth, adoption or placement for adoption ((~~of a child~~)).

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-131 When does employer paid insurance coverage end? PEBB medical, dental and life insurance ((~~coverages~~)) for a terminated employee, spouse, qualified ((~~same sex~~)) domestic partner or ((~~dependent~~)) child ceases at 12:00 midnight, the last day of the month in which the ((~~employee or dependent~~)) enrollee is eligible. Basic long-term disability ((~~coverage~~)) insurance ceases at 12:00 midnight the date employment ((~~terminates~~)) ends or immediately upon the death of the employee.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-133 What options for continuing coverage are available to employees when they are no longer eligible for PEBB insurance coverage paid for by their employer? Eligible employees covered by PEBB insurance coverage have options for providing continued coverage for themselves and their dependents during temporary or permanent loss of eligibility. Except in the case of approved family and medical leave, and except as otherwise provided, only employees in pay status eight or more hours per month are eligible to receive the employer contribution.

(1) When an employee is on leave without pay due to an event described in (a) through (f) of this subsection, insurance coverage may be continued at the group rate by self-paying premiums. Employees may self-pay for a maximum of twenty-nine months. The number of months that an employee self-pays premium during a period of leave without pay will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave may continue long-term disability insurance. The following types of leave qualify to continue coverage under this provision:

(a) The employee is on authorized leave without pay;

(b) The employee is laid off because of a reduction in force (RIF);

(c) The employee is receiving time-loss benefits under workers' compensation;

(d) The employee is applying for disability retirement;

(e) The employee is called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); ((~~however, self-payment of life insurance is limited to twelve months from the date the employee is called to active duty;~~)) or

(f) The employee is on approved educational leave.

(2) Part-time faculty and part-time academic employees may self-pay premium at the group rate between periods of eligibility for a maximum of eighteen months. ((~~Part-time faculty~~)) These employees may continue any combination of medical, dental and life insurance.

(3) The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives enrollees the right to continue ((~~group~~)) medical and dental ((~~coverage~~)) for a period of eighteen to ((~~thirty-six~~)) twenty-nine months when they lose eligibility due to one of the following qualifying events.

(a) Termination of employment.

(b) The employee's hours are reduced to the extent of losing eligibility.

(4) Employees who are approved for leave under the federal Family and Medical Leave Act (FMLA) are eligible to receive the employer contribution toward premium for up to twelve weeks, as provided in WAC 182-12-138.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-136 May an employee on approved educational leave waive PEBB health plan coverage? In order to avoid duplication of group health plan coverage, the following shall apply to employees during any period of approved educational leave. Employees eligible for coverage provided in WAC 182-12-133 who obtain comprehensive health plan coverage under another group plan may waive continuance of such coverage for each full calendar month in which they maintain coverage under the other comprehensive group health plan. These employees have the right to reenroll in a PEBB health plan ((~~coverage~~)) effective the first day of the month after the date the other comprehensive group health plan coverage ((~~terminates~~)) ends, provided ((~~proof~~)) evidence of such other comprehensive group health plan coverage is provided to the ((~~HCA~~)) PEBB benefits services program upon application for reenrollment.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-138 If an employee is approved for family and medical leave, what ((~~PEBB~~)) insurance coverage may be continued? Employees on leave under the federal Family and Medical Leave Act (FMLA) may continue to receive up to twelve weeks of employer-paid ((~~group~~)) medical, dental, basic life, and basic long-term disability insurance while on family and medical leave and may also continue current optional life and long-term disability. All employee premium amounts associated with insurance coverage must be paid monthly as they become due. If premiums are more than sixty days delinquent, insurance coverage will ((~~be terminated~~)) end as of the last day of the month of fully paid coverage.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-141 If I revert from an eligible position to an ineligible position what happens to my insurance coverage? Employees who revert to a position that is ineligible for employer contribution toward insurance coverage may continue enrollment in a PEBB health plan ((~~coverage~~)) by self-paying premium for up to eighteen months (and in some cases up to twenty-nine months) under the same terms as an employee who is granted leave without pay.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-146 ((~~PEBB~~)) Continuing health plan coverage under COBRA. Enrollees and eligible dependents who become ineligible for ((~~health plan~~)) coverage and who qualify for continued coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue their ((~~plan coverage~~)) medical and dental by self-payment of health plan premiums in accordance with COBRA statutes and regulations.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-148 May an employee continue PEBB insurance coverage during their appeal of dismissal? (1) Employees awaiting hearing of a dismissal action before any of the following may continue their insurance coverage by self-payment of premium on the same terms as an employee who is granted leave without pay.

(a) For an appeal filed on or before June 30, 2005, the personnel appeals board or any court.

(b) For an appeal filed on or after July 1, 2005, the personnel resources board, an arbitrator, a grievance or appeals committee established under a collective bargaining agreement for union represented employees.

(2) If the dismissal is upheld, all insurance coverage ((~~shall terminate~~)) will end at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is earlier.

(3)(a) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid insurance coverage retroactively, the employer must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

(b) HCA will refund to the employee any premiums the employee paid that may be provided for as a result of the reinstatement of the employer contribution only if the employee makes retroactive payment of any employee contribution amounts associated with the insurance coverage. In the alternative, at the request of the employee, HCA may deduct the employee's contribution from the refund of any premiums self-paid by the employee during the appeal period.

(c) All optional life and long-term disability insurance which was in force at the time of dismissal shall be reinstated retroactively only if the employee makes retroactive payment of premium for any such optional coverage which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to restore such optional coverage.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-12-171 ((~~Eligible retirees.~~)) When are retiring employees eligible to enroll in retiree insurance? (1) ((~~Eligible~~)) **Procedural requirements.** Retiring employees ((~~who terminate public employment after becoming vested in a Washington state sponsored retirement system are eligible to continue PEBB sponsored insurance coverage as a retiree provided the following requirements in (a) and (b) of this subsection as well as one of (c) through (g) of this subsection are met:~~)) must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) ((~~If the retiree or enrolled dependent(s) is entitled to Medicare and the retiree retired after July 1, 1991, the Medicare-entitled retiree or Medicare-entitled dependent must enroll in both Medicare Parts A and B; and~~)) The employee

must submit an election form to enroll or defer insurance coverage within sixty days after their employer paid or COBRA coverage ends. Employees who cancel PEBB health plan coverage or do not enroll in a PEBB health plan at retirement are only eligible to enroll if they have deferred enrollment and maintained comprehensive coverage as defined in WAC 182-12-200 or 182-12-205.

(b) The ((~~retiring employee must submit an election form to enroll or defer health plan coverage within sixty days after their employer paid or continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends and is eligible for retiree benefits under one or more of the programs described in (c), (d), (e), (f), or (g) of this subsection;~~

~~(c) Except as provided in (c)(vii) of this subsection, the person immediately upon termination begins receiving a monthly retirement income benefit from one or more of the following retirement systems:~~

~~(i) Law enforcement officers' and fire fighters' retirement system Plan 1 or 2;~~

~~(ii) Public employees' retirement system Plan 1 or 2;~~

~~(iii) Public safety employees' retirement system;~~

~~(iv) School employees' retirement system Plan 2;~~

~~(v) State judges/judicial retirement system;~~

~~(vi) Teachers' retirement system Plan 1 or 2; or~~

~~(vii) Washington state patrol retirement system.~~

~~(viii) Provided, however, that a lump-sum payment may be received in lieu of a monthly retiree income benefit payment under RCW 41.26.425(1), 41.32.762(1), 41.32.870(1), 41.35.410(1), 41.35.670(1), 41.37.200(1), 41.40.625(1) or 41.40.815(1).~~

~~(d) The person is at least fifty-five years of age with at least ten years of state of Washington service credit and a member of one of the following retirement systems:~~

~~(i) Public employees' retirement system Plan 3;~~

~~(ii) School employees' retirement system Plan 3; or~~

~~(iii) Teachers' retirement system Plan 3.~~

~~(e) The person is a member of a state of Washington higher education retirement plan, and is:~~

~~(i) At least fifty-five years of age with at least ten years service; or~~

~~(ii) At least sixty-two years of age; or~~

~~(iii) Immediately begins receiving a monthly retirement income benefit.~~

~~(f) If not retiring under the public employees' retirement system, the person would have been eligible for a monthly retirement income benefit because of age and years of service had the person been employed under the provisions of public employees' retirement system Plan 1 or Plan 2 for the same period of employment.~~

~~(g) The person is an elected official as defined under WAC 182-12-115(6) who has voluntarily or involuntarily left a public office, whether or not the person receives a benefit from a state retirement system~~)) employee and enrolled dependents who are entitled to Medicare must enroll and maintain enrollment in both Medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to Medicare after enrollment in PEBB retiree insurance, they must enroll and maintain enrollment in Medicare.

(2) **Eligibility requirements.** Eligible employees ((~~who participate in PEBB sponsored life insurance as an active employee and meet qualifications for retiree insurance coverage as provided in subsection (1) of this section are eligible for PEBB sponsored retiree life insurance if they submit an election form no later than sixty days after the date their PEBB employee life insurance terminates, providing their employee life insurance premium is not being waived by the life insurance carrier at the time they elect retiree life insurance~~)) (as defined in WAC 182-12-115) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree the employee must be eligible to retire under a Washington state-sponsored retirement plan within sixty days after their employer paid or COBRA coverage ends.

Except for employees who are members of a retirement Plan 3 or eligible elected state officials, retiring employees must immediately begin to receive a monthly retirement plan payment.

Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service within sixty days of PEBB employee insurance coverage ending.

Employees who are members of a Washington higher education retirement plan are eligible if they meet their plan's age requirement, are at least age fifty-five with ten years of state service, or immediately begin to receive a monthly retirement plan payment.

(a) **Local government employees who are not members of a Washington state-sponsored retirement system.** Eligible employees (as defined in WAC 182-12-115) who retire from a local government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as a retiree. If they are not retiring under a Washington state-sponsored retirement system, they must meet the same age and years of service had the person been employed and a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to

enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(13)), are eligible if they meet their retirement plan's age requirement and length of service within sixty days of employer paid or COBRA coverage ending.

Employees who separate from employment due to total and permanent disability who are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's open enrollment period for the year beginning January 1, 1995.

(3) ((The following retired and disabled school district and educational service district employees are eligible to participate in health plan coverage only, provided they meet all of the enrollment criteria stated below and, if they are entitled to Medicare, are also enrolled in both Medicare Parts A and B:

(a) Persons receiving a retirement allowance under chapter 41.32, 41.35 or 41.40 RCW as of September 30, 1993, and who enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the authority for the plan year beginning January 1, 1995;

(b) Persons who separate from employment with a school district or educational service district due to a total and permanent disability and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35 or 41.40 RCW. Such persons must enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the HCA for the plan year beginning January 1, 1995, or sixty days following retirement, whichever is later.)) **Elected state officials.** Employees who are elected state officials (as defined under WAC 182-12-115(6)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They are eligible whether or not they receive a retirement plan payment from a state-sponsored retirement system.

(4) ((With the exception of the Washington state patrol, retirees and disabled employees are not eligible for an employer premium contribution.)) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and fire fighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teacher's retirement system; and
- State patrol retirement system.

(((5))) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, ((shall be)) are considered a Washington state-sponsored retirement system for Washington State University Extension employees ((who are)) covered under the PEBB insurance coverage at the time of retirement or disability.

(((6) Employees who do not elect enrollment in PEBB retiree insurance coverage no later than sixty days immediately after termination of employment for retirement, or immediately after continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends, or who terminate PEBB retiree coverage no later than sixty days after retirement, or who terminate PEBB retiree coverage after retirement, are not eligible to reenroll in PEBB retiree insurance coverage unless they retired and deferred PEBB retiree coverage pursuant to WAC 182-12-205 or retired and deferred PEBB retiree coverage pursuant to WAC 182-12-200.

(7)(a) If a retiree's insurance coverage terminates for any reason, coverage will not be reinstated at a later date. Examples of termination include, but are not limited to, any one or more of the following:

(i) Failure to continue to meet eligibility requirements;

(ii) Fraud, intentional misrepresentation or withholding of information the enrollee knew or should have known was material or necessary to accurately determine eligibility or the correct premium;

(iii) Failure to provide information requested by the due date or knowingly providing false information;

(iv) Abusive or offensive conduct repeatedly directed to an HCA employee, a health plan or other HCA contractor providing coverage on behalf of the PEBB program, its employees, or other persons; or

(v) Intentional misconduct.

(b) If a retiree fails to pay the premium when due or an underpayment of premium is made, PEBB sponsored insurance coverage will terminate on the last day of the month for which the last full premium was received.

(c) Notwithstanding (a) of this subsection, the PEBB assistant administrator or designee may approve reinstatement of insurance coverage if the retiree or their dependent or beneficiary submits a written appeal and provides proof that extraordinary circumstances made it virtually impossible to make the payment and the retiree agrees to make payment in accordance with the terms of an agreement with the HCA. No insurance coverage will be reinstated more than three times.

(8) Enrollees may not enroll in retiree dental coverage unless they also enroll in retiree medical coverage.

(9) In order to continue retiree term life insurance, an election must be made within sixty days after retirement and premiums must be paid whether or not the retiree is otherwise

~~employed. Election of retiree term life insurance may not be waived or deferred during periods of other coverage or otherwise.~~))

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-175 May a local government entity applying for participation in PEBB insurance coverage include their retirees in the transfer unit? Local government entities applying for participation in PEBB insurance coverage under WAC 182-12-111(4), may request inclusion of retired employees who are covered under their retiree health plan at the time of application. The PEBB benefits services program will use the following criteria for approval of these requests for inclusion of retirees.

(1) The local government retiree health plan must have existed ((~~for a minimum of~~)) at least three years ((~~prior to~~)) before the date of application for participation in PEBB health plans.

(2) Eligibility for coverage under the local government's retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of employee coverage.

(3) The retiree must have maintained continuous enrollment in their local government retiree health plan.

(4) To protect the integrity of the risk pool, if total local government retiree enrollment exceeds ten percent of the total PEBB retiree population, the PEBB benefits services program may:

(a) Stop approving inclusion of retirees with local government unit transfers; or

(b) May adopt a new rating methodology reflective of the cost of covering local government retirees.

(5) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12 and 182-16 WAC.

(6) Employees eligible for retirement subsequent to the local government transferring to PEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-200 May a retiree who is enrolled as a dependent in a PEBB ((~~sponsored~~)) health plan or a Washington state K-12 school district sponsored health plan ((~~coverage~~)) defer enrollment in a PEBB retiree health plan((~~s~~))? ((~~A retiree, whose spouse is enrolled as an eligible employee in a PEBB or Washington state school district sponsored health plan,~~)) Retirees who are enrolled in a PEBB health plan or Washington state K-12 school district sponsored health plan as a dependent may defer enrollment in a PEBB retiree health plan ((~~coverage and enroll in the spouse's PEBB or school district sponsored health plan coverage. If a retiree~~)). Retirees who defer((~~s~~)) enrollment in ((~~PEBB retiree~~)) medical ((~~coverage, enrollment must also be deferred for dental coverage~~)) cannot remain enrolled in dental. ((~~The retiree and eligible dependents~~)) Retirees who defer may ((~~subsequently~~)) later enroll themselves and their dependents in PEBB retiree medical ((~~coverage~~)), or medical and dental ((~~coverage~~)), if ((~~the retiree was continuously enrolled under the spouse's~~)) they provide evidence of continuous enrollment in a PEBB or K-12 school district sponsored health plan ((~~coverage~~)). Continuous enrollment must be from the date the retiree was initially eligible for retiree insurance ((~~coverage~~)). Retirees may enroll:

(1) During any PEBB open enrollment period ((~~determined by the HCA~~)) (Enrollment in the PEBB health plan will begin the first day of January after the open enrollment period.); or

(2) ((~~Within~~)) No later than sixty days after enrollment in the ((~~date the spouse ceases to be enrolled in a~~)) PEBB or K-12 school district sponsored health plan ((~~as an eligible employee; or~~

~~(3) Within sixty days of the date after the retiree's loss of eligibility as a dependent under the spouse's PEBB or school district sponsored health plan coverage.~~)) ends. (Enrollment in the PEBB health plan will begin the first day of the month after the PEBB or K-12 school district health plan ends.)

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-205 ((~~Retirees~~)) May a retiree defer enrollment in a PEBB health plan ((~~coverage~~)) at or after retirement((~~.~~))? Except as stated in subsection (1)(c) of this section, if a retiree defers enrollment in a PEBB health plan ((~~coverage~~)), ((~~PEBB~~)) they also ((~~waives coverage~~)) defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other ((~~coverage~~)) life insurance.

(1) Retirees may defer enrollment in a PEBB health plan ((~~coverage~~)) at or after retirement if continuously enrolled in other comprehensive medical ((~~coverage~~)) as ((~~stated~~)) identified below:

(a) Beginning January 1, 2001, retirees may defer ((~~their PEBB health plan coverage~~)) enrollment if they are enrolled in comprehensive employer-sponsored medical ((~~coverage~~)) as an employee or the ((~~spouse or same-sex domestic partner~~)) dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer ((~~their PEBB health plan coverage~~)) enrollment if they are enrolled in medical ((~~coverage~~)) as a retiree or the ((~~spouse or same-sex domestic partner~~)) dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer ((~~their PEBB health plan coverage~~)) enrollment if they are enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB ((~~coverage~~)) health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a Medicaid program.

(2) To defer health plan ((~~coverage~~)) enrollment, the retiree must send a completed ((~~enrollment~~)) election form to the PEBB benefits services program requesting to defer ((~~coverage~~)). The PEBB benefits services program must receive the form before ((~~coverage~~)) health plan enrollment is deferred or no later than sixty days after the date the retiree

becomes eligible to apply for PEBB retiree ((~~benefits~~)) insurance coverage.

(3) Retirees who defer ((~~PEBB coverage~~)) may enroll in a PEBB ((~~coverage~~)) health plan as follows:

(a) Retirees who defer ((~~PEBB health plan coverage~~)) while enrolled in employer-sponsored medical ((~~coverage~~)) may enroll in a PEBB health plan ((~~coverage~~)) by sending a completed ((~~enrollment~~)) election form and ((~~proof~~)) evidence of continuous enrollment in comprehensive employer-sponsored ((~~coverage~~)) medical to the PEBB benefits services program:

(i) During ((~~an annual~~)) open enrollment ((~~period~~)) (Enrollment in the PEBB ((~~coverage~~)) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their employer-sponsored ((~~coverage~~)) medical ends. (Enrollment in the PEBB ((~~coverage~~)) health plan will begin the first day of the month after the employer-sponsored ((~~coverage~~)) medical ends.)

(b) Retirees who defer ((~~PEBB health plan coverage~~)) enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to ((~~reenroll~~)) enroll in a PEBB health plan ((~~coverage~~)) by sending a completed ((~~enrollment~~)) election form and ((~~proof~~)) evidence of continuous enrollment in a federal retiree medical plan to the PEBB benefits services program:

(i) During ((~~an annual~~)) open enrollment ((~~period~~)) (Enrollment in the PEBB ((~~coverage~~)) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after the federal retiree ((~~coverage~~)) medical ends. (Enrollment in the PEBB ((~~coverage~~)) health plan will begin the first day of the month after the federal retiree ((~~coverage~~)) medical ends.)

(c) Retirees who defer ((~~PEBB health plan coverage~~)) enrollment while enrolled in Medicare Parts A and B and Medicaid may enroll in a PEBB health plan ((~~coverage~~)) by sending a completed ((~~enrollment~~)) election form and ((~~proof~~)) evidence of continuous enrollment in creditable coverage to the PEBB benefits services program:

(i) During ((~~the annual~~)) open enrollment ((~~period~~)) (Enrollment in the PEBB ((~~coverage~~)) health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their Medicaid coverage ends (Enrollment in the PEBB ((~~coverage~~)) health plan will begin the first day of the month after the Medicaid coverage ends.); or

(iii) No later than the end of the calendar year ((~~during which~~)) when their Medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a Medicare Part D plan. (Enrollment in the PEBB ((~~coverage~~)) health plan will begin the first day of January following the end of the calendar year ((~~during which~~)) when the Medicaid coverage ends.)

NEW SECTION

WAC 182-12-207 When can a retiree or eligible dependent's insurance coverage be canceled by HCA? (1) Failure to provide information requested by the due date or knowingly providing false information.

(2) Failure to pay the premium when due or an underpayment of premium.

(3) If a retiree's insurance coverage is canceled for misconduct, insurance coverage will not be reinstated at a later date. Examples of such termination include, but are not limited to the following:

(a) Fraud, intentional misrepresentation or withholding of information the subscriber knew or should have known was material or necessary to accurately determine eligibility or the correct premium;

(b) Abusive or threatening conduct repeatedly directed to an HCA employee, a health plan or other HCA contracted vendor providing insurance coverage on behalf of the HCA, its employees, or other persons.

NEW SECTION

WAC 182-12-208 May a retiree enroll only in dental? If an enrollee is enrolled in retiree insurance coverage, they may not enroll in dental unless they also enroll in medical.

NEW SECTION

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in PEBB life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit an election form to the PEBB benefits services program no later than sixty days after the date their PEBB employee life insurance ends. However, employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends. Retirees may not defer enrollment in retiree term life insurance.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-12-211 If department of retirement systems makes a formal determination of retroactive eligibility, may the retiree enroll in PEBB ((~~sponsored~~)) retiree insurance coverage? (1) When the Washington state department of retirement systems (DRS) makes a formal determination that a person is retroactively eligible for pension benefits((~~,~~)) that person may apply for enrollment in a PEBB ((~~retiree~~)) health plan ((~~coverage~~)) only if application is made within sixty days after the date of notice from DRS.

(2) All premiums due from the date of eligibility established by DRS or the date of the DRS decision letter, at the option of the retiree, must be sent with the application to ((~~HCA~~)) the PEBB benefits services program.

(3) The administrator may make an exception to the date PEBB retiree ((~~benefits~~)) insurance coverage commences or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending Order 06-08, filed 10/3/06, effective 11/3/06)

WAC 182-12-250 Insurance coverage eligibility for ((~~surviving dependents~~)) survivors of emergency service personnel killed in the line of duty. Surviving ((~~dependents~~)) spouses and dependent children of emergency service personnel who are killed in the line of duty are eligible ((~~for~~)) to enroll in health plans ((~~coverage~~)) administered by the PEBB benefits services program within HCA.

(1) This section applies to the ((~~dependents~~)) surviving spouse and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and fire fighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and fire fighters as defined in RCW 41.24.010.

(3) "Surviving ((~~dependent~~)) spouse and children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) ((~~Dependent~~)) Children. The term "children" includes the following unmarried children of the emergency service worker who are: Under the age of twenty or under the age of twenty-four if he or she is a dependent student attending high school or registered at an accredited secondary school, college, university, vocational school, or school of nursing. ((~~Disabled dependents~~)) Children with disabilities as defined in RCW 41.26.030(7) are eligible at any age. "Children" are defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren; and

(iii) Legally adopted children.

(4) Surviving ((~~dependents~~)) spouses and children who are entitled to Medicare must enroll in both parts A and B of Medicare.

(5) The ((~~surviving dependent~~)) survivor (or agent acting on their behalf) must send a completed ((~~enrollment~~)) election form (to either enroll or defer ((~~public employees' benefits board (~~)) enrollment in a PEBB((~~) coverage~~)) health plan) to PEBB benefits services ((~~department~~)) program no later than one hundred eighty days after the latter of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer fire fighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving ((~~dependent~~)) spouse or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving ((~~dependent~~)) spouse or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors ((~~that~~)) who do not choose to defer enrollment in a PEBB ((~~coverage~~)) health plan may choose among the following options for when their enrollment in a PEBB ((~~coverage~~)) health plan will begin:

(a) June 1, 2006, for survivors whose ((~~enrollment~~)) election form is received by the PEBB benefits services program no later than September 1, 2006;

(b) The first of the month that is no more than sixty days before the date that the PEBB benefits services program receives the ((~~enrollment~~)) election form (for example, if the PEBB benefits services program receives the ((~~enrollment~~)) election form on August 29, the survivor may request ((~~coverage~~)) health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB benefits services program receives the ((~~enrollment~~)) election form.

For surviving ((~~dependents~~)) spouses and children who enroll, monthly health plan premiums ((~~for PEBB health plan coverage~~)) must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) ((~~Surviving dependents~~)) Survivors must choose one of the following two options to maintain eligibility for PEBB ((~~health plan~~)) insurance coverage:

(a) Enroll in a PEBB health plan ((~~coverage~~)):

(i) Enroll in medical ((~~coverage~~)); or

(ii) Enroll in medical and dental ((~~coverage~~)).

(iii) ((~~The dependent~~)) Survivors enrolling in dental must stay enrolled in dental ((~~coverage~~)) for at least two years before dental ((~~coverage~~)) can be dropped.

(iv) Dental only ((~~coverage~~)) is not an option.

(b) Defer enrollment:

(i) ((~~Surviving dependents~~)) Survivors may defer enrollment in a PEBB health plan ((~~coverage~~)) if ((~~they are~~)) enrolled in comprehensive medical coverage through an employer.

(ii) ((~~Surviving dependents~~)) Survivors may enroll in a PEBB health plan ((~~coverage~~)) when they lose employer medical coverage. ((~~Dependents~~)) Survivors will need to ((~~prove~~)) provide evidence that they were continuously enrolled in comprehensive coverage through an employer when applying for a PEBB ((~~coverage~~)) health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan ((~~coverage~~)) enrollment and premiums will begin the first day of the month following the day that the other coverage ended for ((~~dependents that reenroll~~)) eligible spouses and children who enroll.

(8) ((~~Surviving dependents~~)) Survivors may change their health plan during open enrollment. In addition to open enrollment, ((~~they~~)) survivors may change health plans ((~~if they move out of their health plan's service area or into a service area where a health plan that was not previously offered is now available~~)) as described in WAC 182-08-198.

(9) ((~~Surviving dependents~~)) Survivors may not add new dependents acquired through birth, marriage, or establishment of a qualified ((~~same-sex~~)) domestic partnership.

(10) ((~~Surviving dependents~~)) Survivors will lose their right to enroll in a PEBB health plan ((~~coverage~~)) if they:

(a) Do not apply to enroll or defer PEBB health plan ((~~coverage~~)) enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive medical coverage through an employer during the

deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-260 Who are eligible dependents ((defined.))? The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse.

(2) ((A same sex)) Domestic partner qualified ((through)) by the PEBB declaration ((certificate issued by PEBB)) of domestic partnership that meets all of the following criteria:

(a) Partners have a close personal relationship in lieu of a lawful marriage;

(b) Partners are not married to anyone;

(c) Partners are each other's sole domestic partner and are responsible for each other's common welfare;

(d) Partners are not related by blood as close as would bar marriage; and

(e) Partners are barred from a lawful marriage.

(3) Domestic partner qualified by the certificate of state registered domestic partnership or registration card issued by the Washington secretary of state for a same-sex partnership.

(((3) Dependent)) (4) Children through age nineteen. ((The term "children" includes)) Children include:

(a) The subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support of a child in anticipation of adoption of the child, children of the subscriber's qualified ((same sex)) domestic partner, or children specified in a court order or divorce decree((.));

(b) Married children who qualify as dependents of the subscriber under the Internal Revenue Code((, and));

(c) Extended dependents ((approved by PEBB are included. To qualify for PEBB approval, the subscriber must demonstrate)) in the legal custody ((for the child with)) or legal guardianship of the subscriber, their spouse, or qualified domestic partner. The legal responsibility is demonstrated by a valid court order((,)) and the child's((:

(a) Must be living with the subscriber in a parent-child relationship; and

(b) Must not be a)) official residence with the custodian or guardian. This does not include foster ((child)) children for whom support payments are made to the subscriber through the state department of social and health services (((DSHS))) foster care program((.));

(((4) Dependent)) (d) Children age twenty through age twenty-three ((and)) who are attending high school or registered students at an accredited secondary school, college, university, vocational school, or school of nursing.

(((a) Dependent)) (i) Student ((coverage)) health plan enrollment begins the first day of the month ((in which)) of the quarter((/)) or semester for which the ((dependent)) child is registered begins ((and)). Health plan enrollment ends the last day of the month in which the ((dependent)) student stops attending or in which the quarter((/)) or semester ends, whichever is first, except that dependent student eligibility continues year-round for those who attend three of the four school quarters or two semesters.

(((b) Dependent)) (ii) Student ((coverage)) eligibility for enrollment in a PEBB health plan continues during the three month period following graduation provided the subscriber is covered, ((at the same time,)) the ((dependent)) child has not reached age twenty-four, and ((the dependent)) meets all other eligibility requirements.

(iii) Student recertification occurs annually.

(e) Children as defined in (a) through (d) of this subsection who have disabilities are eligible by subsection (5) of this section.

(5) ((Dependent)) Children of any age with disabilities, developmental disabilities, mental illness or mental retardation who are incapable of self-support, provided such condition occurs ((prior to)) before age twenty or during the time the dependent was eligible as a student under subsection (4) of this section.

(a) The subscriber must provide ((proof)) evidence that such disability occurred ((prior to)) as stated below:

(i) For children enrolled in PEBB insurance coverage, the subscriber must provide evidence of the disability before the ((dependent's)) child's attainment of age twenty ((or during the time)).

(ii) For children enrolled in PEBB insurance coverage as a student under subsection (4)(d) of this section, the subscriber must provide evidence of the disability within sixty days after the student is no longer eligible under subsection (4)(d) of this section.

(iii) To enroll a dependent child with disabilities, age twenty or older, the subscriber must provide evidence that the condition occurred before the child reached age twenty or evidence that when the condition occurred the ((dependent satisfies)) child would have satisfied eligibility for student coverage under subsection (4) of this section((, and as)). The PEBB benefits services program will request evidence of the child's disability periodically ((requested)) thereafter ((by the PEBB program)).

(((a))) (b) The subscriber must notify the PEBB benefits services program, in writing, no later than sixty days after the date that a ((dependent)) child age twenty or older no longer qualifies under this subsection.

(i) For example, children who become self-supporting are not eligible under this rule as of the last day of the month in which they become capable of self-support. The ((dependent)) child may be eligible to continue enrollment in a PEBB ((coverage)) health plan under provisions of WAC 182-12-270.

(ii) Children age twenty and older ((that)) who become capable of self-support do not regain eligibility under subsection (5) of this section if they later become incapable of self-support.

(c) Disability recertification occurs periodically.

(6) ((Dependent)) Parents.

(a) ((Dependent)) Parents covered under ((a)) PEBB medical ((plan)) before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous ((coverage)) enrollment in PEBB ((sponsored)) medical ((coverage));

(ii) The parent qualifies under the Internal Revenue Code as a dependent of ((~~an eligible~~)) the subscriber;

(iii) The subscriber ((~~who claimed the parent as a dependent~~)) continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical ((~~coverage~~)).

(b) ((~~Dependent~~)) Parents ((~~that are~~)) eligible under (((~~a) of~~)) this subsection may be enrolled with a different health ((~~carrier~~)) plan than that selected by the ((~~eligible~~)) subscriber((~~; however, dependent~~)). Parents may not add additional dependents to their insurance coverage.

(7) The enrollee (or the subscriber on their behalf) must notify the PEBB benefits services program, in writing, no later than sixty days after the date ((~~that a dependent~~)) they are no longer ((~~qualifies~~)) eligible under ((~~subsection (1), (2), (3), (4) or (6) of~~)) this section. ((~~The subscriber must notify the PEBB program in writing no later than sixty days after the date a dependent no longer qualifies under subsection (5) of this section.~~)) A PEBB continuation of coverage election notice and continued health plan enrollment will only be available if the PEBB benefits services program is notified in writing within the sixty-day period.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-12-265 What options for continuing health plan ((~~coverage~~)) enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in public employees((~~'~~)) benefits board (PEBB) retiree insurance coverage as a surviving dependent. An eligible surviving ((~~dependent~~)) spouse, qualified domestic partner, or child must enroll in or defer enrollment in a PEBB health plan ((~~coverage~~)) no later than sixty days after the date of the employee((~~'s~~)) or retiree's death.

(1) Dependents ((~~that~~)) who lose eligibility due to the death of an eligible employee may continue enrollment in a PEBB health plan ((~~coverage~~)) as a survivor under ((~~a~~)) retiree ((~~plan~~)) insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or qualified ((~~same sex~~)) domestic partner may continue ((~~coverage~~)) health plan enrollment until death.

(b) ((~~Other dependents~~)) Children may continue ((~~coverage~~)) health plan enrollment until they lose eligibility under PEBB rules.

(c) If a surviving ((~~dependent~~)) spouse, qualified domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum payment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems) the dependent is not eligible ((~~to participate in~~)) for PEBB retiree ((~~coverage~~)) insurance as a survivor. However, the dependent may continue health plan ((~~coverage~~)) enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents ((~~that~~)) who lose eligibility due to the death of a PEBB eligible retiree may continue health plan ((~~coverage~~)) enrollment under ((~~a~~)) retiree ((~~plan~~)) insurance.

(a) The retiree's spouse or qualified ((~~same sex~~)) domestic partner may continue ((~~coverage~~)) health plan enrollment until death.

(b) ((~~Other dependents~~)) Children may continue ((~~coverage~~)) health plan enrollment until they lose eligibility under PEBB rules.

(c) Dependents ((~~that~~)) who are waiving enrollment in a PEBB health plan ((~~coverage~~)) at the time of the retiree's death are eligible to enroll or defer enrollment in PEBB retiree ((~~coverage~~)) insurance. A form to enroll or defer PEBB health plan ((~~coverage~~)) enrollment must be hand-delivered or mailed to the PEBB benefits services program no later than sixty days after the retiree's death. To enroll in a PEBB health plan ((~~coverage~~)), the dependent must provide satisfactory evidence ((~~that~~)) of continuous enrollment in other health plan coverage ((~~was continuous~~)) from the most recent open enrollment ((~~period~~)) for which PEBB coverage was waived.

(3) Surviving spouses or eligible ((~~dependent~~)) children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in a PEBB ((~~sponsored~~)) health plan ((~~coverage~~)) provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or qualified ((~~same-sex~~)) domestic partner may continue health plan ((~~coverage~~)) enrollment until death.

(b) ((~~Other dependents~~)) Children may continue ((~~coverage~~)) health plan enrollment until they lose eligibility under PEBB rules.

(4) Surviving dependents must notify the PEBB benefits services program of their decision to enroll or defer enrollment in a PEBB health plan ((~~coverage~~)) no later than sixty days after the date of death of the employee or retiree. If PEBB ((~~coverage~~)) health plan enrollment ended due to the death of the employee or retiree, PEBB will reinstate health plan ((~~coverage~~)) enrollment without a gap subject to payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan ((~~coverage~~)) under WAC 182-12-200 and 182-12-205. To notify the PEBB benefits services program of their intent to enroll or defer enrollment in a PEBB health plan ((~~coverage~~)) the surviving dependent must send a completed ((~~enrollment~~)) election form to the PEBB benefits services program no later than sixty days after the date of death of the employee or retiree.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-12-270 What options are available to dependents ((~~that~~)) who cease to meet the ((~~definition of dependent~~)) eligibility criteria in WAC 182-12-260? If eligible, dependents may continue health plan enrollment ((~~in PEBB health plan coverage~~)) under one of the continuation options in subsection (1), (2), or (3) of this section by self-paying premiums following their loss of eligibility. The PEBB benefits services program must receive a timely election form as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing ((~~coverage~~)) health plan enrollment are based on the reason that eligibility was lost.

(1) ((~~Dependents that~~)) Spouses, qualified domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue ((~~coverage~~)) health plan enrollment under provisions of WAC 182-12-250 or 182-12-265.

(2) Dependents of a lawful marriage ((~~that~~)) who lose eligibility because they no longer meet the ((~~definition of dependent as defined~~)) eligibility criteria in WAC 182-12-260 are eligible to continue ((~~coverage~~)) health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA); or

(3) Dependents of a qualified ((~~same sex~~)) domestic partnership ((~~that~~)) who lose eligibility because they no longer meet the ((~~definition of dependent as defined~~)) eligibility criteria in WAC 182-12-260 may continue health plan enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No extension of PEBB coverage will be offered unless the PEBB benefits services program is notified through hand-delivery or United States Postal Service mail of a completed notice of qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-12-190	May a retiree change health carriers at retirement?

AMENDATORY SECTION (Amending WSR 96-08-042, filed 3/29/96, effective 4/29/96)

WAC 182-08-010 Declaration of purpose. The general purpose of this chapter is to establish a set of rules ((~~used by~~)) to administer the health care authority's (HCA) public employees benefits board (PEBB) ((~~for designing~~)) employee and retiree eligibility and ((~~insurance~~)) PEBB benefits ((~~and for administration of these insurance plans by the Washington State Health Care Authority (HCA)~~)).

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Administrator" means the administrator of the health care authority (HCA) or designee.

"Board" means the public employees((~~'~~)) benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB ((~~sponsored~~)) medical insurance by a retiree or ((~~surviving dependent~~)) eligible survivor.

"Dependent" means a person who meets eligibility requirements ((~~set forth~~)) in WAC 182-12-260.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

((~~"Effective date of enrollment" means the first date on which an enrollee is entitled to receive covered benefits.~~

~~"Extended dependent" means a dependent child who is not the child of an enrollee through birth, adoption, marriage, or a qualified same sex domestic partnership. Some examples of extended dependents include, but are not limited to, a grandchild or a niece or nephew for whom the enrollee is the legal guardian or the enrollee has legal custody.~~

~~"Health carrier" has the meaning set forth at RCW 48.43.005(18) for purposes of administering this Title 182 WAC only, it includes the uniform medical plan and uniform dental plan.~~))

"Health plan" or "plan" means a medical ((~~and~~)) or dental ((~~coverage~~)) plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life ((~~or~~)) insurance, long-term care insurance, long-term disability insurance ((~~plan~~)), or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employer and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employer ((~~and~~)), life insurance offered to employees on an optional basis, and retiree life insurance.

"Open enrollment" means a time period designated by the administrator ((~~during which enrollees~~)) when subscribers may apply to transfer their enrollment from one health ((~~carrier~~)) plan to another, enroll in medical ((~~coverage~~)) if the ((~~enrollee~~)) subscriber had previously waived such insurance coverage, or add dependents.

((~~"PEBB plan" or~~)) "PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverage((~~s approved~~)) or other employee benefit administered by the ((~~public employees' benefits board for eligible enrollees and their dependents~~)) PEBB benefit services program within the HCA.

"PEBB benefits services program" means the program within the health care authority which administers insurance and other benefits to eligible employees of the state (as defined in WAC 182-12-115), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), and others as defined in RCW 41.05.011.

"Subscriber" or "insured" means the employee, retiree, COBRA beneficiary or ((~~surviving dependent~~)) eligible survivor who has been designated by the HCA as the individual to whom the HCA and the health ((~~carrier~~)) plan will issue all notices, information, requests and premium bills on behalf of ((~~enrolled dependents~~)) enrollees.

"Waive" means to interrupt enrollment or postpone enrollment in a PEBB ((~~sponsored~~)) health plan by an employee (as defined in WAC 182-12-115) or a dependent who meets eligibility requirements ((~~set forth~~)) in WAC 182-12-260.

AMENDATORY SECTION (Amending Order 02-07, filed 8/14/03, effective 9/14/03)

WAC 182-08-120 Employer contribution. The employers' contribution must be used to provide insurance coverage for the basic life insurance benefit, a basic long-term disability benefit, medical ((~~coverage~~)), and dental ((~~coverage~~)), and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage((~~s~~)).

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-180 Premium payments and refunds. PEBB premiums will be refunded using the following method:

(1) When a PEBB subscriber submits an enrollment change affecting eligibility, such as for example: Death, divorce, or when no longer a dependent as defined at WAC 182-12-260 no more than three months of accounting adjustments and any excess premium paid will be refunded to any individual or agency except as ((~~provided~~)) indicated in WAC 182-12-148(3).

(2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator or designee may approve a refund which does not exceed twelve months of premium ((~~provided~~)) if both of the following occur:

(a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the HCA; and

(b) Proof is provided that extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

(3) Errors resulting in an underpayment to HCA must be reimbursed by the employer or subscriber to the HCA. Upon request of an employer, subscriber, or beneficiary, as appropriate, the HCA will develop a repayment plan designed not to create undue hardship on the employer or subscriber.

(4) HCA errors will be adjusted by returning the excess premium paid, if any, to the employer, subscriber, or beneficiary, as appropriate.

(5) Premium is due for the entire month of insurance coverage and will not be prorated during the month of death or loss of eligibility of the enrollee except when eligible for life insurance conversion.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-190 The employer contribution ((~~shall be~~)) is set by the HCA and paid to the HCA for all eligible employees. Every department, division, or agency of state government, and such county, municipal or other political subdivision, K-12 school district or educational service district that are covered under PEBB insurance coverage, ((~~shall~~)) must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions ((~~shall be~~)) are set by the HCA and are subject to the approval of the governor.

(2) Employer contributions ((~~shall~~)) must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each eligible employee in pay status eight or more hours during a calendar month or each eligible employee on leave under the federal Family and Medical Leave Act (FMLA) ((~~shall be~~)) are eligible for the employer contribution. The entire employer contribution is due and payable to HCA even if medical ((~~coverage~~)) is waived.

(4) PEBB insurance coverage for any county, municipality or other political subdivision or any K-12 school district or educational service district may be ((~~terminated~~)) canceled by HCA if the premium contributions are delinquent more than ninety days.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB benefits as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC 182-12-115.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

WAC 182-08-196 What happens if my health ((~~carrier~~)) plan becomes unavailable? Employees and retirees for whom the chosen health ((~~carrier~~)) plan becomes unavailable due to a change in service area, the health ((~~carrier~~)) plan no longer contracting with HCA, or the retiree's entitlement to Medicare must select a new health plan within sixty days after notification by the PEBB benefit services program.

(1) Employees ((that)) who fail to select a new ((health)) medical or dental plan within the prescribed time period will be enrolled in the health ((carrier's)) plan's successor plan if one is available or will be enrolled in the Uniform Medical Plan ((and)) Preferred Provider Organization or the Uniform Dental Plan with existing dependent enrollment ((by default)).

(2) Retirees and ((surviving dependents)) survivors eligible under WAC 182-12-250 or 182-12-265 ((that)) who fail to select a new health plan within the prescribed time period will be enrolled in the health ((carrier's)) plan's successor plan if one is available or will be enrolled in the Uniform Medical Plan Preferred Provider Organization and the Uniform Dental Plan((, except that)). However, retirees enrolled in Medicare Parts A and B, and who enroll in Medicare Part D may be ((defaulted)) assigned to a PEBB((-sponsored)) Medicare plan that does not include a pharmacy benefit.

Any ((employee or retiree defaulted to a carrier's successor plan, the Uniform Medical Plan or the Uniform Dental Plan)) subscriber assigned to a health plan as described in this rule may not change health plans until the next open enrollment except as ((set forth)) allowed in WAC 182-08-198.

(3) Enrollees continuing PEBB health plan ((coverage as provided in)) under WAC 182-12-133, 182-12-148 or 182-12-270 (2) or (3) must select a new health plan no later than sixty days after notification by the PEBB benefit services program or their health plan ((coverage)) enrollment will ((terminate)) end as of the last day of the month in which the plan is no longer available.

AMENDATORY SECTION (Amending Order 06-02, filed 5/24/06, effective 6/24/06)

WAC 182-08-197 ((Newly eligible)) Employees must select insurance coverages within thirty-one days of the date they become eligible ((to apply for coverage)) for PEBB benefits. (1) Employees who are newly eligible ((employees)) for PEBB benefits must ((select a medical and dental plan (if dental is available based on employer participation in PEBB insurance coverages))) complete an enrollment form indicating their health plan choice and return it to their employing agency no later than thirty-one days after they become eligible to apply for ((coverage)) PEBB benefits, as stated in WAC 182-12-115. Newly eligible employees who do not ((select a)) return an enrollment form to their employing agency indicating their medical and dental ((plan)) choice within thirty-one days will be ((defaulted to Uniform Medical Plan Preferred Provider Organization and Uniform Dental Plan)) enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan Preferred Provider Organization; and

(b) Dental enrollment (if the employing agency participates in PEBB dental) will be Uniform Dental Plan.

(2) Newly eligible employees may enroll in optional insurance coverage (except for employees of agencies that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their agency no later than thirty-one days after becoming eligible for PEBB benefits.

(c) To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.

(d) Employees may apply for optional life, long-term disability, and long-term care insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) When an employee's employment ends, insurance coverage ends (WAC 182-12-131). Employees who are later reemployed and become eligible for PEBB benefits enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one agency to another agency without a break in state service. This includes movement of employees between any agencies described as eligible groups in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution-based enrollment in PEBB insurance coverage.

(c) When employees continue insurance coverage under WAC 182-12-133 (1) or (2) and are reemployed into a benefits eligible position before the end of the maximum number of months allowed for continuing PEBB health plan enrollment. Employees who are eligible to continue optional life or optional long-term disability but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to employment.

AMENDATORY SECTION (Amending Order 06-09, filed 11/22/06, effective 12/23/06)

WAC 182-08-198 When may ((an enrollee)) a subscriber change health plans? (1) ((Enrollees)) Subscribers may change health plans during the annual open enrollment. The enrollee must request the health plan change no later than the end of the open enrollment period. Enrollment in the new health plan(('s coverage)) will begin the first day of January after open enrollment.

(2) ((Enrollees)) Subscribers may change health plans outside of the annual open enrollment period under ((some)) the circumstances indicated below. To make a health plan change, the ((enrollee)) subscriber must send a completed enrollment form (and a completed disenrollment form, if required) to the PEBB benefits services program no later than sixty days after the event occurs. Enrollment in the new health plan(('s coverage)) will begin the first day of the month after the PEBB benefits services program receives the form(s). These are the circumstances:

(a) Enrollees ((~~may change health plans if they~~)) move and their current health plan is not available in their new location. If the ((~~enrollee~~)) subscriber does not select a new health plan, the PEBB benefits services program ((~~will automatically~~)) may enroll them in the Uniform Medical Plan Preferred Provider Organization or Uniform Dental Plan.

(b) Enrollees ((~~may change health plans if they~~)) move and a health plan that was not available to them before is available to them in the new location. The ((~~enrollee~~)) subscriber may only choose a newly available health plan.

(c) ((~~Enrollees~~)) Subscribers may change health plans if a court order requires the ((~~enrollee~~)) subscriber to provide insurance coverage for an eligible spouse, ((~~same-sex~~)) qualified domestic partner, or child and the ((~~enrollee~~)) subscriber adds the dependent to their insurance coverage.

(d) Seasonal employees whose off-season is during the annual open enrollment period may select a new health plan upon their return to work.

(e) ((~~Employees~~)) Subscribers may change health plans when they enroll in PEBB retiree insurance coverage.

(f) ((~~Enrollees~~)) Subscribers may change health plans when they or an eligible dependent becomes entitled to Medicare or enrolls in a Medicare Part D plan.

(g) ((~~Enrollees~~)) Subscribers may change health plans if they or their enrolled dependent reaches their medical plan's lifetime maximum.

(h) Subscribers may not change their health plan if their or an enrolled dependent's physician stops participation with the ((~~enrollee's~~)) subscriber's health plan unless the PEBB appeals manager determines that a continuity of care issue exists. However, if the employee is having premiums taken from payroll on a pretax basis a plan change will not be approved if it would conflict with provisions of the benefits contribution plan authorized under RCW 41.05.300. The PEBB appeals manager will use criteria that include but are not limited to the following in determining if a continuity of care issue exists:

(i) Active cancer treatment; or

(ii) Recent transplant (within the last twelve months); or

(iii) Scheduled surgery within the next sixty days; or

(iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy; or

(vi) Language barrier.

((~~(h) Enrollees may change health plans if they reach their medical plan's lifetime maximum.~~))

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment? When an eligible employee's employment ceases with an employing agency at any time ((~~prior to~~)) before the end of the month for which a premium contribution is due and that employee transfers to another agency, the losing agency is responsible for the payment of the contribution for that employee for that month. The receiving agency would not be liable for any employer contribution for that eligible employee until the month following the transfer.

AMENDATORY SECTION (Amending Order 02-07, filed 8/14/03, effective 9/14/03)

WAC 182-08-220 Advertising or promotion of PEBB ((~~sponsored~~)) benefit plans. (1) In order to assure equal and unbiased representation of PEBB ((~~plans, any promotion of these plans shall~~)) benefits, contracted vendors must comply with all of the following:

(a) All materials describing PEBB ((~~plan~~)) benefits ((~~shall~~)) must be prepared by or approved by the HCA ((~~prior to~~)) before use.

(b) Distribution or mailing of all ((~~plan~~)) benefit descriptions ((~~shall~~)) must be performed by or under the direction of the HCA.

(c) All media announcements or advertising by a ((~~carrier~~)) contracted vendor which include any mention of the "public employees benefits board," "health care authority" or any reference to ((~~coverage~~)) benefits for "state employees or retirees" or any group of employees covered by PEBB ((~~plans~~)) benefits, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a PEBB contracted ((~~carrier~~)) vendor or subcontractor may result in contract termination by the HCA, refusal to continue or renew a contract with the noncomplying party, or both.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

WAC 182-08-230 Participation in PEBB benefits by employer groups, K-12 school districts and educational service districts. This section applies to all employer groups, K-12 school districts and educational service districts participating in PEBB insurance coverage((~~s~~)).

(1) For purposes of this section, "employer group" means those employee organizations representing state civil service employees, blind vendors, county, municipality, and political subdivisions that meet the participation requirements of WAC 182-12-111 (2), (3) and (4) and that participate in PEBB insurance coverage((~~s~~)).

(2)(a) Each employer group ((~~shall~~)) must determine an employee's eligibility for PEBB insurance coverage in accordance with the applicable sections of chapter 182-12 WAC, RCW 41.04.205, and chapter 41.05 RCW.

(b) Each employer group, K-12 school district and educational service district applying for participation in PEBB insurance coverage ((~~shall~~)) must submit required documentation and meet all participation requirements ((~~set forth~~)) in the then-current *Introduction to PEBB Coverage K-12 and Employer Groups* booklet(s).

(3)(a) Each employer group, K-12 school district or educational service district applying for participation in PEBB insurance coverage ((~~shall~~)) must sign an interlocal agreement with the HCA.

(b) Each interlocal agreement ((~~shall~~)) must be renewed no less frequently than once in every two-year period.

(4) At least twenty days ((~~prior to~~)) before the premium due date, the HCA ((~~shall~~)) will cause each employer group, K-12 school district or educational service district to be sent a monthly billing statement. The statement of premium due

will be based upon the enrollment information provided by the employer group, K-12 school district or educational service district.

(a) Changes in enrollment status ((~~shall~~)) must be submitted to the HCA ((~~prior to~~)) before the twentieth day of the month ((~~during which~~)) when the change occurs. Changes submitted after the twentieth day of each month may not be reflected on the billing statement until the following month.

(b) Changes submitted more than one month late ((~~shall~~)) must be accompanied by a full explanation of the circumstances of the late notification.

(5) An employer group, K-12 school district or educational service district ((~~shall~~)) must remit the monthly premium as billed or as reconciled by it.

(a) If an employer group, K-12 school district or educational service district determines that the invoiced amount requires one or more changes, they may adjust the remittance only if an insurance eligibility adjustment form detailing the adjustment accompanies the remittance. The proper form for reporting adjustments will be attached to the interlocal agreement as Exhibit A.

(b) Each employer group, K-12 school district or educational service district is solely responsible for the accuracy of the amount remitted and the completeness and accuracy of the insurance eligibility adjustment form.

(6) Each employer group, K-12 school district or educational service district ((~~shall~~)) must remit the entire monthly premium due including the employee share, if any. The employer group, K-12 school district or educational service district is solely responsible for the collection of any employee share of the premium. The employer ((~~shall~~)) must not withhold portions of the monthly premium due because it has failed to collect the entire employee share.

(7) Nonpayment of the full premium when due will subject the employer group, K-12 school district or educational service district to disenrollment and termination of each employee of the group.

(a) ((~~Prior to~~)) Before termination for nonpayment of premium, the HCA ((~~shall cause~~)) will send a notice of overdue premium ((~~to be sent~~)) to the employer group, K-12 school district or educational service district which notice will provide a one-month grace period for payment of all overdue premium.

(b) An employer group, K-12 school district or educational service district that does not remit the entirety of its overdue premium no later than the last day of the grace period will be disenrolled effective the last day of the last month for which premium has been paid in full.

(c) Upon disenrollment, notification will be sent to both the employer group, K-12 school district or educational service district and each affected employee.

(d) Employer groups, K-12 school districts or educational service districts disenrolled due to nonpayment of premium ((~~shall~~)) have the right to a dispute resolution hearing in accordance with the terms of the interlocal agreement.

(e) Employees ((~~terminated~~)) canceled due to the nonpayment of premium by the employer group, K-12 school district or educational service district are not eligible for continuation of group health plan coverage according to the terms of the Consolidated Omnibus Budget Reconciliation Act (COBRA). ((~~Terminated~~)) Employees ((~~shall~~)) whose coverage is canceled have conversion rights to an individual insurance policy as provided for by the employer group, K-12 school district or educational service district.

(f) Claims incurred by ((~~terminated~~)) employees of a disenrolled group after the effective date of disenrollment will not be covered.

(g) The employer group, K-12 school district or educational service district is solely responsible for refunding any employee share paid by the employee to the employer group, K-12 school district or educational service district and not remitted to the HCA.

(8) A disenrolled employer group, K-12 school district or educational service district may apply for reinstatement in PEBB insurance coverage((~~s~~)) under the following conditions:

(a) Reinstatement must be requested and all delinquent premium paid in full no later than ninety days after the date the delinquent premium was first due, as well as a reinstatement fee of one thousand dollars.

(b) Reinstatement requested more than ninety days after the effective date of disenrollment will be denied.

(c) Employer groups, K-12 school districts or educational service districts may be reinstated only once in any two-year period and will be subject to immediate disenrollment if, after the effective date of any such reinstatement, subsequent premiums become more than thirty days delinquent.

(9) Upon written petition by the employer group, K-12 school district or educational service district disenrollment of an employer group, K-12 school district or educational service district or denial of reinstatement may be waived by the administrator upon a showing of good cause.

WSR 07-14-136
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed July 3, 2007, 3:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-19-118.

Title of Rule and Other Identifying Information: What are the forms of acceptable identification?, WAC 314-11-025.

Hearing Location(s): Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on August 22, 2007, at 10:00 a.m.

Date of Intended Adoption: September 19, 2007.

Submit Written Comments to: Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4921, by September 5, 2007.

Assistance for Persons with Disabilities: Contact Pam Madson by August 31, 2007, TTY (800) 855-2880 or (360) 664-1648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to repeal WAC 314-11-025 that lists the types of official identification that a person must present if

their age is questioned when purchasing alcohol. The board proposes to remove reference to the need for expiration dates on these documents and the need to show a punched expired Washington driver's license along with a temporary license.

Reasons Supporting Proposal: RCW 66.16.040 sufficiently describes the types of documents that must be shown by a person when that person's age is questioned for purposes of purchasing alcohol. The format of the temporary Washington driver's license has changed to include a picture giving it the characteristics of a permanent license. Expiration dates are not a requirement for an official form of ID.

Statutory Authority for Adoption: RCW 66.16.040.

Statute Being Implemented: RCW 66.16.040.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Pam Madson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1648; Implementation and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal imposes only minor impact on businesses in the industry.

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

July 3, 2007
Lorraine Lee
Chairman

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-11-025 What are the forms of acceptable identification?

WSR 07-14-140
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 07-06—Filed July 3, 2007, 3:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-06-076.

Title of Rule and Other Identifying Information: Chapter 173-545 WAC, Instream resources protection program—Wenatchee River basin, water resource inventory area (WRIA) 45. The proposed rule amendment will address revised instream flows and tools for managing water in the Wenatchee basin.

Hearing Location(s): Leavenworth City Hall, 700 Highway 2, Leavenworth, WA, on August 7, 2007, at 7:00 p.m.

Date of Intended Adoption: October 1, 2007.

Submit Written Comments to: Department of ecology water resources web page at http://www.ecy.wa.gov/programs/wr/instream-flows/wenatchee.html, David Holland, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902, e-mail dhol461@ecy.wa.gov, fax (509) 575-2809, by August 24, 2007.

Assistance for Persons with Disabilities: Contact Judy Beitel by July 27, 2007, TTY (877) 833-6341 or (360) 407-6878.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In order to better manage water resources in WRIA 45, the Wenatchee watershed planning unit recommended that ecology adopt, in rule, a new water resource management strategy that includes:

- Increased management flows (minimum instream flows) at existing control points.
- Minimum instream flows set at new instream flow control points in the upper watershed.
- A water reservation to provide a reliable water supply for the twenty-year projected population growth.
- A maximum allocation for seasonal use and storage.

Generally, the revised management flows are higher than previous management flows and more protective of habitat. This makes water unavailable for future uses during low flow portions of the year (August through October). To provide a reliable, year-round supply of water for future uses, it is necessary to reserve water that would not be subject to curtailment when the proposed minimum instream flows are not met. To do this, RCW 90.54.020 (3)(a) requires that ecology determine that the overriding consideration of the public interest (OCPI) would be served by the proposed reservation.

Reasons Supporting Proposal: During the watershed planning process for WRIA 45, the current instream flows in the 1983 flow rule (current chapter 173-545 WAC) was assessed and it was determined that changes should be made to better meet the needs of aquatic species and humans. The recommend [recommended] instream flows were developed by the local planning unit, of which ecology is an active partner, as allowed by chapter 90.82 RCW. RCW 90.82.130(4) states when a watershed plan is approved by the planning unit and the county legislative authority, ecology, as a participating member of the planning unit, is obligated to use the plan for making future water resource decision[s] within WRIA 45.

Statutory Authority for Adoption: Chapters 90.82, 90.54, 90.22, 90.03, 90.44 RCW.

Statute Being Implemented: Chapters 90.03, 90.44, 90.54, and 90.82 RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Barwin, (509) 457-7140 and David Holland, (509) 457-7112, Central Regional Office, Department of Ecology; Implementation and Enforcement: Thomas Tebb, Central Regional Office, Department of Ecology, (509) 574-3989.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Introduction: The Washington state department of ecology (ecology) is amending chapter 173-545 WAC, water resources program for the Wenatchee River Basin, Water Resources Inventory Area (WRIA) 45. The objective of this small business economic impact statement (SBEIS) is to identify and evaluate the various requirements and costs that the proposed amendment might impose on business. In particular, the SBEIS examines whether the costs on businesses from the proposed rule impose a disproportionate impact on the state's small businesses. RCW 19.85.040 describes the specific purpose and required contents of an SBEIS.[1]

This rule amendment proposes to:

- Retain perennial rivers, streams, and lakes in the Wenatchee River Basin with instream flows and levels necessary to protect and preserve in-stream values.
- Maintain stream functions by limiting the total maximum allocation of future surface waters and groundwater from the Wenatchee River Basin.
- Provide water to reliably satisfy the following future needs by creating a reservation of water for:
  - Domestic purposes.
  - Irrigation associated with a residence.
  - Potable domestic water associated with municipal, commercial, and industrial purposes.
  - Stockwatering.
- Set forth ecology's policies to guide the protection, utilization, and management of Wenatchee River basin surface water and interrelated groundwater resources for use in future water right decisions.

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rule is consistent with legislative policy.

Analysis of Compliance Costs for Washington Businesses: We have evaluated the impacts of the proposed rule by analyzing and comparing water right management before and after the effective date of the amendment. The current framework that forms the baseline includes administrative procedures for considering applications for both new water rights and changes to existing water rights, and for the use of water by permit-exempt wells (RCW 90.44.050). Implementation of chapters 90.22, 90.54, and 90.82 RCW are [is] also part of this legal baseline. In proposing a reservation of water, the proposed rule creates new conditions considered in future water right decisions.

We provide a brief description of compliance requirements below. You can find a detailed description of water management under the existing and proposed rules in Appendix B and Appendix C.

Water Rights Administration Under the Rule: The proposed amendment to chapter 173-545 WAC will create new or modify existing "instream flows." Instream flows are water rights for in-stream resources and are protected from impairment by "junior" water rights - those with a later priority date. This means junior water rights must stop use when stream flows do not meet the senior minimum instream flows.

The amendment also reserves water for future out-of-stream uses not subject to the instream flows and clarifies other requirements that might affect future uses. Expected impacts to water management are described below.

Surface Water: The decision process for surface water rights will be similar after the proposed rule amendment as before. Currently (baseline), except for single domestic and stockwatering purposes, ecology grants water rights subject to the instream flows set. Under the proposed rule, new surface water uses from the reservation may continue use despite low stream flow conditions.

Uses that do not qualify for the reservation, up to the maximum allocation limits specified, may be permitted but will continue to be subject to the instream flows. Uses that do not qualify include new agricultural, commercial, or manufacturing uses. Under the amendment, these new uses must stop withdrawing water when minimum flows are not met. These businesses would also not be permitted to withdraw water during periods (typically August and September) when water is not available (a maximum allocation limit equal to zero). These uses may only continue during these periods if they are using water from storage or ecology determines their use is sufficiently mitigated under an approved plan.

This amendment is not likely to represent a significant change from the current rule. In both cases, new out-of-stream uses would be subject to similar instream flow provisions, with the exception of water from the reservation provided in the amendment. Additionally, under both the baseline and the proposed amendment, ecology may approve applications for new consumptive surface water rights if the director determines it is "clear that overriding considerations of the public interest will be served."

Groundwater Permits: Ecology will make decisions on new groundwater rights permits under the amended rule as under the baseline, with the notable exception of water made available from the proposed reservation. The reservation of water applies to groundwater as well as surface water. Applications for groundwater in hydraulic continuity with the Wenatchee River and its tributaries would be subject to the instream flows under the baseline or the proposed rule, unless they use water from the reservation. Under both the proposed amendment and the baseline, ecology may approve a use if it is "clear that overriding considerations of the public interest will be served."

There is a high likelihood of well use within the basin impairing surface water levels and flows. The analysis and recommendations in the Wenatchee watershed management plan regarding hydrogeology of the basin, and the location and depth where groundwater withdrawals generally occur support this finding.

Businesses that begin new agricultural, commercial, manufacturing projects or similar enterprises relying on wells for process water would be required to either:

- Suspend water use during periods of low flows,
- Develop storage mechanisms, or
- Develop strategies, acceptable to ecology, to mitigate their impacts.

The amendment does not create the need for, and does not change the standards for, the analysis regarding whether instream flows are impaired. This would be the case under the baseline and would not represent an impact of the proposed rule. Both the proposed rule and the baseline allow for an applicant for a new groundwater use:

- To demonstrate that the proposed water use is not in hydraulic continuity with the surface waters of the Wenatchee River or its tributaries.
- To mitigate for any impacts to instream flows, thus enabling continuous use of water out-of-stream if mitigation strategies acceptable to ecology are proposed.

Permit-Exempt Groundwater: Under the proposed rule, the applicant would gain an uninterruptible permit-exempt water use if the use is eligible for the reservation. Those developing a permit-exempt use not eligible for the reservation would be required to curtail their water use during low flow periods and would have no right to water during periods when it is not available (a maximum allocation limit equal to zero), typically August and September.

Under the baseline, water used for single domestic (including lawn and garden irrigation) and stockwatering purposes is exempt from the instream flows. All other permit-exempt uses are subject to curtailment during low flow periods.

Changes or Transfers of Water Rights: Ecology will continue to process changes or transfers of existing water rights as permitted by chapters 90.03 and 90.44 RCW. The process is the same with the proposed amendment as with the baseline.

- Ecology would evaluate transfers of surface water rights considering the instream flows as they would be under the baseline.
- Requirements related to changes in the point of diversion from a surface point to a groundwater point, if it is from the same water source or from one groundwater source to another, are the same in the baseline and the proposed rule.

  Reservation of Water: The reservation of water, the use of water under the reservation, and associated conditions for that use, are all part of the proposed amendment. The reservation will allow eligible prospective water users the benefit of having a continuous, reliable source of water during low flow periods, with a few restrictions. These restrictions include the finite quantity of the reservation. Domestic water use must also meet efficiency standards. Permitted surface water and groundwater withdrawals from the reservation will be required to meter and report their water use. Small businesses that locate outside the service area of municipal water suppliers are most likely to use permit-exempt wells. The amendment does not require permit-exempt uses to meter and report water use to ecology. However, local public water purveyors, the county, or a municipal government may require metering and reporting through ordinances adopted to implement the watershed plan. Ecology also has authority to require metering and reporting under RCW 90.03.360 in the future.

Impacts to Businesses in WRIA 45: The primary impact to businesses of the proposed rule making will likely be the creation of a reservation for future allocations. Businesses that need water only for potable use for employees and customers will receive benefits from the reservation. Businesses that also need water for commercial or industrial manufacturing processes and landscape or commercial irrigation will see both costs and benefits.

The amendment will not directly affect existing water right holders. In general, the economic costs and benefits to businesses are from the business impacts from having less water in the river, but more available for out-of-stream use. Having the reservation makes water predictably and reliably available for more out-of-stream uses than would have been the case under the baseline. Therefore, it is likely most businesses will be positively affected. An exception to this would be businesses that utilize water in the river. The possible impacts are described below.

Impacts to businesses depending on instream flows: As mentioned above, the amendment creates a reservation. The reservation will provide water for domestic uses and associated residential irrigation, stockwatering, and potable water needs associated with commercial and industrial uses. These uses will be able to obtain reliable water in the future, up to the limits of the reservation.

Accessing the reservation will allow entities to use water for various uses during low flow periods. This will slightly reduce the amount of water in the river and could potentially indirectly impact in-stream benefits such as ecosystem services, recreation, and so on. For businesses that provide guide services such as rafting, fishing, and bird watching; or those dependent on dilution for waste removal; there could be a very minor impact. However, discussions with local interests show that little, if any, impact from the proposed flow reductions will result from establishment of the reservation.

Creation of the reservation: Under the baseline, groundwater withdrawals must curtail use during low flow periods. This includes permit-exempt groundwater withdrawals in continuity with the Wenatchee River or its tributaries, except single domestic and stockwatering uses. Under the amendment, some or all of the future needs of domestic uses and associated residential irrigation, stockwatering, potable water needs associated with commercial and industrial uses could be met through the reservation, even during low flow periods.

For businesses developing land for residential construction, having a reliable supply of domestic water and associated residential irrigation during low flow periods is a net benefit from this rule making.

The reservation of water for stockwatering will provide year-round access to water for new stockwatering uses, except for feedlots and other activities not related to normal grazing uses. Under the baseline, stockwater is treated identically. The change in the rule does not result in a net cost to stock-related businesses.

Impacts to existing permitted water rights: Allowing access to water through the reservation could affect the value of existing permitted water rights held by some businesses. The exact effect will depend on the allowable use, volume

and point of diversion of the existing rights, the existing uses and the desired uses, and the volumes needed.

New water rights and permit-exempt withdrawals: New permitted surface water and groundwater withdrawals from the reservation for small businesses will be required to meter and report their water use. If more accurate water use data is needed in the basin, ecology may also require water metering for permit-exempt wells.

Costs to Firms and Required Professional Services: As mentioned above, those business entities that depend on water in the river are most likely to experience costs from the amendment and those businesses that would obtain water from the reservation are most likely to gain the benefits. The cost analyses required in chapter 19.85 RCW follow:

Reporting and recordkeeping—Permit exempt well users: No additional reporting or recordkeeping will be required for small business using permit-exempt ground water uses. If small businesses were to choose withdrawal from surface water or groundwater through permits, there would be minimal additional costs from reporting their metered use. It is unlikely there would be many users that choose this option.

Additional professional services: No additional professional services are anticipated. For water users proposing uses eligible for the reservation and not exempted from the minimum instream flows in the current rule, the proposed rule reduces the need for small businesses to obtain consulting services. A reliable water supply is made available, without the expense and uncertainty of showing that the proposed use is in the overriding consideration of the public interest.

Costs of equipment, supplies, labor, and increased administrative costs: No additional equipment, supplies, labor or administrative costs are anticipated. We expect less than three new businesses per year to seek permits for surface water or groundwater withdrawals and thus be required to meter.

Other compliance requirements: As mentioned above, firms that depend on instream activities and potentially those that hold existing permits could incur adverse impacts.

- The impacts to instream users would be specific to the firm, but is unlikely to be significant since few firms are dependent on instream flows.[3]
- Existing water rights holders could be impacted if the value of their water right changes as a result of this rule. This would ultimately only affect those that want to transfer or lease a right and only for the period until the reservation is fully allocated to new uses. The exact cost is difficult to determine since it depends on many factors and very few if any transfers would happen in this fashion. Moreover, the reservation would tend to increase the availability of water relative to the baseline and decrease the incentive to transfer water in the future.

Creation of the reservation will be a net benefit for most businesses that need water. Water unavailable during low flow periods is damaging to any business that needs it for its own use or who are looking to develop residential or commercial properties.

In order to have water available during low flow periods under the baseline, water would have to be obtained through leases, transfers or on-site storage. On-site storage for a low flow period can cost approximately $10,000-$15,000[4] for a typical residence; the amendment avoids this cost for those using the reservation. For other users, the cost of storage would likely preclude it as an option.

Agriculture users would likely be required to purchase or transfer water absent the proposed rule. This could mean some cost for every low flow year. This analysis assumes that water would be readily available for transfer or lease. If not the case, then prices would likely be very high. For those that do not require water for domestic needs during low flow periods, an interruptible water right remains an option under both the current and proposed rule.

Quantification of Costs and Ratios: RCW 19.85.040 requires that additional analysis of impacts be provided. It is the purpose of this section to evaluate whether:

- Compliance with the amended rule will cause businesses to lose sales or revenue.
- The proposed rule amendment will have a disproportionate impact on small business.

Revenue Impacts: As noted previously, the most likely significant impacts are associated with decreased flows in the river and the creation of the reservation.

- The reduction of flows in the river is unlikely to significantly affect any firms within the Wenatchee basin.
- Those firms that will now be able to access water from the reservation will experience a benefit from being able to access water without constructing expensive storage alternatives, or purchasing or leasing rights as would be required under the baseline. The existing instream flow rule limits uses in exempt wells to periods of time when flows are adequate. It is estimated that summer flows will not meet the minimum instream flows in a majority of years and that storage would likely be required for most domestic uses absent the rule. In that sense, the rule will represent a negative cost (net benefit) to firms.

The net benefit to firms is the value of avoiding expensive storage, or purchasing or leasing water rights or other mitigation options to access water during periods of low flow. This will likely lower costs to some potential water users and to that extent, may increase revenues.

Existing water right holders might see some loss in the value of existing water rights and this would lower revenues. However, as mentioned above, this effect is likely to be relatively small and is not further considered.

Distribution of Compliance Costs: The distribution of compliance costs can be analyzed by evaluating those that would be required to meter their water use to qualify for the reservation (domestic use). Although the rule prescribes this, local ordinance already requires these businesses to meter.

It is possible that small businesses could have additional costs under the amendment if they pursue interruptible water rights. Ecology is unable to determine this cost as it would be very small and are unsure if future permitted water rights will be processed.

Known Costs: No businesses are required to comply with the rule. Businesses that choose to qualify for the benefits of the reservation must meter. These businesses would already be required to meter by local ordinance. Business uses that require water for drinking, bathing, sanitary purposes, cooking, laundering or other incidental human health and welfare requirements for employee or customer needs would qualify. Commercial or industrial process water uses do not qualify for the reservation.

The cost of a meter and installation for small water systems is estimated to range from $300 to $400.[5] Ecology chooses to use $400 per meter, including any reporting costs.

There were one hundred forty-one small businesses in the potentially affected industries in the basin. For small businesses in these industries, the average number of employees is four. For the top 10% of potentially affected businesses, the average number of employees is one hundred eighty four.

Table 1. Proportional Costs to Businesses

		Average # of Employees		**Cost Per Employee**	
	Estimated Costs	Small Business	10% Largest	Small Business	10% Largest
Cost of a meter and reporting	$400	4	184	**$100**	**$2.17**

The highest cost per employee for small business is $100, and for the top 10% of large businesses is $2.17.

Overall, the data suggests that the impacts of the proposed rule will impose disproportionate costs to small businesses. However, there is clearly a very large net benefit to those who are required to comply with the proposed rule to qualify for the reservation.

Conclusions: No businesses are required to comply with the rule. Businesses that choose to qualify for the benefits of the reservation must meter. These businesses would already be required to meter by local ordinance.

All businesses of all sizes that qualify to use the reservation (normal domestic uses) will experience net benefits from the rule. When examining only the costs, the rule will have disproportional costs to small businesses.

Actions Taken to Reduce the Impact on Small Business: As noted above, it is unlikely that there will be significant adverse impacts on businesses (small or large) as part of this rule making under the baseline. Therefore, no specific measures have been taken to reduce or mitigate these rule impacts. In general, mitigation options and allowed uses under the reservation (i.e. potable domestic water for employees and customers) should provide for flexibility in obtaining water for beneficial uses.

Involvement of Small Business in the Development of the Proposed Rule Amendments: The proposed rule amendment has been developed as an outcome of the Wenatchee watershed planning committee recommendations and process. This was an open process allowing for comment and participation by all entities as the project has proceeded. Participants in the planning unit included small businesses and organizations representing small businesses. Public hearings will be held after the filing of the CR-102 to consider the rule and allowing small businesses to provide additional input.

SIC Codes of Impacted Industries: No industries are required to comply with the proposed rule unless they seek to obtain new water right permits or permit-exempt water rights in the covered area. The following list shows Standard Industrial Codes (SIC) codes for existing developable properties in the Wenatchee River Basin.[6] This serves as a representative sample of potential future businesses that may be affected.

Table 2. Industries Likely Required to Comply with the Rule
(North American Industry Classification System[7])

Storage/packing agricultural produce	Code 1151
Deciduous tree fruits	Code 0175
Horticulture nurseries	Code 1114
Produce stands	Code 1113
Fresh fruits and vegetables	Code 5148
Commercial greenhouses	Code 1114
Hatcheries	Code 1129
Mining, mineral extraction	Code 21
Residential building construction	Code 2361
Nonresidential building construction	Code 2362
Produce market	Code 445230
Grape vineyards	Code 111332
Fruit farming	Code 111339
Wineries	Code 312130
Golf facility	Code 713910
Stables	Code 713990
Animal production	Code 115210

Expected Jobs Created or Lost: Ecology expects to issue one or two permits a year that would be for commercial or industrial uses subject to the proposed instream flows. The permits typically average twenty acres of irrigated land. Pear orchard, the most commonly grown crop in the area, produces revenue of $10-12,000 per acre.[8] Commercial crop production could therefore generate an estimated $200,000 to 240,000 per year if the grower can successfully adapt the unreliable supply provided by the permit to meet the needs of pear orchard[s].

If thirty new permits or six hundred new agricultural acres were issued water rights over the next twenty years we could expect 7.2 million in revenue. This could create two hundred eleven new supporting jobs.

Office of financial management's NAICS based input/output model[9] provides estimates of interdependence among industrial sectors in the state. Each sector not only produces and sells goods or services, but also purchases

goods or services for use within its production process. Ecology expects jobs created by compliance of the proposed rule in these areas:

	Employment
Crop production	141
Animal production	1
Construction	2
Food manufacturing	1
Wholesale trade	3
Retail trade	13
Transportation and warehousing	2
Information	1
Finance and insurance	3
Real estate	7
Professional services and management	11
Educational services	1
Health services	11
Arts, recreation, and accommodation	2
Food services and drinking places	6
Other services	6
Total Employment	**211**

[1] Due to size limitations relating to the filing of documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, the rule-making file contains this information and it is available upon request.

[3] Talks with local interests show few commercial activities in the basin depend on instream flows.

[4] Cost assumes two-5,000 gallon underground potable-water rated tanks.

[5] Survey of well drillers, pump installers, and ecology's metering coordinator.

[6] Data provided by the Chelan County assessor and by the Washington state employment security department was the basis for this table.

[7] Ecology has used NAICS codes rather than Standard Industrial Codes (SIC). It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

[8] Wenatchee Water Resources Inventory Area (WRIA) 45 Management Plan.

[9] http://www.ofm.wa.gov/economy/io/default.asp.

A copy of the statement may be obtained by contacting Department of ecology water resources web page at http://www.ecy.wa.gov/programs/wr/instream-flows/wenatchee.html or Lanessa Inman, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA 98504, phone (360) 407-6862, fax (360) 407-7162, e-mail Linm461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Department of ecology water resources web page at http://www.ecy.wa.gov/programs/wr/instream-flows/wenatchee.html or Lanessa Inman, Department of Ecology, 300 Desmond Drive S.E., Lacey, WA, phone (360) 407-6862, fax (360) 407-7162, e-mail Linm461@ecy.wa.gov.

July 3, 2007
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-010 General ((~~provision~~)). These rules apply to waters within the Wenatchee River basin, WRIA 45, as defined in WAC 173-500-040. This chapter is ((~~promulgated pursuant to~~)) adopted under chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (minimum water flows and levels), chapter ((~~75.20~~)) 77.57 RCW (state fisheries code), chapter 90.82 RCW (Watershed Planning Act), and in accordance with chapter 173-500 WAC (water resources management program).

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-020 Purpose. The purposes of this chapter ((~~is~~)) are to retain perennial rivers, streams, and lakes in the Wenatchee River basin with instream flows and levels necessary to ((~~provide protection for~~)) protect water quality, wildlife, fish, ((~~scenic, aesthetic,~~)) and other environmental values, as well as aesthetics, recreation, navigation((~~,~~)); and ((~~water quality~~)) to meet certain future out-of-stream water needs identified in the Wenatchee watershed management plan.

(1) The Wenatchee watershed management plan approved by the Wenatchee planning unit and the Chelan County commission under RCW 90.82.130 is the basis for amendments to the June 3, 1983 rule. The plan recommendations were approved on April 26, 2006, by the Wenatchee watershed planning unit, a group composed of a broad base of water use interests, and on June 26, 2006, by the Chelan County commission. The plan recommendations are therefore considered an expression of the public interest.

(2) This chapter sets forth the department's policies to guide the protection, use and management of Wenatchee River basin surface water and interrelated ground water resources. It protects existing water rights, establishes instream flows, and sets forth a program for the administration of future water allocation and use.

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-030 ((~~Establishment of instream flows.~~)) Definitions. (((~~1) Stream management units and associated control stations are established as follows:~~

~~Stream Management Unit Information~~

~~Control Station No. Stream Management Unit Name~~	~~Control Station by River Mile and Section, Township, and Range~~	~~Affected Stream Reach(es) including Tributaries~~
~~12-4570.00 Wenatchee River at Plain~~	~~46.2 Sec. 12, T. 26N., R. 17E. W.M~~	~~From Plain Road Bridge, R.M. 46.2, to headwaters~~
~~12-4585.00 Icicle Cr. near Leavenworth~~	~~1.5 Sec. 24, T. 24N., R. 17E. W.M~~	~~Headwaters of Icicle Creek to its mouth~~

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township, and Range	Affected Stream Reach(es) including Tributaries
12-4590.00 Wenatchee River at Peshastin	21.5 Sec. 8, T. 24N., R. 18E. W.M	From confluence of Derby Creek to Plain Road Bridge, R.M. 46.2 excluding Derby Creek and Icicle Creek
12-4625.00 Wenatchee River at Monitor	7.0 Sec. 11, T. 23N., R. 19E. W.M	From mouth to confluence of Derby Creek, including Derby Creek and excluding Mission Creek
12-4620.00 Mission Creek near Cashmere	1.5 Sec. 8, T. 23N, R. 19E. W.M	From mouth to headwaters

(2) Instream flows are established for the stream management units in WAC 173-545-030(1) as follows:

Instream Flows in the Wenatchee River basin
(instantaneous cubic feet per second)

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4580.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin
Jan	1	550	120	700
	15	550	120	700
Feb	1	550	120	700
	15	550	120	700
Mar	1	550	150	750
	15	700	170	940
Apr	1	910	200	1300
	15	1150	300	1750
May	1	1500	450	2200
	15	2000	660	2800
Jun	1	2500	1000	3500
	15	2000	660	2600
Jul	1	1500	450	1900
	15	1200	300	1400
Aug	1	880	200	1000
	15	700	170	840
Sep	1	660	130	820
	15	620	130	780
Oct	1	580	130	750
	15	520	130	700
Nov	1	550	150	750
	15	550	150	750
Dec	1	550	150	750
	15	550	150	750

Instream Flows in the Wenatchee River basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	12-4620.00 Mission Cr. near Cashmere	12-4625.00 Wenatchee R. at Monitor
Jan	1	6	820
	15	6	820
Feb	1	6	820
	15	6	800
Mar	1	6	800
	15	11	1040
Apr	1	22	1350
	15	40	1750
May	1	40	2200
	15	40	2800
Jun	1	28	3500
	15	20	2400
Jul	1	14	1700
	15	10	1200
Aug	1	7	800
	15	5	700
Sep	1	4	700
	15	4	700
Oct	1	4	700
	15	5	700
Nov	1	6	800
	15	6	800
Dec	1	6	800
	15	6	800

(3) Instream flow hydrographs, as represented in the document entitled "Wenatchee River basin instream resources protection program, figs. 7, 8, 9, pgs. 30 and 31," shall be used for identification of instream flows on those days not specifically identified in WAC 173-545-030(2).

(4) Future consumptive water right permits issued hereafter for diversion of surface water from the main stem Wenatchee River and perennial tributaries shall be expressly subject to instream flows established in WAC 173-545-030 (1) through (3) as measured at the appropriate gage, preferably the nearest one downstream, except for those exemptions described in WAC 173-545-070 (1) through (3).

(5) Projects that would reduce the flow in a portion of a stream's length (e.g.: hydroelectric diversion projects) will be considered consumptive with respect to the bypassed portion of the stream and will be subject to specific instream flow requirements as specified by the department for the bypassed reach notwithstanding WAC 173-545-030 (1) through (3). The department may require detailed, project-specific instream flow studies to determine a specific instream flow for the bypassed reach.

(6) If department investigations determine that withdrawal of ground water from the source aquifers would not interfere significantly with stream flow during the period of stream closure or with maintenance of minimum flows, then applications to appropriate public ground waters may be approved and permits or certificates issued.)) For the purposes of this chapter, the following definitions shall be used:

(1) **"Allocation"** means the designation of specific amounts of water for specific beneficial uses.

(2) **"Appropriation"** means the process of legally acquiring the right to specific amounts of water for beneficial uses, as consistent with the requirements of the ground and surface water codes and other applicable water resource statutes.

(3) **"Beneficial uses"** means uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, thermal power production, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state.

(4) **"Consumptive use"** means a use of water whereby there is a diminishment of the overall amount or quality of water in the water source.

(5) **"Closure"** means a finding by the department that no water is available for future appropriations. WAC 173-545-100 identifies the periods when, and in what quantities, water may be available for future appropriation. If the maximum allocation is zero, no water is available. Practically, it means a permit to appropriate water for a beneficial use will not be approved from a stream or aquifer that results in a diminishment of the stream or aquifer during any period of time that water is unavailable and, unless otherwise excepted, no water is available for new or expanded exempt withdrawals under RCW 90.44.050.

(6) **"Department"** means the Washington state department of ecology.

(7) **"Domestic water use"** means, for the purposes of the reservation of water in this chapter, use of water associated with human health and welfare requirements, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses.

(8) **"Existing water right"** includes perfected riparian rights, federal Indian and non-Indian reserved rights or other perfected and inchoate appropriative rights.

(9) **"Hydraulic continuity"** means the interrelation between ground water (water beneath land surfaces or surface water bodies) and surface water (water above ground, such as lakes and streams).

(10) **"Instream flow"** as used in this chapter, has the same meaning as a minimum instream flow under chapter 90.82 RCW, a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or management flow in the Wenatchee watershed plan. The instream flow constitutes a water right under chapter 90.03 RCW.

(11) **"Irrigation associated with a residence"** means irrigation of not more than one-half acre of lawn or garden per dwelling.

(12) **"Nonconsumptive use"** means a type of water use where either there is no withdrawal from a water source or there is no diminishment in the overall amount or quality of water in the water source.

(13) **"Plan"** or **"watershed plan"** means the Wenatchee watershed management plan, approved by the Wenatchee watershed planning unit on April 26, 2006, and by the Chelan County commissioners on June 26, 2006.

(14) **"Planning unit"** means the Wenatchee watershed planning unit (WWPU), or a successor approved by the WWPU. The WWPU was established in 1999 in accordance with chapter 90.82 RCW, Watershed Planning Act. The WWPU presently consists of the main planning unit, the steering committee, several technical subcommittees (e.g., water quantity/instream flow, habitat, water quality, growth and land use, outreach), and other interested stakeholders.

(15) **"Public water system"** means any system providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. Water use shall be consistent with WAC 246-290-020 or as it may be recodified.

(16) **"Reservation"** means an allocation of water set aside for future domestic use, municipal use, and stock water use (except feedlots). For the purposes of this chapter, the reservation is not subject to the instream flows set in WAC 173-545-050 and 173-545-060. "Reservation" is the same as "reserve" and "reserved water" in the Wenatchee watershed management plan.

(17) **"Stock water"** means the use of water by animals consistent with the Chelan County Code, Section 11.88.030. It does not apply to feedlots and other activities which are not related to normal grazing land uses.

(18) **"Stream management unit"** means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular use, action, instream flow level or reservation of water applies. Each of these units contains a control station. A map of the control points is included in this chapter (WAC 173-545-170).

(19) **"Withdrawal"** means the extraction of ground water or diversion of surface water.

(20) **"WRIA"** means water resource inventory area. This term can be used interchangeably with "basin" and "watershed."

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-040 Stream ((~~closure~~)) management units. ((~~The department has determined that additional diversions of water from Peshastin Creek during the period June 15 to October 15 would deplete instream flows required to protect instream values. Peshastin Creek is, therefore, closed to further consumptive appropriation from June 15 to October 15 each year. During the nonclosed period, minimum instream flows will be controlled and measured from the control station on the Wenatchee River at Monitor.~~)) Stream management units and associated control stations are established as follows:

Stream Management Unit Information

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township, and Range	Affected Stream Reach(es) including Tributaries
12-4570.00 Wenatchee River at Plain	46.2 Sec. 12, T. 26N., R. 17E. W.M.	From Beaver Valley Hwy, R.M. 46.2, to headwaters
12-4585.00 Icicle Cr. near Leavenworth	2.6 Sec. 23, T. 24N., R. 17E. W.M.	Headwaters of Icicle Creek to its mouth
12-4590.00 Wenatchee River at Peshastin	21.5 Sec. 8, T. 24N., R. 18E. W.M.	From confluence of Derby Creek to Beaver Valley Hwy, R.M. 46.2 excluding Derby Creek and Icicle Creek

Control Station No. Stream Management Unit Name	Control Station by River Mile and Section, Township, and Range	Affected Stream Reach(es) including Tributaries
12-4625.00 Wenatchee River at Monitor	7.0 Sec. 11, T. 23N., R. 19E. W.M.	From mouth to confluence of Derby Creek, including Derby Creek and excluding Mission Creek
12-4620.00[1] Mission Creek near Cashmere	1.5 Sec. 9, T. 23N., R. 19E. W.M.	From mouth to headwaters
ECY 453070[2] Mission Creek near Cashmere	0.2 Sec. 5, T. 23N., R. 19E. W.M.	From mouth to headwaters
12-4565.00 Chiwawa River near Plain	6.2 Sec. 13, T. 27N., R. 17E. W.M.	From the confluence of the Chiwawa River and the Wenatchee River upstream to the headwaters of the Chiwawa River
ECY 45J070 Nason Creek near mouth	0.2 Sec. 33, T. 27N., R. 17E. W.M.	From the confluence of Nason Creek and the Wenatchee River upstream to the Nason Creek headwaters
ECY 45F070 Peshastin Creek at Green Bridge Rd.	1.4 Sec. 28, T. 24N., R. 18E. W.M.	From the confluence of Peshastin Creek and the Wenatchee River

[1]This station is used for regulation of permits issued subject to the minimum instream flows listed in WAC 173-545-050.

[2]This station is to be used for regulation of any permits issued subject to the minimum instream flows in WAC 173-545-060.

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-050 ((~~**Policy statement for future permitting actions.**~~)) **Instream flows established on June 3, 1983.** ((~~Consistent with the provisions of chapter 90.54 RCW, it is the policy of the department to preserve an appropriate base flow in all streams and rivers as well as the water levels in all lakes in the Wenatchee River basin by encouraging the use of alternate sources of water which include (1) ground water, (2) storage water, or (3) purchase of other valid water rights.~~)) (1) The following instream flows were established June 3, 1983. Water rights established after that date and prior to the effective date of this rule are subject to these instream flows. The June 3, 1983, instream flows for the following stream management units in WAC 173-545-040 are as follows:

1983 Instream Flows in the Wenatchee River (instantaneous cubic feet per second)

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4580.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin
Jan	1	550	120	700
	15	550	120	700
Feb	1	550	120	700
	15	550	120	700
Mar	1	550	150	750
	15	700	170	940
Apr	1	910	200	1300
	15	1150	300	1750
May	1	1500	450	2200
	15	2000	660	2800
Jun	1	2500	1000	3500
	15	2000	660	2600
Jul	1	1500	450	1900
	15	1200	300	1400
Aug	1	880	200	1000
	15	700	170	840
Sep	1	660	130	820
	15	620	130	780
Oct	1	580	130	750
	15	520	130	700
Nov	1	550	150	750
	15	550	150	750
Dec	1	550	150	750
	15	550	150	750

Instream Flows in the Wenatchee River (instantaneous cubic feet per second)

Month	Day	12-4620.00 Mission Cr. near Cashmere	12-4625.00 Wenatchee R. at Monitor
Jan	1	6	820
	15	6	820
Feb	1	6	820
	15	6	800
Mar	1	6	800
	15	11	1040
Apr	1	22	1350
	15	40	1750
May	1	40	2200
	15	40	2800
Jun	1	28	3500
	15	20	2400
Jul	1	14	1700
	15	10	1200
Aug	1	7	800
	15	5	700
Sep	1	4	700
	15	4	700
Oct	1	4	700
	15	5	700
Nov	1	6	800
	15	6	800
Dec	1	6	800
	15	6	800

(2) Instream flow hydrographs, WAC 173-545-170, Appendix 1 to this rule, shall be used for identification of instream flows on those days not specifically identified in WAC 173-545-050(1).

(3) The instream flows in subsection (1) of this section shall retain their original priority date and quantities, except where the flows in WAC 173-545-060(7) are lower than the flows in subsection (1) of this section. In those instances, existing water rights subject to subsection (1) of this section will instead be subject to the lower flow in WAC 173-545-060(7). However, the priority date of the original right remains unchanged. If, at a future date, it is determined that the higher flows in subsection (1) of this section are required to retain flows necessary to preserve fish, wildlife, scenic, aesthetic, or other environmental values, the department will issue an order notifying the holders of the conditioned permits and certificates of such a decision and the justification.

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-060 ((~~Lakes.~~)) Instream flows based on watershed planning. ((~~In future permitting actions relating to withdrawal of lake waters, lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served.~~)) (1) The instream flows established in this section are based on the recommendations of the Wenatchee watershed planning unit and public input received during the rule-making process. These instream flows are established under RCW 90.82.080, and are necessary to meet the water resource management and ecosystem maintenance objectives of the Wenatchee watershed plan.

(2) Instream flows established in this section protect stream flows from future appropriations, and preserve flow levels that are necessary to protect wildlife, fish, water quality, aesthetic and other environmental values, recreation, and navigational values.

(3) Instream flows in subsection (7) of this section established at new locations or in larger amounts than the instream flows in WAC 173-545-050(1) are water rights with a priority date of November 2, 2001.

(4) All water rights (surface and ground water) established after the effective date of this rule, and not covered under the reservation in WAC 173-545-090, are subject to these instream flows. Water rights junior to the instream flow may be exercised when flow or ground water conditions will provide enough water to satisfy senior rights, including the instream flows. New appropriations which would conflict with instream flows shall be authorized only in situations where it is clear that the overriding considerations of the public interest will be served.

(5) Based upon the department's determination of overriding considerations of public interest, the reservation of water established in WAC 173-545-090 is not subject to the instream flows in subsection (7) of this section or WAC 173-545-050(1).

(6) Instream flows are expressed in cubic feet per second (cfs). Instream flows are measured at the control stations identified in WAC 173-545-040.

(7) Instream flows are established for the stream management units in WAC 173-545-040, as follows:

Instream Flows in the Wenatchee River Basin
(instantaneous cubic feet per second)

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4585.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin
Jan	1	550	267	1933
	15	550	267	1933
Feb	1	550	267	1933
	15	550	566	2800
Mar	1	550	518	2800
	15	700	518	2800
Apr	1	910	650	2800
	15	1150	650	2800
May	1	1500	650	2800
	15	2000	650	2800
Jun	1	2500	650	2800
	15	2000	550	1933
Jul	1	1500	550	1933
	15	1200	550	1933
Aug	1	880	400	1933
	15	700	343	1400
Sep	1	660	275	1311
	15	620	275	1311
Oct	1	580	267	1932
	15	520	267	2672
Nov	1	550	267	2900
	15	550	267	2900
Dec	1	550	267	1933
	15	550	267	1933

Instream Flows in the Wenatchee River Basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	ECY 45E070 Mission Cr. near Cashmere	12-4625.00 Wenatchee R. at Monitor
Jan	1	4.7	1867
	15	4.7	1867
Feb	1	4.7	1867
	15	24.2	2400
Mar	1	24.2	2400
	15	24.2	2400
Apr	1	24.2	2400
	15	24.2	2400
May	1	24.2	2400
	15	24.2	2400
Jun	1	24.2	2400
	15	16.2	1600
Jul	1	11	1600
	15	11	1600
Aug	1	6	1600
	15	4.7	900
Sep	1	4.7	900
	15	4.7	1338
Oct	1	4.7	1723
	15	4.7	2427
Nov	1	4.7	2800
	15	4.7	2800
Dec	1	4.7	1867

Month	Day	ECY 45E070 Mission Cr. near Cashmere	12-4625.00 Wenatchee R. at Monitor
	15	4.7	1867

Instream Flows in the Wenatchee River Basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	ECY 45J070 Nason Cr. near Mouth	12-4565.00 Chiwawa R. near Plain
Jan	1	120	267
	15	120	267
Feb	1	120	267
	15	160	277
Mar	1	160	277
	15	160	475
Apr	1	160	475
	15	160	475
May	1	160	475
	15	160	475
Jun	1	160	475
	15	210	375
Jul	1	210	375
	15	210	375
Aug	1	180	400
	15	180	369
Sep	1	165	270
	15	165	270
Oct	1	120	267
	15	120	267
Nov	1	120	267
	15	120	267
Dec	1	120	267
	15	120	267

Instream Flows in the Wenatchee River Basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	ECY 45F070 Peshastin Cr. at Green Bridge Rd.	Chumstick Cr. at North Road
Jan	1	53	To be determined (tbd)
	15	53	
Feb	1	53	tbd
	15	120	
Mar	1	120	tbd
	15	120	
Apr	1	120	tbd
	15	120	
May	1	120	tbd
	15	120	
Jun	1	120	tbd
	15	110	
Jul	1	110	tbd
	15	110	
Aug	1	80	tbd
	15	80	
Sep	1	80	tbd
	15	80	
Oct	1	53	tbd
	15	53	
Nov	1	53	tbd
	15	53	
Dec	1	53	tbd
	15	53	

(8) Instream flow hydrographs, WAC 173-545-170, Appendix 1 to this rule, shall be used for identification of instream flows on those days not specifically identified in WAC 173-545-060(7).

(9) Future consumptive water right permits issued hereafter for the withdrawal of surface and ground water from the mainstem Wenatchee River and tributaries shall be subject to instream flows established in subsection (7) of this subsection, except for those withdrawals eligible for the reservation under WAC 173-545-090.

(10) Projects that would reduce the flow in a portion of a stream's length (e.g.: Hydroelectric diversion projects) are consumptive with respect to the bypassed portion of the stream and are subject to specific instream flow requirements for the bypassed reach. The department may require detailed, project-specific instream flow studies to determine a specific instream flow for the bypassed reach. The flows established in subsection (7) of this section shall apply to the bypassed stream reach unless the department, by order, determines that different flows may be maintained in the bypassed reach.

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-070 ((~~Exemptions.~~)) Lakes and ponds. ((~~(1) Nothing in this chapter shall affect existing water rights, riparian, appropriative, or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.~~

~~(2) Future requests for group domestic uses, including municipal supply, may be exempted from the minimum instream flow provisions of this chapter when it is determined by the department, in consultation with the departments of fisheries and game, that overriding considerations of the public interest will be served.~~

~~(3) Single domestic and stockwatering use, except that related to feedlots, shall be exempt from the provisions established in this chapter. If the cumulative impacts of numerous single domestic diversions would significantly affect the quantity of water available for instream uses, then only single domestic in-house use shall be exempt if no alternative source is available.~~

~~(4) Nonconsumptive uses which are compatible with the intent of the chapter may be approved.~~)) In accordance with RCW 90.54.020(3), lakes and ponds in the Wenatchee watershed shall be retained substantially in their natural condition, including those in the Wenatchee National Forest. Water withdrawals from lakes and ponds for purposes eligible under the reservation in WAC 173-545-090 are not subject to instream flows. All other water withdrawals from lakes and ponds or storage projects sited within or upon existing lakes

or ponds are subject to instream flows and maximum future allocations.

AMENDATORY SECTION (Amending Order DE 83-8, filed 6/3/83)

WAC 173-545-080 ((~~Future rights.~~)) Interim closure. ((~~No rights to divert or store public surface waters of the Wenatchee River basin, WRIA 45, shall hereafter be granted which shall conflict with the purpose of this chapter.~~)) The Chumstick Creek subbasin shall be closed to all future appropriations other than those provided by the interim reservation in WAC 173-545-090 (1)(d)(vi) until the department adopts a rule establishing instream flows, closes Chumstick Creek permanently, or determines that instream flows or a closure are not required.

AMENDATORY SECTION (Amending Order 88-11, filed 6/9/88)

WAC 173-545-090 ((~~Enforcement.~~)) Reservation of water for certain future uses. ((~~In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including but not limited to the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 90.03.600.~~)) (1) Using the watershed plan as a primary expression of public interest, and consistent with the authority under RCW 90.54.050(1) and 90.82.130(4), the department's director determines that it is an overriding consideration of the public interest to reserve an amount of surface and ground water, up to 4 cubic feet per second, for future beneficial uses as follows:

(a) The priority date for uses under the reservation is the effective date of this chapter.

(b) The reservation is not subject to the instream flows established in WAC 173-545-050 and 173-545-060.

(c) Beneficial uses of water eligible for the reservation are limited to:

(i) Permitted uses for domestic purposes, irrigation associated with a residence, potable domestic water requirements associated with municipal, commercial, and industrial purposes, and stock water (as defined in WAC 173-545-030 (17)).

(ii) Permit-exempt uses for domestic purposes, irrigation associated with a residence, domestic water requirements associated with municipal, commercial, and industrial purposes, and stock water (as defined in WAC 173-545-030 (17)).

(d) The reservation of water for future use is limited to the following locations and amounts:

(i) Chiwawa River near Plain (USGS 12-4565.00), up to 0.5 cfs.

(ii) Nason Creek near mouth, up to 0.16 cfs.

(iii) Wenatchee River at Plain (USGS Gage No. 12-4570.00), up to 1.0 cfs inclusive of actual water use associated with the subbasin reservations in (d)(i) and (ii) of this subsection.

(iv) Icicle Creek near Leavenworth: Up to 0.1 cfs. Reservation of an additional 0.4 cfs will be considered after completion of flow restoration efforts targeting habitat between the city of Leavenworth and Icicle Irrigation District's point of diversion and the U.S. Fish and Wildlife Service hatchery return. Rule making will be required to establish this additional reservation.

(v) Peshastin Creek at Green Bridge: Up to 0.1 cfs.

(vi) Chumstick Creek at North Road: Up to .043 cfs as an interim reservation to meet projected growth for the three years immediately following the effective date of this rule. At the end of three years, or sooner if the interim reservation is fully appropriated, allocation of any water remaining in the interim reservation and water above the interim reservation, up to a total of .13 cfs, is subject to additional conditions described in subsection (10) of this section.

(vii) Mission Creek near Cashmere: Up to .03 cfs for an interim reservation to meet projected growth for the two years immediately following the effective date of this rule. The interim reservation is subject to additional conditions described in subsection (11) of this section.

(viii) Wenatchee River at Monitor (USGS Gage No. 12-4625.00): Up to 4 cfs inclusive of actual water use associated with the subbasin reservations in (d)(i) through (vii) of this subsection.

(2) A water right permit allocating water from the reservation must be consistent with the requirements of RCW 90.03.290.

(3) All water uses from the reservation must implement water use efficiency and conservation practices, consistent with the watershed plan.

(4) This reservation of water is intended to meet needs identified for the basin within the Wenatchee watershed plan. The department shall deny all applications for water from this reservation for use not conforming to subsection (1)(c) of this section.

(5) An accounting of all appropriations from the reservation shall be maintained by the department and the Chelan County natural resource department. The accounting shall, at a minimum, include estimated and measured use in gallons per day.

(6) All permitted and permit-exempt uses from the reservation will have the same priority date. The following will guide water supply decisions in times of water shortage:

(a) Among the use categories: Domestic and stock-watering uses will be met first, followed by domestic water requirements associated with municipal, commercial and industrial use, and then residential irrigation.

(b) Within each use category, the date of first beneficial use will be used. The use with the earliest date will be satisfied first.

(7) The reservation will be evaluated by the department and the Wenatchee planning unit prior to 2010, 2015, 2020, and 2025. The allocated and unallocated amounts for each use will be reviewed, as well as the allocated and unallocated amounts for the entire reserve. Modifications to the program may therefore be established through rule making, if needed.

(8) The department shall notify both Chelan County and the planning unit or its successor, in writing, when it determines that fifty percent, seventy-five percent, and one hundred percent, respectively, of the total reservation is appropriated. The department shall also issue a public notice in a

newspaper of general circulation for the region at the same three junctures.

(9) The department shall require metering and reporting for permitted surface and ground water appropriation from the reservation. If more accurate water use data is needed, the department may, after consulting with the planning unit and Chelan County, require metering and reporting for ground water withdrawals otherwise exempted from permit requirements under RCW 90.44.050.

(10) For Chumstick Creek, allocation of the full 0.13 cfs reservation will be considered only after completion of an instream flow assessment and a cumulative impacts assessment. Rule making will be required to establish Chumstick Creek instream flows. A cumulative impacts assessment will be used to determine if outdoor water use associated with permit-exempt ground water uses initiated after June 6, 1983, interferes with the instream flows in WAC 173-545-050. Rule making will also be required to either terminate the interim closure of the Chumstick Creek subbasin or to make it permanent.

(11) For Mission Creek, the interim reservation will terminate after two years. A cumulative impacts assessment will be used to determine if outdoor water use associated with permit-exempt ground water uses initiated subsequent to June 6, 1983, interferes with the adopted instream flows in WAC 173-545-050.

AMENDATORY SECTION (Amending Order 88-11, filed 6/9/88)

WAC 173-545-100 ((~~Regulation review.~~)) Maximum future allocation. ((~~The department of ecology shall initiate a review of the rules established in this chapter whenever new information, changing conditions, or statutory modifications make it necessary to consider revisions.~~)) (1)(a) The department determines that there are certain times when there are surface waters above the instream flows, referred to as "high flows." These high flows provide critical ecological functions such as channel and riparian zone maintenance, flushing of sediments, and fish migration. In order to protect the frequency and duration of these higher flows, the department hereby establishes maximum amounts of water/flow that can be withdrawn from specific streams at specific times, subject to the flows in WAC 173-545-060.

(b) A maximum allocation shall be used to review future applications for beneficial uses from the mainstem Wenatchee and tributary rivers and creeks.

Maximum Allocations in the Wenatchee River Basin
(instantaneous cubic feet per second)

Month	Day	12-4570.00 Wenatchee R. at Plain	12-4585.00 Icicle Cr. near Leavenworth	12-4590.00 Wenatchee R. at Peshastin (2002 #'s)
Jan	1	82	21	113
	15	82	21	113
Feb	1	78	20	111
	15	78	0	111
Mar	1	96	0	147
	15	96	0	147
Apr	1	243	59	335
	15	243	59	335
May	1	525	149	711
	15	525	149	711
Jun	1	604	175	800
	15	604	175	800
Jul	1	296	76	376
	15	296	76	376
Aug	1	102	28	122
	15	102	0	122
Sep	1	0	0	0
	15	0	0	0
Oct	1	0	0	0
	15	0	0	0
Nov	1	95	23	128
	15	95	23	128
Dec	1	92	25	122
	15	92	25	122

Maximum Allocations in the Wenatchee River Basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	ECY 45F070 Peshastin Cr. near Green Bridge	12-4625.00 Wenatchee R. at Monitor	ECY 45E070 Mission Cr. near Cashmere
Jan	1	6	132	0.6
	15	6	132	0.6
Feb	1	6	148	1.2
	15	6	148	1.2
Mar	1	7	192	1.4
	15	7	192	1.4
Apr	1	16	360	2.7
	15	16	360	2.7
May	1	38	710	3.1
	15	38	710	3.1
Jun	1	44	813	1.9
	15	44	813	1.9
Jul	1	20	373	0
	15	20	373	0
Aug	1	0	117	0
	15	0	117	0.3
Sep	1	0	72	0
	15	0	0	0
Oct	1	0	0	0
	15	0	0	0
Nov	1	7	139	.4
	15	7	139	.4
Dec	1	7	130	.4
	15	7	130	.4

Maximum Allocations in the Wenatchee River Basin (cont'd)
(instantaneous cubic feet per second)

Month	Day	ECY 45J070 Nason Cr. near Mouth	12-4565.00 Chiwawa R. near Plain
Jan	1	13	12
	15	13	12

		ECY 45J070	12-4565.00
Month	Day	Nason Cr. near Mouth	Chiwawa R. near Plain
Feb	1	12	12
	15	12	0
Mar	1	15	0
	15	15	16
Apr	1	44	58
	15	44	58
May	1	99	139
	15	99	139
Jun	1	114	147
	15	114	147
Jul	1	54	71
	15	54	71
Aug	1	17	24
	15	17	0
Sep	1	0	0
	15	0	0
Oct	1	0	0
	15	0	0
Nov	1	15	16
	15	15	16
Dec	1	15	16
	15	15	16

(2) The designation of a maximum allocation limit does not constitute a determination by the department that a permit to appropriate public waters will be issued. RCW 90.03.290 and 90.44.060 require that a permit can be issued only upon a determination that: Water is available; the use will not impair existing rights; water will be applied to a beneficial use; and the use is not detrimental to the public interest. Establishment of a water right within the limit of the allocation occurs after proper authorization from the department and after the water is first put to beneficial use. The water rights are subject to the instream flows established in WAC 173-545-060, and other provisions established in statutory, administrative and case law.

(3) The department shall require the metering and reporting of all permitted surface and ground water withdrawals for which a maximum allocation applies.

(4) The department will maintain a record of the amount of water appropriated from the Wenatchee River and tributaries specified above. Once the maximum amounts are fully appropriated, the department shall notify Chelan County and the planning unit in writing. The department shall also issue a public notice in a newspaper of general circulation for the region.

NEW SECTION

WAC 173-545-110 Permitting actions. (1) Surface and ground water permits not subject to the instream flows established in WAC 173-545-060 may be issued if:

(a) The proposed use is nonconsumptive, and compatible with the intent of this chapter.

(b) The water use qualifies for the reservation established in WAC 173-545-090.

(2)(a) Future applications for surface waters that are not part of the reservation established in WAC 173-545-090 may be approved subject to the instream flows established in WAC 173-545-060 and the maximum water allocation limits established in WAC 173-545-100, unless the source is closed to further appropriation.

(b) Future applications for ground waters that are not part of the reservation established in WAC 173-545-090 may be approved subject to the instream flows established in WAC 173-545-060 and the maximum water allocation limits established in WAC 173-545-100 (except if there is a closure). Based upon existing data and the findings in the watershed plan, the department determines that there is a high likelihood of hydraulic continuity between surface water and ground water sources within both the Wenatchee River management units and tributaries established in WAC 173-545-040. Therefore, water rights without instream flow limitations may be issued for ground water only if the department determines that the withdrawal of ground water with proposed mitigation in place would not adversely affect or impair the instream flows.

(3) No right to withdraw or store the public surface or ground waters of the Wenatchee River basin that conflicts with the provisions of this chapter will hereafter be granted, except in cases where such rights will clearly serve overriding considerations of the public interest, as stated in RCW 90.54.020 (3)(a).

(4) All future surface and ground water permit holders shall be required to install and maintain measuring devices and report the data to the department in accordance with permit requirements. In addition, the department may require the permit holder to monitor stream flows and ground water levels.

NEW SECTION

WAC 173-545-120 Changes and transfers. No changes to, or transfers of, existing surface and ground water rights in the Wenatchee River basin shall hereafter be granted if they conflict with the purpose of this chapter. Any change or transfer proposal can be approved only if there is a finding that existing rights, including the instream flows established in WAC 173-545-050 and 173-545-060, will not be impaired.

NEW SECTION

WAC 173-545-130 Compliance and enforcement. (1) To obtain compliance with this chapter, the department, with assistance from Chelan County, the planning unit or its successor and partners, shall prepare and distribute technical and educational information regarding the scope and requirements of this chapter to the public. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When the department determines that a violation has occurred, it shall first attempt to achieve voluntary compliance. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(3) To obtain compliance and enforce this chapter, the department may impose such sanctions as appropriate under authorities vested in it, including, but not limited to, issuing

regulatory orders under RCW 43.27A.190; and imposing civil penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

NEW SECTION

WAC 173-545-140 Appeals. All final written decisions of the department pertaining to permits, regulatory orders, and related decisions made pursuant to this chapter can be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

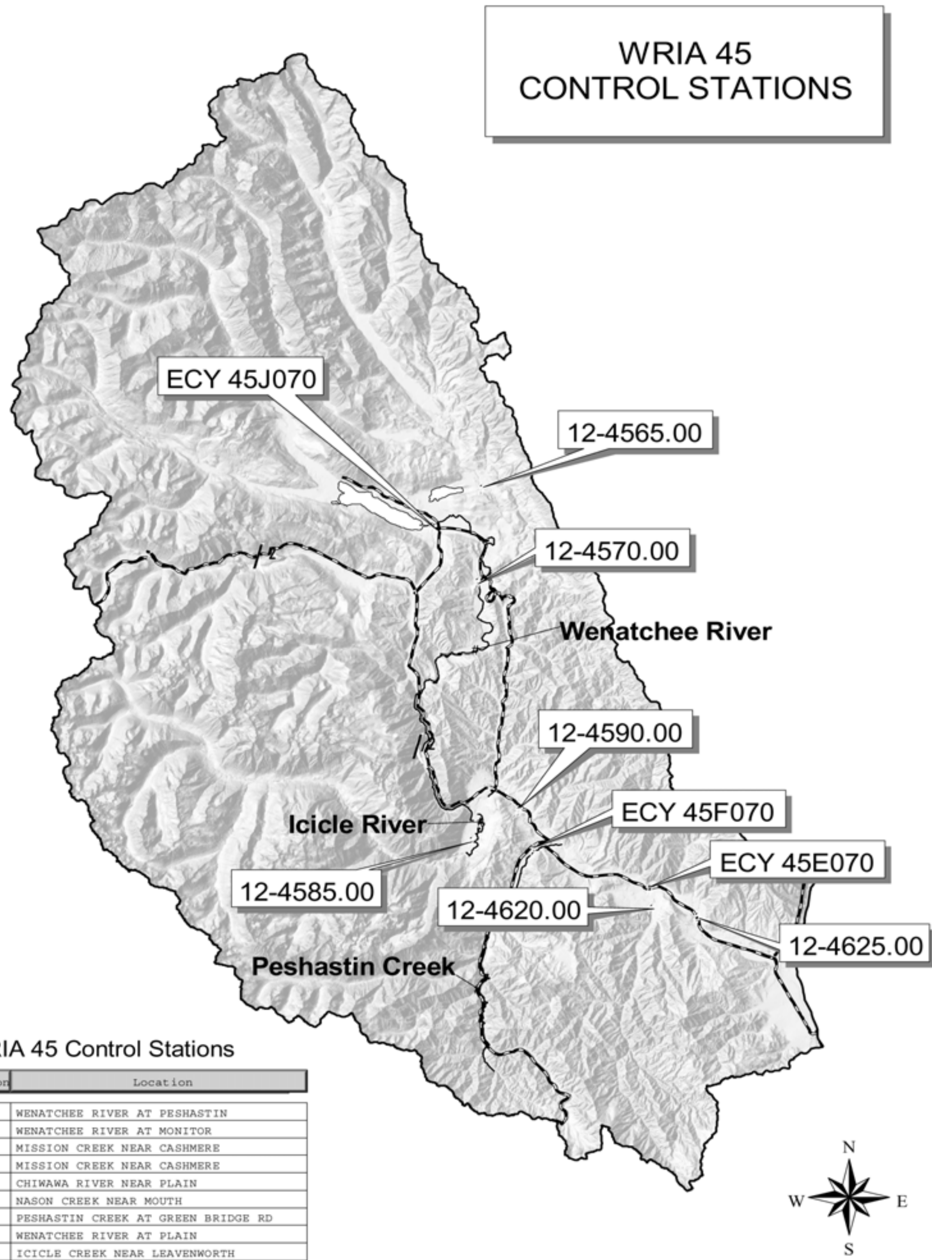
NEW SECTION

WAC 173-545-150 Regulation review. Review of this chapter may be initiated by the department whenever significant new information is available, a significant change in conditions occurs, statutory changes are enacted that are determined by the department to require review of the chapter, or if modifications are necessary based on the reviews described in WAC 173-545-080 and 173-545-090. Chelan County, the planning unit, or other interested citizens with standing may request that the department initiate a review at any time. If the department initiates a review, it will consult with Chelan County and the planning unit or its successor. If necessary, the department will modify the appropriate provisions of this chapter by rule.

The reservation will be evaluated by the department and the Wenatchee planning unit prior to 2010, 2015, 2020, and 2025. The allocated and unallocated amounts for each use will be reviewed, as well as the allocated and unallocated amounts for the entire reserve. Modifications to the program may therefore be implemented by rule, if needed.

NEW SECTION

WAC 173-545-160 Map. For the purposes of administering this chapter, the boundaries of the Wenatchee River basin identified in the figure below are presumed to accurately reflect the basin hydrology.

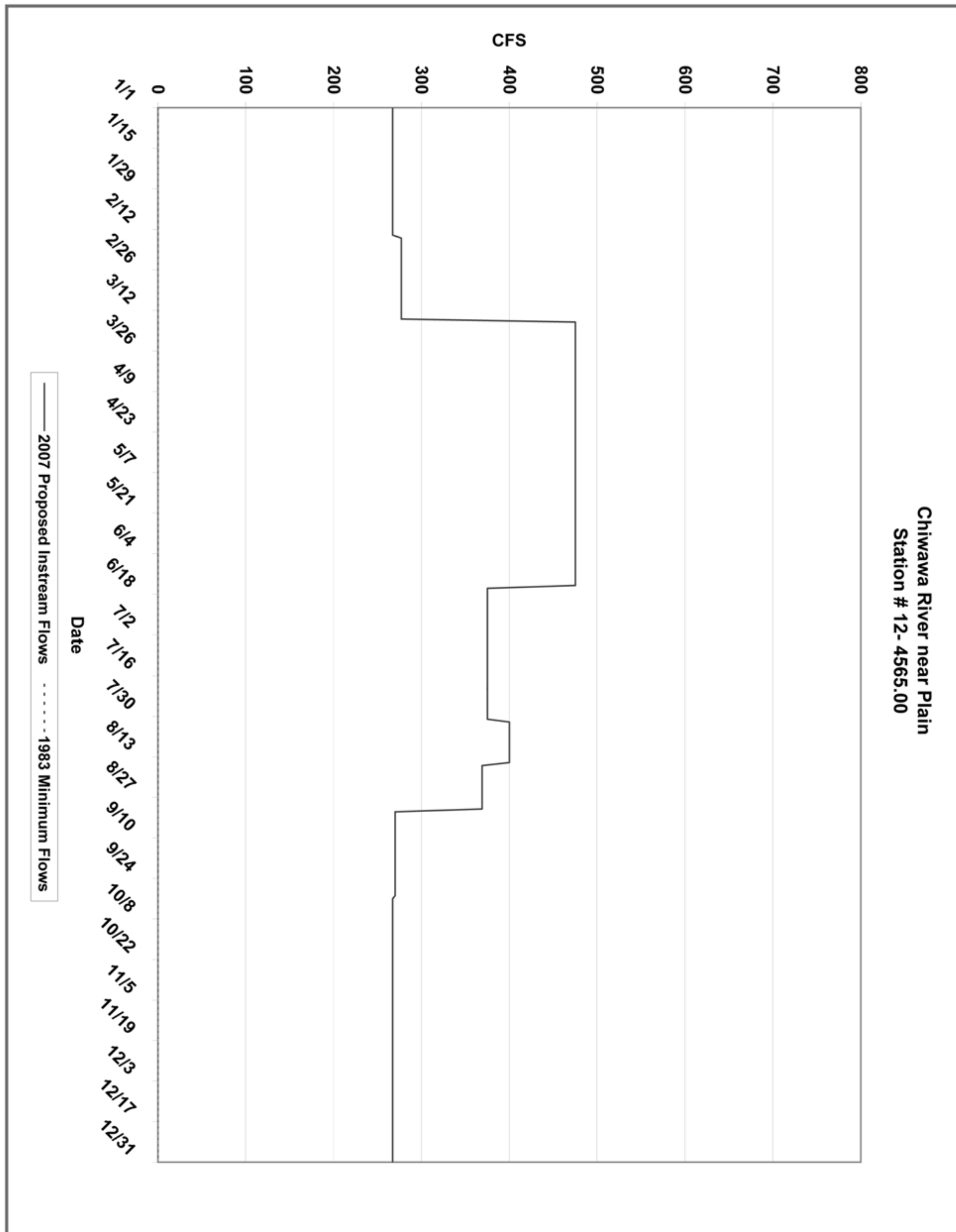


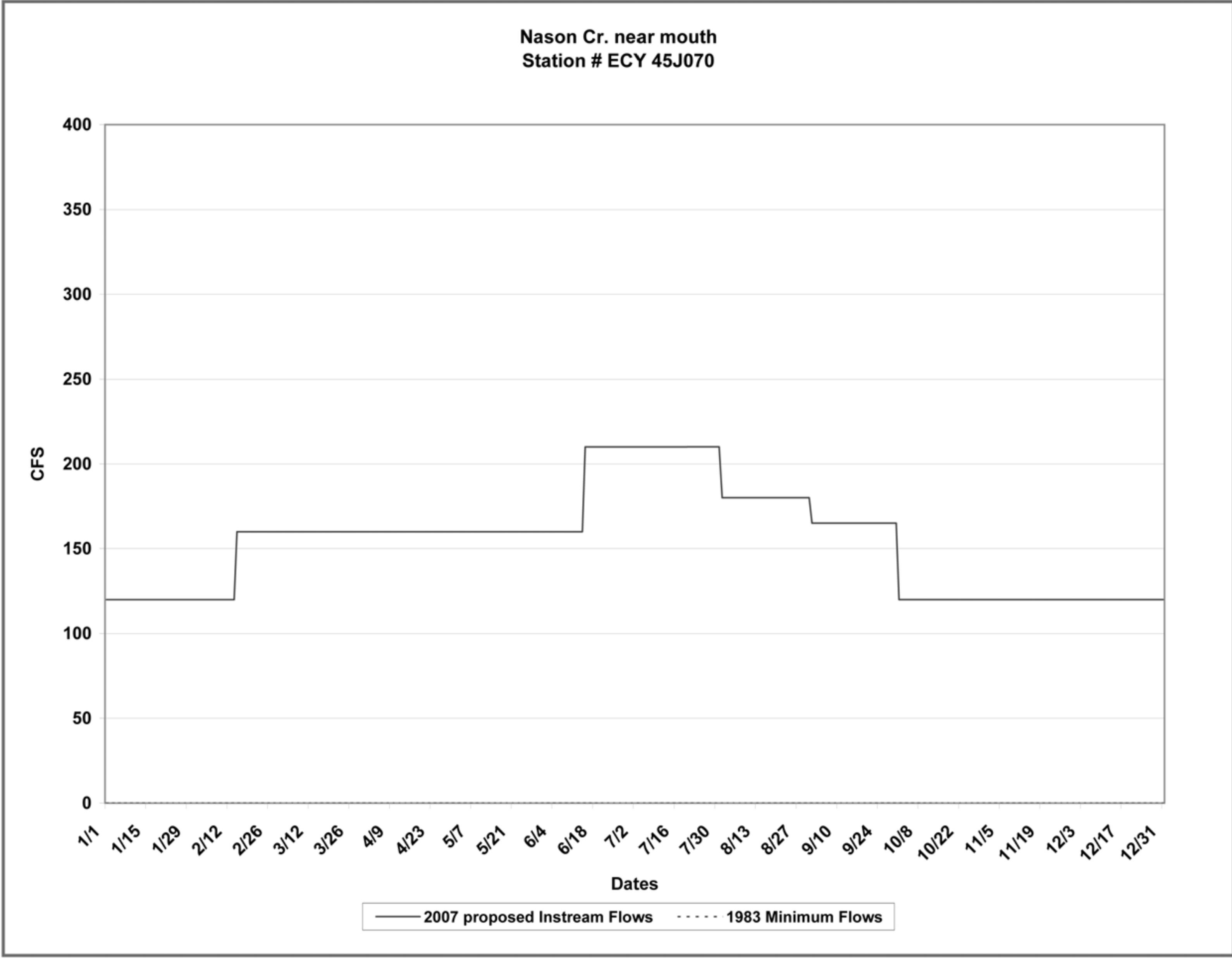
WRIA 45 Control Stations

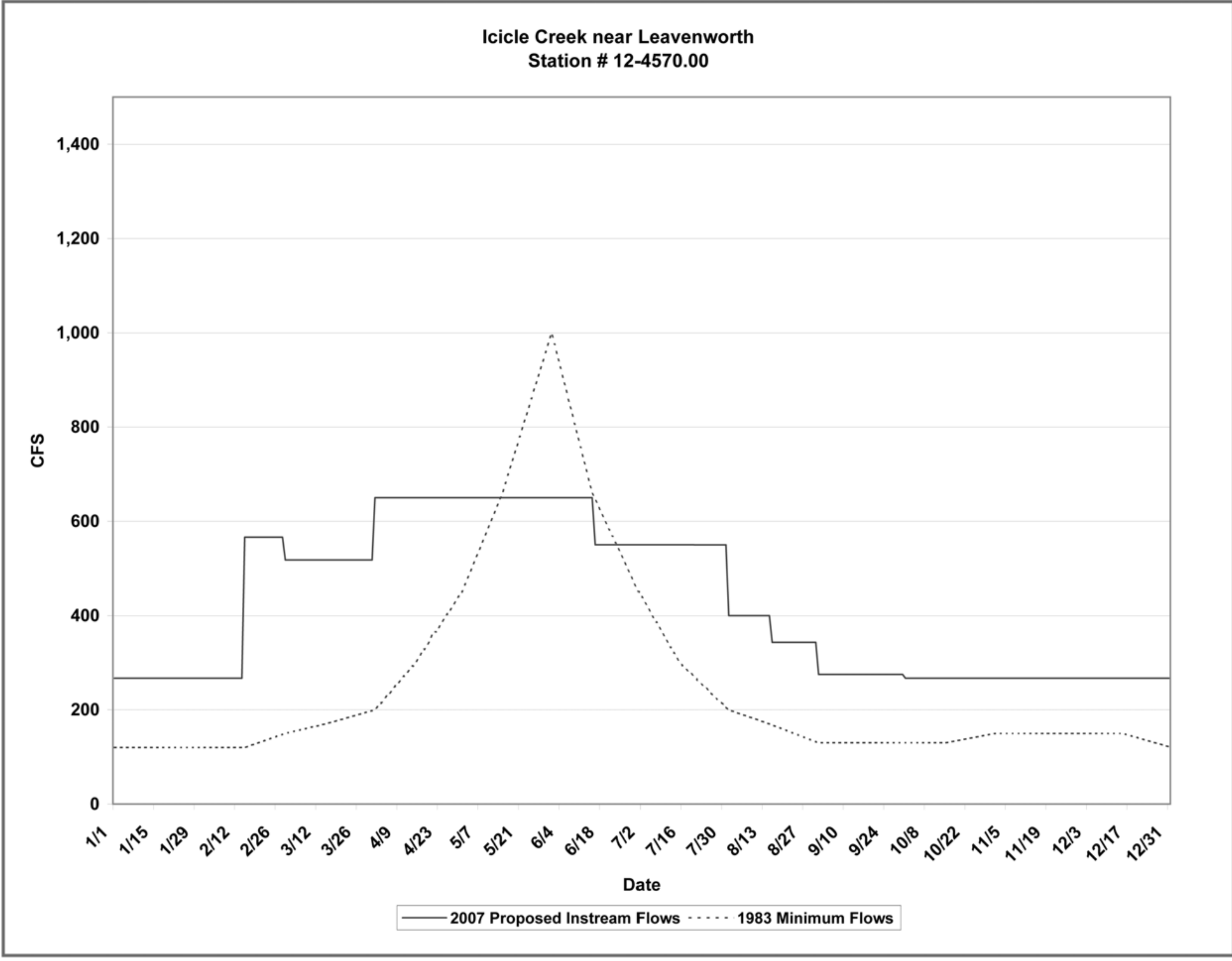
Control Station	Location
12-4590.00	WENATCHEE RIVER AT PESHASTIN
12-4625.00	WENATCHEE RIVER AT MONITOR
12-4620.00	MISSION CREEK NEAR CASHMERE
ECY 45E070	MISSION CREEK NEAR CASHMERE
12-4565.00	CHIWAWA RIVER NEAR PLAIN
ECY 45J070	NASON CREEK NEAR MOUTH
ECY 45F070	PESHASTIN CREEK AT GREEN BRIDGE RD
12-4570.00	WENATCHEE RIVER AT PLAIN
12-4585.00	ICICLE CREEK NEAR LEAVENWORTH

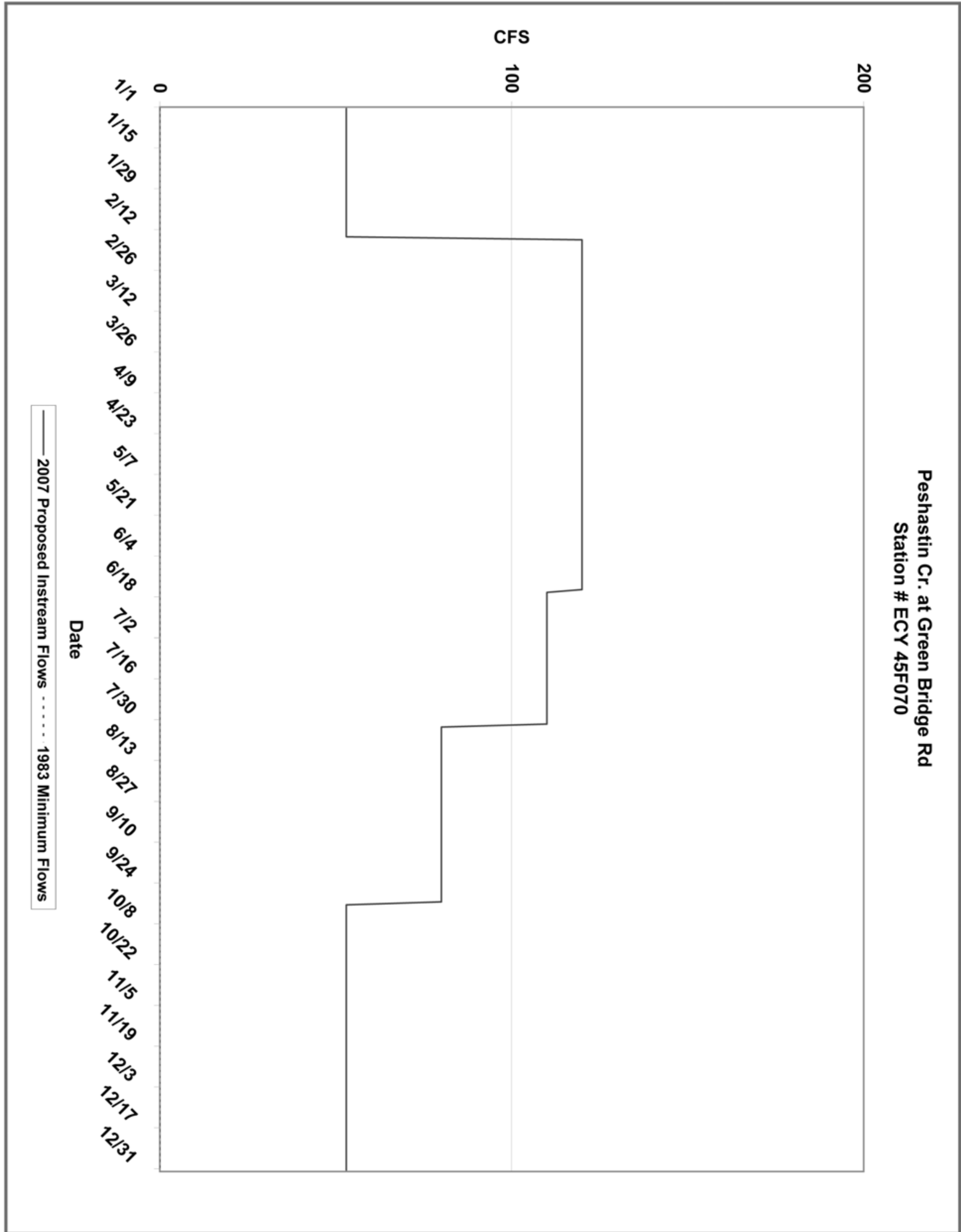
NEW SECTION

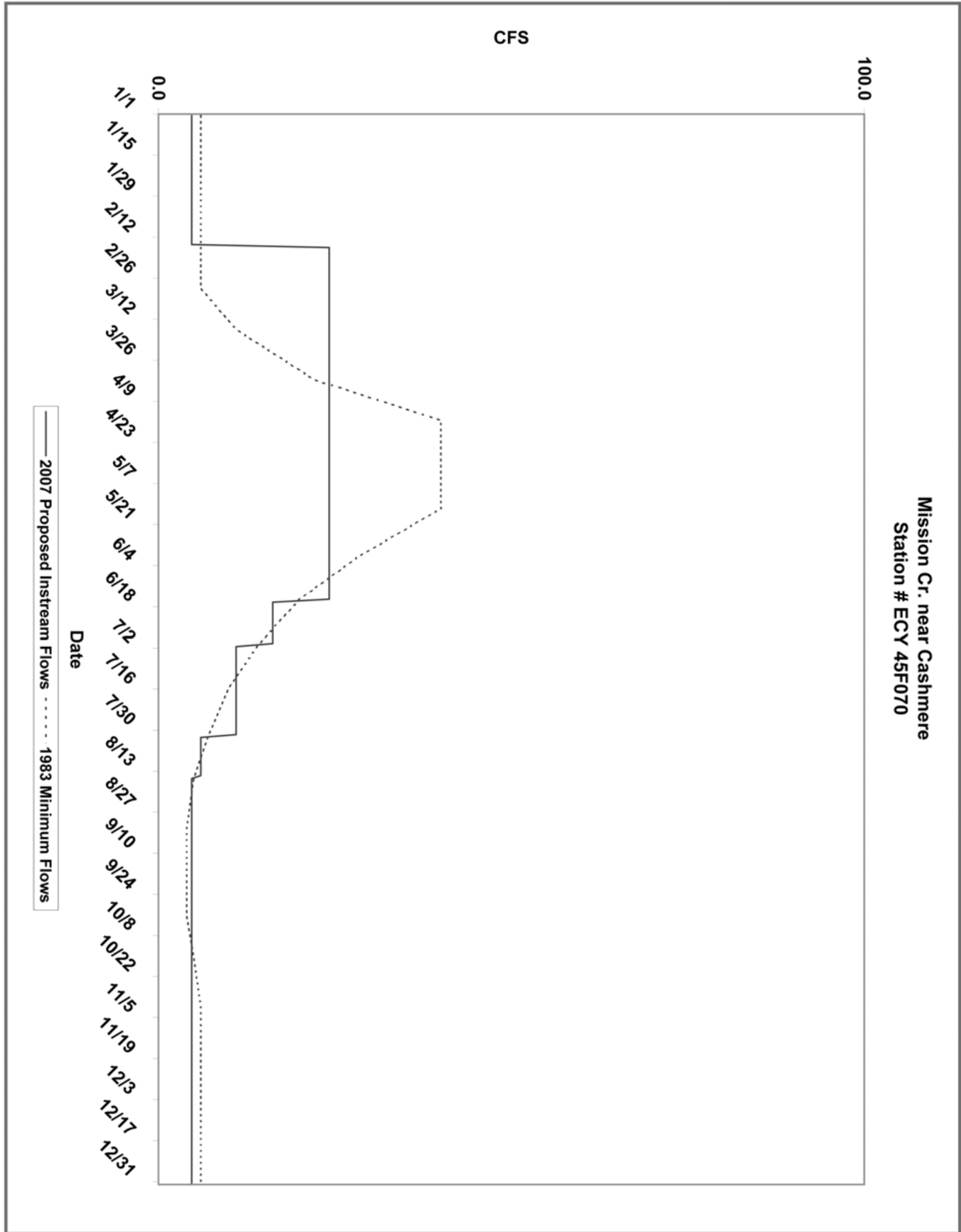
WAC 173-545-170 Appendix 1: Hydrographs.

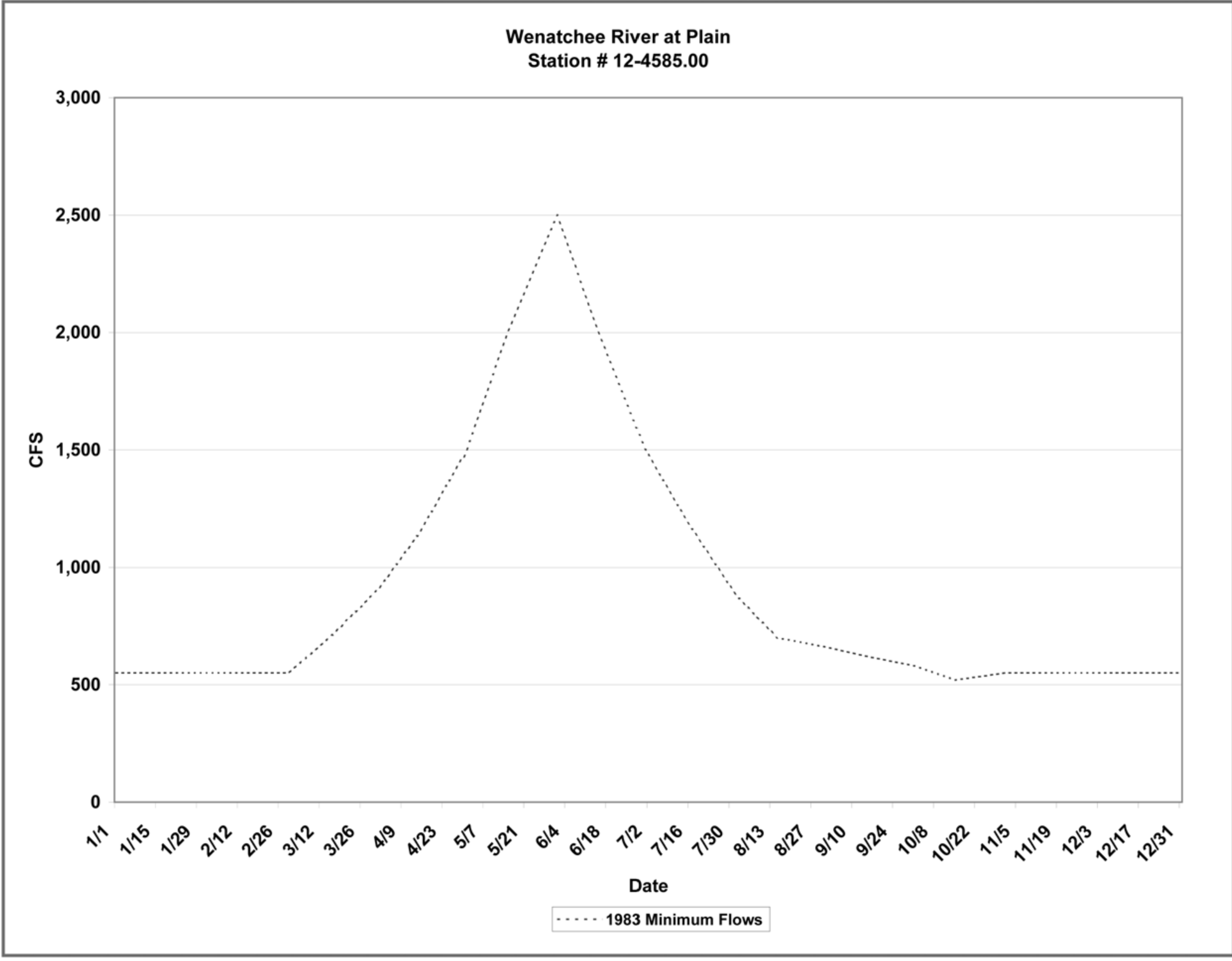


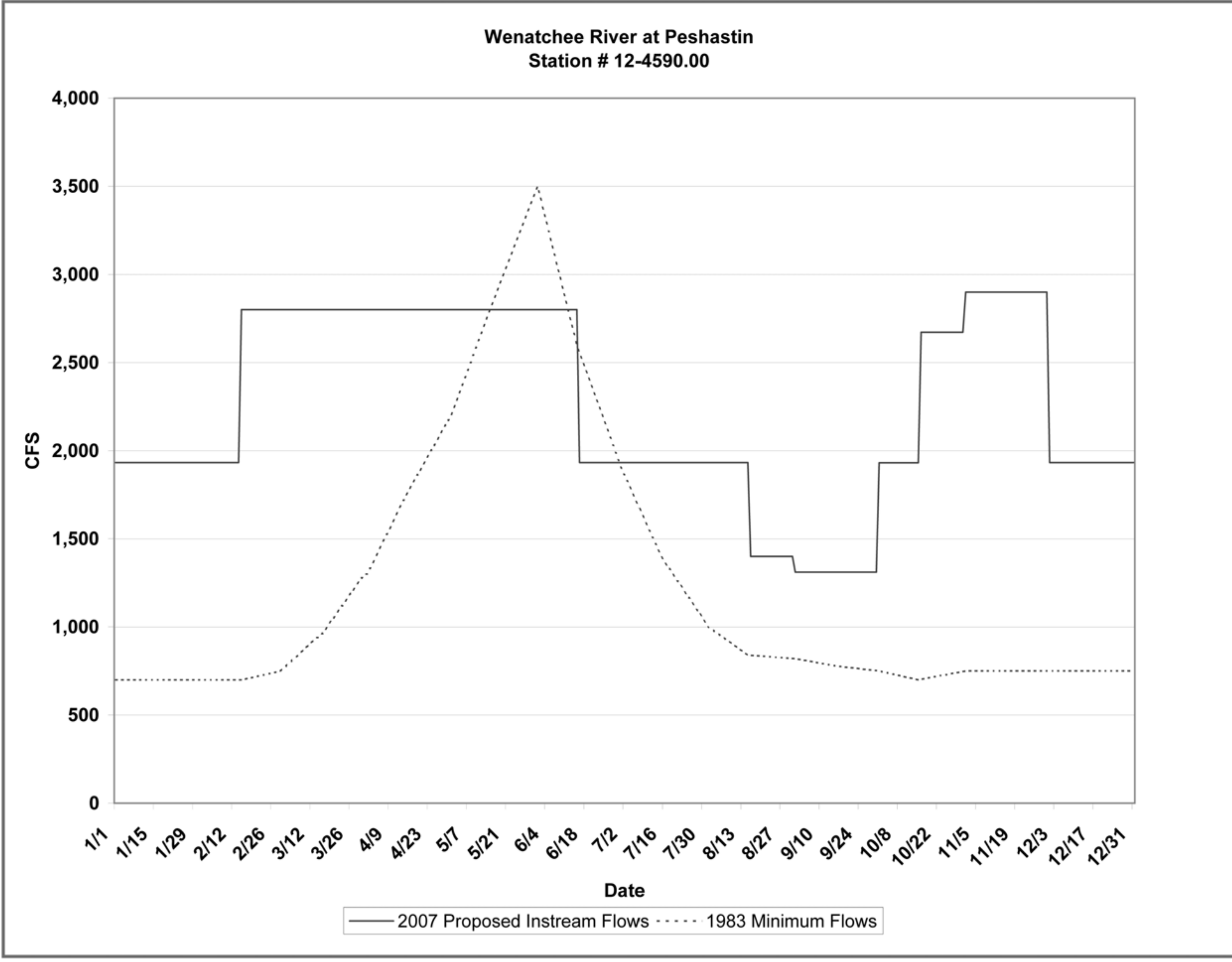

Nason Cr. near mouth
Station # ECY 45J070
400
350
300
250
200
150
100
50
0
CFS
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
Dates
2007 proposed Instream Flows
1983 Minimum Flows

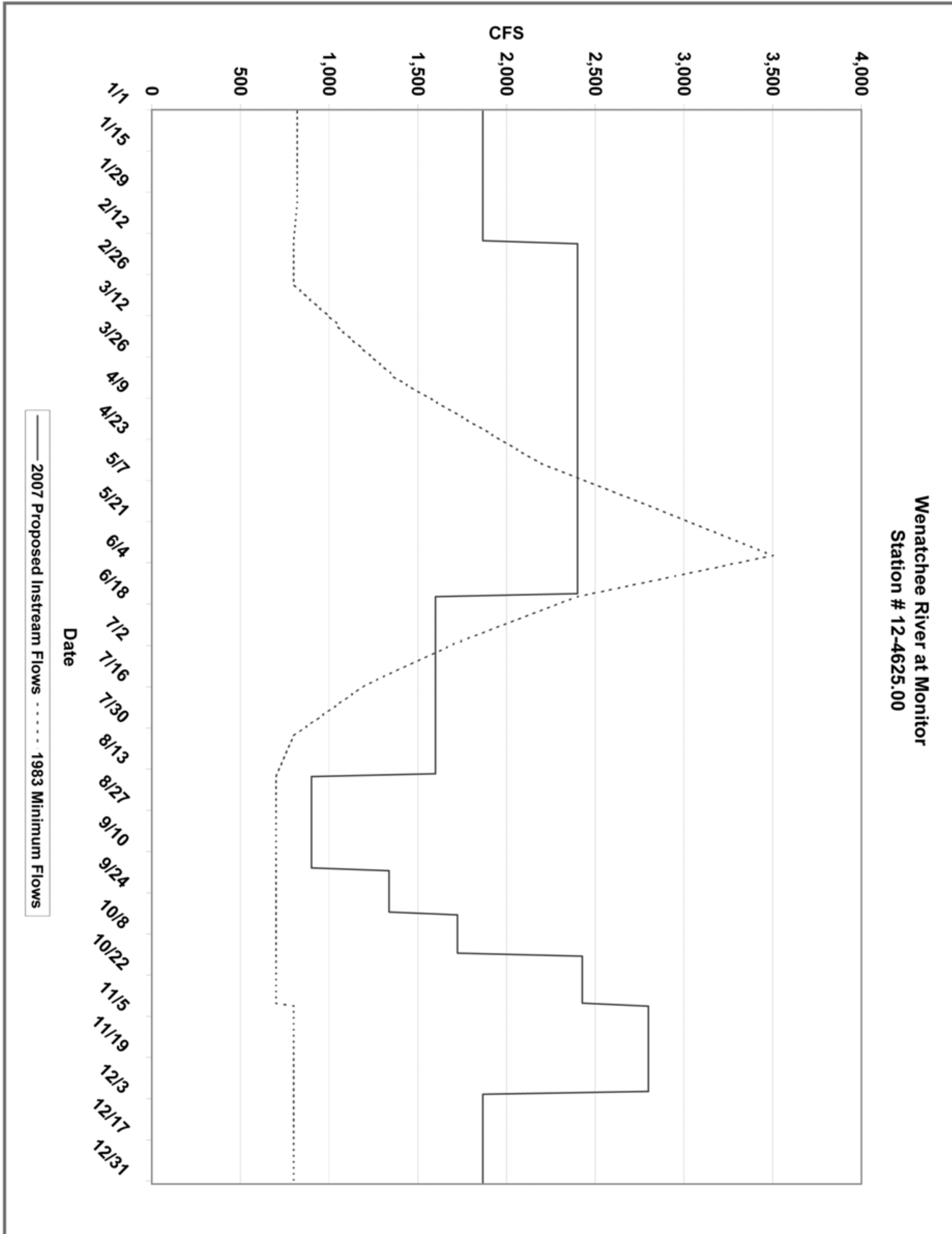

Icicle Creek near Leavenworth
Station # 12-4570.00
CFS
1,400
1,200
1,000
800
600
400
200
0
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
Date
2007 Proposed Instream Flows
1983 Minimum Flows


Peshastin Cr. at Green Bridge Rd
Station # ECY 45F070
CFS
0
100
200
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
Date
2007 Proposed Instream Flows
1983 Minimum Flows


Mission Cr. near Cashmere
Station # ECY 45F070
CFS
0.0
100.0
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
Date
2007 Proposed Instream Flows
1983 Minimum Flows


Wenatchee River at Plain
Station # 12-4585.00
3,000
2,500
2,000
1,500
1,000
500
0
CFS
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
Date
1983 Minimum Flows


Wenatchee River at Peshastin
Station # 12-4590.00
CFS
4,000
3,500
3,000
2,500
2,000
1,500
1,000
500
0
1/1
1/15
1/29
2/12
2/26
3/12
3/26
4/9
4/23
5/7
5/21
6/4
6/18
7/2
7/16
7/30
8/13
8/27
9/10
9/24
10/8
10/22
11/5
11/19
12/3
12/17
12/31
Date
2007 Proposed Instream Flows
1983 Minimum Flows



REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-545-095 Appeals.

WSR 07-14-141
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed July 5, 2007, 9:27 a.m.]

The department of health would like to withdraw the following proposed rule making (CR-102):

WAC NUMBER	WSR NUMBER	WSR DATE	SUBJECT
246-933-200 246-935-150 246-937-120	07-03-151	1/23/07	Delegation of authority

This memo serves as notice that the department is withdrawing the CR-102 for WAC 246-933-200, 246-935-150, and 246-937-120 filed January 23, 2007, and published in WSR 07-03-151. Under the proposal, complaints against veterinarians, vetenarian technicians and veterinary medication clerks would be reviewed first by department staff through the case management team to determine if an investigation is warranted. A member of the veterinary board of governors would provide final review and approval. Since the filing of the proposed rule language and the public hearing, the veterinary board of governors has determined that it does not want to adopt rules providing for this delegation. For this reason, the CR-102 for WAC 246-933-020, 246-935-150, and 246-937-120 is no longer needed.

Individuals requiring information on this rule should contact Judy Haenke, program manager for the veterinary board of governors at (360) 236-4947.

Mary C. Selecky
Secretary

WSR 07-14-150
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Docket UE-060649—Filed July 5, 2007, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-12-104.

Title of Rule and Other Identifying Information: Chapter 480-108 WAC, Electric companies—Interconnection with electric generators.

The proposed rule would establish standards for determining the charges, terms and conditions for interconnection of consumer-owned power generation facilities up to 20 MW of nameplate capacity to electric utility delivery systems. These regulations include standards for applications for interconnection, processing of such applications, technical and engineering standards for interconnections, safety standards, insurance and liability provisions, dispute resolution, and other provisions.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on August 15, 2007, at 1:30 p.m.

Date of Intended Adoption: August 15, 2007.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@wutc.wa.gov, fax (360) 586-1150, by August 2, 2007. Please include "Docket UE-060649" in your comments.

Assistance for Persons with Disabilities: Contact Mary De Young by August 13, 2007, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On August 8, 2005, amendments to Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) (PURPA) became effective under the federal Energy Policy Act. Section 1254(a) amends PURPA to require state regulatory commissions to consider and determine whether to establish a standard to require that utilities make available to utility customers with on-site generation facilities interconnection service to the utility's local distribution system. The commission initiated this inquiry to determine whether adoption by rule of the new PURPA standard for interconnection would be in the public interest and would further the objectives of PURPA to encourage: Conservation of energy supplied by electric utilities; optimal efficiency of electric utility facilities and resources; and equitable rates for electric consumers. The requirement for regulatory authorities to consider the interconnection standard established in Section 1254(a) does not apply if a state has taken "prior action" to adopt or consider the standard or a comparable standard, or the state's legislature has voted on the standard or a comparable standard.

Chapter 480-108 WAC already sets standards regulating the interconnection of consumer-owned electric generation to utility distribution systems. However, the regulations are limited to generation facilities up to 25 KW in nameplate capacity. The proposed amendments to chapter 480-108 WAC extend the application of standards to govern interconnection of consumer-owned generating facilities with nameplate generating capacity up to and including 20 MW to the distribution facilities of utilities jurisdictional to the commission. The proposed amended regulations are beneficial and in the public interest because they will facilitate development of distributed generation with capacity larger than the small scale projects covered now by chapter 480-108 WAC and because they will harmonize the standards a utility must apply to interconnections to state-jurisdictional distribution facilities with the standards a utility must apply to interconnections to facilities jurisdictional to the Federal Energy Regulatory Commission.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

Statute Being Implemented: Not applicable.

Rule is necessary because of federal law, 16 U.S.C. § 1254(a).

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Dick Byers, 1300 South Evergreen Park Drive S.W., Olym-

pia, WA 98504, (360) 664-1209; Implementation and Enforcement: Carole J. Washburn, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules require investor-owned utilities, none of which qualify as a small business, to offer customers interconnection service that was not previously required. Because there will not be any increase in costs to small businesses resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1). In any event, the commission has determined these rules are necessary to comply with federal law, namely Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

July 5, 2007
Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-001 Purpose and scope. (1) The purpose of this chapter is ((~~to establish rules for determining the terms and conditions governing the interconnection of electric generating facilities with a nameplate generating capacity of not more than 25 kilowatts to the electric system of an electrical company over which the commission has jurisdiction~~)) two-fold:

(a) Part 1 of this chapter establishes rules for determining the charges, terms and conditions governing the interconnection of customer-owned electric generating facilities with a nameplate generating capacity of no more than 300 kilowatts (kW) to the electric system of an electrical company over which the commission has jurisdiction.

(b) Part 2 of this chapter establishes rules requiring each electrical company to file interconnection service tariffs for interconnection of electric generating facilities with a nameplate generating capacity greater than 300 kW but no more than 20 megawatts (MW) to the electric system of an electrical company over which the commission has jurisdiction. The terms and conditions in such interconnection service tariffs must be either equivalent in all procedural and technical respects with the electrical company's interconnection service offered under its open access transmission tariff approved by the Federal Energy Regulatory Commission, or they must comply with a specified set of requirements set out in WAC 480-108-090.

(2) These rules are intended:

(a) To be consistent with the requirements of chapter 80.60 RCW, Net metering of electricity; ((~~to partially~~))

(b) To comply with Section 1254 of the Energy Policy Act of 2005, Pub. L. No. 109-58 (2005) that amended section 111(d) of the Public Utility Regulatory Policy Act (PURPA) relating to Net Metering (subsection 11) and Interconnection (subsection 15); and

(c) To promote the purposes of ((~~Substitute Senate Bill No. 5101, chapter 300, Laws of 2005~~)) RCW 82.16.120 (effective July 1, 2005).

(3) This chapter governs the terms and conditions under which ((~~the applicant's~~)) an interconnection customer's generating facility, including without limitation net-metered facilities, will interconnect with, and operate in parallel with, the electrical company's electric system. This chapter does not govern the settlement, purchase or delivery of any power generated by ((~~the applicant's~~)) an interconnection customer's net-metered or production-metered generating facility.

(4) This chapter does not govern electrical company services to PURPA qualifying facilities pursuant to chapter 480-107 WAC.

(5) This chapter does not govern standby generators designed and used only to provide power to the customer when the local electric distribution company service is interrupted and that operate in parallel with the electric distribution company for less than 0.5 seconds both to and from emergency service.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-005 Application of rules. (1) The rules in this chapter apply to any electrical company that is subject to ((~~the jurisdiction of the~~)) commission jurisdiction under RCW 80.04.010 and chapter 80.28 RCW. These rules also include various eligibility and other requirements applicable to ((~~the applicant and the generator~~)) existing or potential interconnection customers.

(2) This chapter governs interconnections subject to the jurisdiction of the commission and does not govern interconnections subject to the jurisdiction of the Federal Energy Regulatory Commission.

(3) The tariff provisions filed by electrical companies must conform to these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance does not constitute a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-100-008.

(4)Electrical companies shall modify((~~, if necessary, any~~)) existing tariffs, ((~~including~~)) if necessary, to conform to these rules. This includes, but is not limited to, tariffs implementing chapter 80.60 RCW, Net metering of electricity((~~, which are currently on file and approved by the commission to conform to these rules~~)).

((~~(3)~~)) (5) Disputes that arise under this chapter will be addressed in accordance with chapter 480-07 WAC. Any existing or potential interconnection customer may ask the commission to review the interpretation or application of these rules by an electrical company by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleadings—General.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-010 Definitions. ((~~**"Applicant"** means any person, corporation, partnership, government agency, or other entity applying to interconnect a generating facility to the electrical company's electric system pursuant to this chapter.~~))

"Application" means the written notice as defined in WAC 480-108-030 ((~~provided by the applicant~~)) that the interconnection customer provides to the electrical company ((~~that~~)) to initiate((~~s~~)) the interconnection process.

"Business day" means Monday through Friday excluding official federal and state holidays.

"Certificate of completion" means the form ((~~as defined~~)) described in WAC 480-108-050 that must be completed by the ((~~applicant or generator~~)) interconnection customer and the electrical inspector having jurisdiction over the installation of the facilities indicating completion of installation and inspection of the interconnection. As provided in WAC 480-108-050, the certificate of completion must be reviewed and approved, in writing, by the electrical company before the interconnection customer's generation facility may be connected and operated in parallel with the electrical company's electrical system.

"Commission" means the Washington utilities and transportation commission.

"Electric system" means all electrical wires, equipment, and other facilities owned ((~~or provided~~)) by the electrical company that are used to transmit electricity to customers.

"Electrical company" means any public service company, as defined by RCW 80.04.010, engaged in the generation, distribution, sale or furnishing of electricity and ((~~which is~~)) subject to the jurisdiction of the commission.

"Generating facility" means a source of electricity owned by the ((~~applicant or generator~~)) interconnection customer that is located on the ((~~applicant's~~)) interconnection customer's side of the point of common coupling, and all ((~~facilities~~)) ancillary and appurtenant ((~~thereto~~)) facilities, including interconnection facilities, which the ((~~applicant~~)) interconnection customer requests to interconnect to the electrical company's electric system.

((~~**"Generator"** means the entity that owns and/or operates the generating facility interconnected to the electrical company's electric system.~~))**"Grid network distribution system"** means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed secondary circuits serving more than one location and more than one electrical company customer.

"Interconnection customer" means the person, corporation, partnership, government agency, or other entity that owns and operates a generating facility interconnected or requested to be interconnected to the electrical company's electric system. The interconnection customer may assign to another party responsibility for compliance with the requirements of this rule only with the express written permission of the electrical company.

"Initial operation" means the first time the generating facility is in parallel operation with the electric system.

"In-service date" means the date on which the generating facility and any related facilities are complete and ready for service, even if the generating facility is not placed in service on or by that date.

"Interconnection" means the physical connection of a generating facility to the electric system so that parallel operation may occur.

"Interconnection facilities" means the electrical wires, switches and other equipment owned by the electrical company or the interconnection customer and used to interconnect a generating facility to the electric system. Interconnection facilities are located between the generating facility and the point of common coupling. Interconnection facilities do not include system upgrades.

"Model interconnection agreement" means a written agreement including standardized terms and conditions that govern the interconnection of generating facilities pursuant to this chapter. The model interconnection agreement may be modified to accommodate terms and conditions specific to individual interconnections, subject to the conditions set forth in these rules.

"Net metering" means measuring the difference between the electricity supplied by an electrical company and the electricity generated by a generating facility that is fed back to the electrical company over the applicable billing period.

((~~**"Network distribution system (grid or spot)"** means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed secondary circuits serving one (a spot network) or more (a grid network) electrical company customers.~~))

"Network protectors" means devices installed on a spot network distribution system designed to detect and interrupt reverse current-flow (flow out of the network) as quickly as possible, typically within three to six cycles.

"Parallel operation" or **"operate in parallel"** means the synchronous operation of a generating facility while interconnected with an electrical company's electric system.

"Point of common coupling" or **"PCC"** means the point where the generating facility's local electric power system connects to the electrical company's electric system, such as the electric power revenue meter or at the location of the equipment designated to interrupt, separate or disconnect the connection between the generating facility and electrical company. The point of common coupling is the point of measurement for the application of IEEE 1547, clause 4.

"PURPA qualifying facility" means a generating facility that meets the criteria specified by the Federal Energy Regulatory Commission (FERC) in 18 CFR Part 292 Subpart B and that sells power to an electrical company under chapter 480-107 WAC.

"Spot network distribution system" means electrical service from a distribution system consisting of two or more primary circuits from one or more substations or transmission supply points arranged such that they collectively feed a secondary circuit serving a single location (e.g., a large facility

or campus) containing one or more electrical company customers.

"System upgrades" means the additions, modifications and upgrades to the electrical company's electrical system at or beyond the point of common coupling necessary to facilitate the interconnection of the generating facility. System upgrades do not include interconnection facilities.

PART 1: INTERCONNECTION OF GENERATION FACILITIES WITH NAMEPLATE CAPACITY RATING OF 300 KW OR LESS

NEW SECTION

WAC 480-108-015 Scope of Part 1. The provisions in Part 1 of this chapter apply to interconnections, and to applications to interconnect, customer-owned generating facilities with a nameplate capacity rating of 300 kW or less to an electrical company's electrical system under this chapter.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-020 Technical standards for interconnection. ((~~The technical standards listed in this section shall apply to all generating facilities to be interconnected to the electrical company under this chapter.~~))

(1) General interconnection requirements.

(a) ((~~Any~~)) The interconnection of a generating facility ((~~desiring to interconnect~~)) with the electrical company's electric system, the modification of a generating facility that is currently interconnected to the electrical company's electric system, or ((~~modify~~)) the modification of an existing interconnection must meet all minimum technical specifications applicable, in their most current approved version, as set forth in ((~~this chapter~~)) WAC 480-108-999.

(b) ((~~The specifications and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical company equipment and personnel and on other customers of the electrical company. They are not intended to address protection of the generating facility itself, generating facility personnel, or its internal load. It is the responsibility of the generating facility to comply with the requirements of all appropriate standards, codes, statutes and authorities to protect its own facilities, personnel, and loads~~)) Interconnection of a generation facility with a nameplate capacity rating of 300 kW or less must comply with all applicable requirements in Table 1.

Table 1. 300 kW Capacity or Less.

	Single-Phase		**Three-Phase**	
Feature	**< 50 kW Inverter based**	**< 50 kW Noninverter based**	**< 300 kW Inverter based**	**< 300 kW Noninverter based**
IEEE 1547 compliant	X	X	X	X
UL 1741 listed	X		X	
Interrupting devices (capable of interrupting maximum available fault current)	X (8)	X	X (8)	X
Interconnection disconnect device (manual, lockable, visible, accessible)	X (1)	X	X	X
System protection		X (3)(4)(6)		X (3)(4)(5)(6)
Over-voltage trip	X (8)	X	X (8)	X
Under-voltage trip	X (8)	X	X (8)	X
Over/under frequency trip	X (8)	X	X (8)	X
Automatic synchronizing check		X		X
Ground over-voltage or over-current trip for utility system faults				X (2)
Power factor		X (7)		X (7)

Notes:
X - Required feature (blank = not required).
(1) - Electrical company may choose to waive this requirement.
(2) - May be required by electrical company; selection based on grounding system.
(3) - No single point of failure shall lead to loss of protection.
(4) - All protective devices shall fully meet the requirements of American National Standards Institute C37.90.
(5) - Electrical company will specify the transformer connection.
(6) - It is the customer's responsibility to ensure that its system is effectively grounded as defined by IEEE Std. 142 at the point of common coupling.
(7) - Variance may be allowed based upon specific requirements per electrical company review. Charges may be incurred for losses.
(8) - UL 1741 listed equipment provides required protection.

(c) Any single or aggregated generating facility with a capacity greater than 50 kW requires a three-phase interconnection.

(d) The specification and requirements in this section are intended to mitigate possible adverse impacts caused by the generating facility on electrical company equipment and personnel and on other customers of the electrical company. The specifications and requirements in this section are not intended to address protection of the generating facility or its internal load, or generating facility personnel. The interconnection customer is responsible for complying with the requirements of all appropriate standards, codes, statutes, and authorities to protect its own facilities, personnel, and loads.

((~~(e)~~)) (e) The specifications and requirements in this section ((~~shall~~)) apply generally to the ((~~nonelectrical company-owned electric generation equipment to which this standard and~~)) interconnection to an electrical company's electric system of customer-owned and operated electric equipment and any other facilities or equipment not owned by the electrical company to which interconnection agreement(s) apply throughout the period encompassing the ((~~generator's~~)) interconnection customer's installation, testing and commissioning, operation, maintenance, decommissioning and removal of ((~~said~~)) equipment. The electrical company may verify compliance at any time, with reasonable notice.

((~~(d)~~)) (f) The ((~~generator shall~~)) electrical company may refuse to establish or maintain interconnection with any interconnection customer that fails to comply with the requirements in ((~~(d)~~)) (f)(i), (ii) and (iii) of this subsection. However, at its sole discretion, the electrical company may approve alternatives that satisfy the intent of, and/or may excuse compliance with, any specific elements of these requirements except local, state and federal building codes.

(i) Code and standards. ((~~Applicant shall~~)) All interconnections must conform to all applicable codes and standards for safe and reliable operation. Among these are the National Electric Code (NEC)((~~,~~)); National Electric Safety Code (NESC)((~~,~~)); the ((~~Institute of Electrical and Electronics Engineers (IEEE), American National Standards Institute (ANSI), and~~)) standards of the North American Electric Reliability Corporation (NERC); the standards of the Western Electricity Coordinating Council (WECC); American National Standards Institute (ANSI); Underwriters Laboratories (UL) standards((~~, and~~)); local, state and federal building codes, and the electrical company's written electric service requirement, if any. ((~~The generator shall be responsible to obtain~~)) Electrical companies may require verification that an interconnection customer has obtained all applicable permit(s) for the equipment installations on its property.

(ii) Safety. All safety and operating procedures for ((~~joint use equipment shall be in compliance~~)) interconnection facilities must comply with the Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269, the NEC, Washington Administrative Code (WAC) rules, the Washington Industrial Safety and Health Administration (WISHA) Standard, and equipment manufacturer's safety and operating manuals.

(iii) Power quality. Installations ((~~will~~)) must be in compliance with all applicable standards including, without limitation, IEEE Standard 519((~~-1992~~)) Harmonic Limits, and IEEE Standard 141 Flicker as measured at the PCC.

(2) Specific interconnection requirements.

(a) ((~~Applicant shall furnish~~)) The electrical company must verify that the interconnection customer has furnished and ((~~install~~)) installed on ((~~applicant's~~)) its side of the meter, a UL-approved safety disconnect switch ((~~which shall be capable of~~)) that can fully ((~~disconnecting~~)) disconnect the ((~~applicant's~~)) interconnection customer's generating facility from the electrical company's electric system. The disconnect switch ((~~shall~~)) must be located adjacent to electrical company meters and shall be of the visible break type in a metal enclosure ((~~which~~)) that can be secured by a padlock. The disconnect switch ((~~shall~~)) must be accessible to electrical company personnel at all times.

(b) The requirement in (a) of this subsection may be waived by the electrical company if the interconnection customer:

(i) ((~~Applicant~~)) Provides interconnection ((~~equipment~~)) facilities that ((~~applicant~~)) the interconnection customer can demonstrate, to the satisfaction of electrical company, perform((~~s~~)) physical disconnection of the generating equipment supply internally; and

(ii) ((~~Applicant~~)) Agrees that its service may be disconnected entirely if generating equipment must be physically disconnected for any reason.

Such waiver granted by the electrical company to the interconnection customer must be explicit and in writing.

(c) The electrical company ((~~shall have~~)) has the right to disconnect the generating facility at the disconnect switch ((~~under the following circumstances~~)):

(i) When necessary to maintain safe electrical operating conditions;

(ii) If the generating facility does not meet required standards; or

(iii) If the generating facility at any time adversely affects or endangers any person, the property of any person, the electrical company's operation of its electric system or the quality of electrical company's service to other customers.

(d) Nominal voltage and phase configuration of ((~~applicant's~~)) interconnection customer's generating facility must be compatible ((~~to~~)) with the electrical company's system within generally accepted engineering standards including without limitation IEEE Standards 141 and 519 at the point of common coupling.

(e) ((~~Applicant must provide evidence that its generation~~)) The electrical company must verify on the basis of evidence provided by the interconnection customer that the gen-

erating facility will never ((result in)) cause reverse current flow through the electrical company's network protectors.

(f) All instances of interconnection to ((secondary)) spot network distribution ((networks shall)) systems require review, studies as necessary, and written ((preapproval)) approval by the electrical company.

(g) All instances of interconnection to ((distribution secondary)) grid network((s is not allowed)) distribution systems require review, studies as necessary, and written approval by the electrical company.

(h) Closed transition transfer switches are not allowed in ((secondary)) network distribution systems.

(3) Specifications applicable to all inverter-based interconnections. In addition to the requirements contained in subsections (1) and (2) of this section, the interconnection of any inverter-based generating facility ((desiring to interconnect)) with the electrical company's electric system, or ((modify)) the modification of an existing interconnection with an inverter-based generating facility must meet the following additional technical specifications, in their most current approved version((, as set forth below.)):

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems((.));

(b) UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems. Equipment must be UL listed((.)); and

(c) IEEE Standard 929, IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

(4) ((Requirements applicable to)) In addition to the requirements in subsections (2) and (3) of this section, all noninverter-based interconnections((. Noninverter-based interconnection requests)) and all inverter-based interconnections failing to meet the requirements of subsection (3) of this section may require more detailed electrical company review((, testing, and approval, at applicant cost,)). Electrical companies may require interconnection customers to pay for testing and approval of the equipment proposed to be installed to ensure compliance with applicable technical specifications, in their most current approved version, including:

(a) IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems((.)), for systems 10 MVA or less; and

(b) ANSI Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(((c) Applicants proposing such interconnection)) (5) The electric company may ((also be required)) require interconnection customers proposing noninverter-based interconnection to submit a power factor mitigation plan for electrical company review and approval.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-030 Application for interconnection. (1) ((When an applicant requests interconnection from an electrical company, the applicant shall be responsible for conforming to the rules and regulations that are in effect and on file with the commission. The electric utility will designate a point of contact and publish a telephone number or web site address for this unique purpose. The applicant seeking to interconnect a generating facility under these rules must fill out and submit a signed application form to the electrical company. Information must be accurate, complete, and approved by the electrical company prior to installing the generating facility. The electrical company shall file a form of application with the commission.)) The electrical company must file a standard form of application with the commission, which the interconnection customer seeking to interconnect a generating facility under Part 1 of this chapter must fill out and submit to the electrical company along with the application fee established according to subsection (4) of this section.

(2) The electrical company will designate a point of contact and publish a telephone number and/or web site address for the unique purpose of assisting potential interconnection customers. The electrical company must comply with reasonable requests for information including relevant system studies, interconnection studies, and other materials useful for an interconnection customer to understand the circumstances of an interconnection at a particular point on the electrical company's electric system, to the extent provision of such information does not violate confidentiality provisions of prior electrical company agreements.

(3) Prior to submitting its interconnection request, a potential interconnection customer may ask the electrical company whether and how the proposed interconnection is subject to this chapter. The electrical company must respond within fifteen business days.

(((2))) (4) Application fees. The electrical company ((may require)) must establish a nonrefundable interconnection application fee ((of no more than one hundred dollars)) set according to facility size to be paid by the interconnection customer to the electrical company when the interconnection customer submits its application. The fee, intended to cover the costs of processing the application, will be no greater than:

(a) One hundred dollars for facilities 0 to 25 kW; and

(b) Five hundred dollars for facilities 26 to 300 kW.

(((3) Application prioritization. All generation interconnection requests pursuant to this chapter will be prioritized by the electrical company in the same manner as any new load requests. Preference will not be given to either request type. The electrical company will process the application and provide interconnection in a time frame consistent with the average of other service connections.

(4))) (5) Interconnection application. The electrical company must stamp all interconnection requests to document the date and time received. The original date and time stamp affixed to the interconnection request will serve as the beginning point for purposes of any timetables in the application and review process.

(6) Application evaluation. ((All generation interconnection requests pursuant to this chapter will be reviewed by the utility for compliance with the rules of this chapter. If the utility in its sole discretion finds that the application does not comply with this chapter, the utility may reject the application. If the utility rejects the application, it shall provide the

~~applicant with written notification stating its reasons for rejecting the application.~~)) Upon receipt of an interconnection application, the electrical company must notify the interconnection customer within ten business days whether the interconnection request is complete. If the application is not complete, the electrical company must provide a written list detailing all additional information necessary to complete the application. The interconnection customer must supply the necessary information or request an extension of time within ten business days. If the interconnection customer does not provide within ten business days the listed information necessary to complete the application or request an extension of time, the electrical company may reject the application.

NEW SECTION

WAC 480-108-035 Model interconnection agreement, review and acceptance of interconnection agreements and costs. (1) Each electrical company must file a model form of interconnection agreement for approval by the commission.

(2) Simplified review process. Once an application is accepted by the electrical company as complete, the electrical company will review the application to determine if the interconnection request complies with the technical standards established in WAC 480-108-020 and to determine whether any additional engineering, safety, reliability or other studies are required. The electrical company must notify the interconnection customer of the result of these determinations within thirty business days of when the application is deemed complete.

(3) If the electrical company notifies the interconnection customer that the request complies with the technical requirements established in WAC 480-108-020 and no additional studies are required to determine the feasibility of the interconnection, the electrical company must offer the interconnection customer an executable interconnection agreement within five business days of such notification. The electrical company also will provide any additional interim agreements, such as construction agreements, that may be necessary and a good faith estimate of the cost and time necessary to complete the interconnection. The interconnection customer must execute and return the completed agreement(s) within thirty business days following receipt. The interconnection customer must simultaneously pay any deposit required by the electrical company not to exceed fifty percent of the estimated costs to complete the interconnection.

(4) Supplemental review process. If the electrical company determines that additional studies are required to determine the feasibility of the interconnection, the electrical company must notify the interconnection customer within thirty business days of when the application is deemed complete and provide the interconnection customer a form of agreement that includes a description of what studies are required and a good faith estimate of the cost and time necessary to perform the studies. The interconnection customer must execute and return the completed agreement within thirty business days along with any deposit required by the electrical company not to exceed the lower of one thousand dollars, or fifty percent of the estimated study cost.

(5) The electrical company will provide the interconnection customer with the results of the studies conducted under subsection (4) of this section. If the studies determine that the interconnection is not feasible, the electrical company will provide notice of denial to the interconnection customer and the reasons for the denial.

(6) If the studies conducted under subsection (4) of this section determine that the interconnection is feasible, the electrical company will notify the interconnection customer and provide an executable interconnection agreement to the interconnection customer within five business days of such notification. The electrical company also will provide any additional interim agreements, such as construction agreements, that may be necessary and a good faith estimate of the cost and time necessary to complete the interconnection. The interconnection customer must execute and return the completed agreement(s) within thirty business days following receipt. The interconnection customer must simultaneously pay any deposit required by the electrical company not to exceed fifty percent of the estimated costs to complete the interconnection.

(7) An interconnection customer's failure to execute and return completed agreements and required deposits within the time frames specified in subsections (3), (4) and (6) of this section may result in termination of the application process by the electrical company under terms and conditions stated in such agreements.

(8) The interconnection customer shall be responsible for all reasonable costs incurred by the electrical company to study the proposed interconnection and to design, construct, operate and maintain any required interconnection facilities or system upgrades all as required under the charges, terms and conditions stated in the study agreement(s) and interconnection agreement required above.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-040 General terms and conditions of interconnection. The general terms and conditions listed in this section shall apply to all interconnections of customer-owned generating facilities ((~~interconnecting to the electrical company under this chapter~~)) with nameplate capacity less than or equal to 300 kW to an electrical company's electric system under Part 1 of this chapter.

(1) Any electrical generating facility with a maximum ((~~electrical generating~~)) nameplate capacity rating of ((~~25~~)) 300 kW or less must comply with these rules to be eligible to interconnect and operate in parallel with the electrical company's electric system. The rules under this chapter ((~~shall~~)) apply to all ((~~interconnecting~~)) interconnection customer-owned generating facilities that are intended to operate in parallel with an electrical company's electric system irrespective of whether the ((~~applicant~~)) interconnection customer intends to generate energy to serve all or a part of the ((~~applicant's~~)) interconnection customer's load; or to sell the output to the electrical company or any third party purchaser.

(2) ((~~In order~~)) To ensure system safety and reliability of interconnected operations, all interconnected generating

facilities ((shall)) must be constructed and operated ((by generator)) in accordance with this chapter and all other applicable federal, state, and local laws and regulations.

(3) Prior to initial operation, all ((generators)) interconnection customers must submit a completed certificate of completion to the electrical company, execute an appropriate interconnection agreement and any other agreement(s) required for the disposition of the generating facility's electric power output as described in WAC 480-108-040(((14))) (15). The interconnection agreement between the electrical company and ((generator)) the interconnection customer outlines the interconnection standards, cost allocation and billing agreements, and on-going maintenance and operation requirements.

(4) ((Applicant or generator)) The interconnection customer shall promptly furnish the electrical company with copies of such plans, specifications, records, and other information relating to the generating facility or the ownership, operation, use, electrical company access to, or maintenance of the generating facility, as may be reasonably requested by the electrical company from time to time.

(5) For the purposes of public and working personnel safety, ((any nonapproved generation interconnections discovered will be)) the electrical company may immediately ((disconnected)) disconnect from the electrical company system any nonapproved generation interconnections.

(6) To ensure reliable service to all electrical company customers and to minimize possible problems for other customers, the electrical company will review the need for a dedicated-to-single-customer distribution transformer. ((Interconnecting generating facilities under 25 kW may require a separate transformer.)) If the electrical company requires a dedicated distribution transformer, the ((applicant or generator shall)) interconnection customer must pay ((for)) all reasonable costs of the new transformer and related facilities in accordance with subsection (13) of this section.

(7) Metering.

(a) Net metering for solar, wind, hydropower ((and)) fuel cells and facilities that simultaneously produce electricity and useful thermal energy as set forth in chapter 80.60 RCW((:)). The electrical company ((shall)) will install, own and maintain a kilowatt-hour meter, or meters as the installation may determine, capable of registering the bi-directional flow of electricity at the point of common coupling at a level of accuracy that meets all applicable standards, regulations and statutes. The meter(s) may measure such parameters as time of delivery, power factor, voltage and such other parameters as the electrical company ((shall specify)) specifies. The ((applicant shall)) interconnection customer must provide space for metering equipment. ((It will be the applicant's responsibility to)) The interconnection customer must provide the current transformer enclosure (if required), meter socket(s) and junction box after the ((applicant)) interconnection customer has submitted drawings and equipment specifications for electrical company approval. The electrical company may approve other generating sources for net metering but is not required to do so.

(b) Production metering: The electrical company may require separate metering, including metering capable of being remotely accessed, for production. This meter will record all generation produced and may be billed separately from any net metering or customer usage metering. ((All)) Costs associated with ((the installation of)) production metering will be paid by the ((applicant)) interconnection customer.

(8) Common labeling furnished or approved by the electrical company and in accordance with NEC requirements must be posted on the meter base, disconnects, and transformers informing working personnel that generation is operating at or is located on the premises.

(9) As currently set forth for qualifying generation under chapter 80.60 RCW (net metering), ((for solar, wind, hydro or fuel cells,)) no additional insurance will be necessary for interconnections that qualify for net metering. For ((other generating facilities permitted under these standards but not contained within)) generation other than qualifying generation under chapter 80.60 RCW, additional insurance, limitations of liability and indemnification may be required by the electrical company.

(10) ((Prior to any future modification or expansion of the generating facility, the generator will obtain)) The electrical company must review and ((approval)) approve any future modification or expansion of an interconnected generating facility. The electrical company ((reserves the right to require the generator, at the generator's expense, to provide corrections or additions to existing electrical devices in the event of modification of government or industry regulations and standards)) may require the interconnection customer to provide and pay for corrections or additions to existing interconnection facilities if government or industry regulations and standards are modified. The electric company must notify the interconnection customer in writing of any such requirement. The electrical company may terminate interconnection service if the interconnection customer does not within thirty business days of the date of the notice arrange with the electrical company a mutually agreed schedule to comply with such requirements.

(11) For the overall safety and protection of the electrical company system, chapter 80.60 RCW ((currently)) limits interconnection of generation for net metering to ((0.1%)) .25 percent of the electrical company's peak demand during 1996 and, beginning in 2014, to .50 percent of the electrical company's peak demand during 1996. Additionally, interconnection of generating facilities for net metering to individual distribution feeders ((will be)) is limited to 10((%)) percent of the feeder's peak capacity. ((However,)) The electrical company also may((, in its sole discretion, allow additional generation interconnection beyond these stated limits)) restrict or prohibit new or expanded interconnected generation capacity on any feeder, circuit or network if engineering, safety or reliability studies indicate a need for restriction or prohibition.

(12) ((It)) The interconnection customer is ((the responsibility of the generator to protect)) responsible for protecting its facilities, loads and equipment and ((comply)) complying with the requirements of all appropriate standards, codes, statutes and authorities.

(13) Charges by the electrical company to the ((applicant or generator)) interconnection customer in addition to the application fee, if any, ((will)) must be ((compensatory and applied as appropriate)) cost-based and consistent with gen-

erally accepted engineering practices. Such ((costs)) charges may include, but are not limited to, the cost of engineering studies; the cost of transformers, production meters, and electrical company testing((,)); the cost of qualification, and approval of non-UL 1741 listed equipment; the cost of interconnection facilities, and the cost of any required system upgrades. Unless an electrical company demonstrates by reference to its integrated resource plan prepared pursuant to WAC 480-100-238, its conservation targets pursuant to RCW 19.285.040, its studies performed under WAC 480-108-065, or other evidence that an interconnection will provide quantifiable benefits to the electrical company's other customers, electrical company charges to the interconnection customer will include all costs made necessary by the requested interconnection service. If an electrical company demonstrates that an interconnection will produce quantifiable benefits for the electrical company's other customers, it may incur a portion of these costs for commission consideration for recovery in its general rates commensurate with such benefits. If after consideration of any costs approved by the commission for recovery in general rates the remaining costs are less than any amounts paid by the interconnection customer, the electrical company must refund the excess amount to the interconnection customer. ((The generator shall be responsible for any costs associated with any future upgrade or modification to its interconnected system required by modifications in the electrical company's electric system.))

(14) ((This section does not govern the settlement, purchase or delivery of any power generated by applicant's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to chapter 80.60 RCW, and other services that the applicant may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Any such agreement shall be complete prior to initial operation and filed with the commission.)) The interconnection customer is responsible for costs associated with future upgrades or modification to its generating facility or interconnection facilities made necessary by modifications the electrical company makes to its electric system.

(15) ((Generator may disconnect the generating facility at any time; provided, that the generator provide reasonable advance notice to the electrical company.)) This section does not govern the settlement, purchase or delivery of any power generated by the interconnection customer's generating facility. The purchase or delivery of power, including net metering of electricity pursuant to chapter 80.60 RCW, power purchases and sales to PURPA qualifying facilities pursuant to chapter 480-107 WAC, and other services that the interconnection customer may require will be covered by separate agreement or pursuant to the terms, conditions and rates as may be from time to time approved by the commission. Any such agreement shall be completed prior to initial operation and filed with the commission.

(16) ((Generator shall notify the electrical company prior to the sale or transfer of the generating facility, the interconnection facilities or the premises upon which the facilities are located. The applicant or generator shall not assign its rights or obligations under any agreement entered into pursuant to these rules without the prior written consent of electrical company, which consent shall not be unreasonably withheld.)) The interconnection customer may disconnect the generating facility at any time after providing reasonable advance notice to the electrical company.

(17) The electrical company must require an interconnection customer to provide notice of the sale or transfer of the interconnection customer's generating facility, interconnection facilities or the premises upon which the interconnection facilities are located. To continue interconnection service to a new owner, the electrical company must require the new owner to execute a new interconnection agreement.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-050 Certificate of completion. ((All generating facilities)) Interconnection customers must obtain an electrical permit and pass electrical inspection for all generating and interconnection facilities before they can be connected or operated in parallel with the electrical company's electric system. ((Generator shall provide to electrical company written certification)) The electrical company must receive written certification from the interconnection customer that the generating facility has been installed and inspected in compliance with the local building and/or electrical codes. The electrical company must review and approve in writing the certificate of completion, before the interconnection customer's generating facility may be operated in parallel with the electrical company's electric system. The electrical company shall not unreasonably withhold such approval, but shall have the right to inspect and test the interconnection facilities in accordance with IEEE 1547.1 prior to parallel operation.

NEW SECTION

WAC 480-108-055 Dispute resolution. An interconnection customer may ask the commission to review an electrical company's study costs, interconnection facility costs, system upgrade costs, deposit requirements, assignment of costs to the interconnection customer or an electrical company's processing, termination, denial or rejection of an application by making an informal complaint under WAC 480-07-910, or by filing a formal complaint under WAC 480-07-370.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-060 Required filings—Exceptions. (1) The electrical company ((shall)) must file for commission approval, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to Part 1 of this chapter. Such filing ((shall)) must include model forms of the following documents and contracts:

(a) Application((.));

(b) ((Model)) Interconnection agreement((.));

(c) Feasibility study agreement;

(d) Construction agreement; and

(e) Certificate of completion.

(2) The commission may grant such exceptions to these rules as may be appropriate in individual cases.

NEW SECTION

WAC 480-108-065 Cumulative effects of interconnections with a nameplate capacity rating of 300 kW or less. Electrical companies will evaluate on an ongoing basis, but not less than once every five years, the cumulative effect, including benefits to its other customers, of interconnections made under Part 1 of this chapter on its electric system and will retain appropriate records of its evaluations.

PART 2: INTERCONNECTION OF GENERATION FACILITIES WITH NAMEPLATE CAPACITY RATING GREATER THAN 300 KW BUT NO MORE THAN 20 MW

NEW SECTION

WAC 480-108-070 Scope of Part 2. Part 2 of this chapter applies to interconnections of, and applications to interconnect customer-owned generating facilities with a nameplate capacity rating of greater than 300 kW but no more than 20 MW to an electrical company's electric system under this chapter.

NEW SECTION

WAC 480-108-080 Interconnection service tariffs. (1) No later than December 31, 2007, each electrical company over which the commission has jurisdiction must file an interconnection service tariff for facilities with nameplate generating capacity greater than 300 kW but no more than 20 MW.

(2) Interconnection service tariffs must offer service equivalent in all procedural and technical respects to the interconnection service the electrical company offers under the small generator interconnection provisions of its open access transmission tariff as approved by the Federal Energy Regulatory Commission (FERC).

(3) For purposes of Part 2 of this chapter, "small generator interconnection provisions" means the procedural and technical requirements established by the FERC in Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, 70 FR 34100 (June 13, 2005), FERC Stats. & Regs. ¶ 31,180 (2005) (Order No. 2006), order on reh'g, Order No. 2006-A, 70 FR 71760 (Nov. 30, 2005), FERC Stats. & Regs. ¶ 31,196 (2005), order on clarif'n, Order No. 2006-B, 71 FR 42587 (July 27, 2006), FERC Stats. & Regs. ¶ 61,046 (2006). "Small generator interconnection provisions" does not include the 10 kW inverter process required under the above-listed FERC regulations.

(4) Interconnection service includes only the terms and conditions that govern physical interconnection to the electrical company's delivery system and does not include sale or transmission of power by the interconnecting customer or retail service to the interconnecting customer.

NEW SECTION

WAC 480-108-090 Alternative interconnection service tariff. (1) If an electrical company demonstrates that the small generator interconnection provisions will impair service adequacy, reliability or safety or will otherwise be incompatible with its electric system, the electrical company may file no later than December 31, 2007, an alternative to the interconnection service tariff required in WAC 480-108-080.

(2) An interconnection service tariff filed under this section must meet the following requirements.

(a) All interconnection customers with generating facilities with nameplate capacity greater than 300 kW but no more than 20 MW must be treated equally without undue discrimination or preference.

(b) Electrical companies must ensure that interconnection service will not impair safe, adequate and reliable electric service to its retail electric customers.

(c) Technical requirements for all interconnections must comply with IEEE, NESC, NEC, North American Electric Reliability Corporation, Western Electric Coordinating Council and other applicable safety and reliability standards.

(d) Charges by the electrical company to the interconnection customer in addition to the application fee, if any, must be cost-based and consistent with generally accepted engineering practices. Unless an electrical company demonstrates by reference to its integrated resource plan prepared pursuant to WAC 480-100-238, its conservation targets pursuant to RCW 19.285.040, the studies it performs under WAC 480-108-120, or other evidence that an interconnection will provide quantifiable benefits to the electrical company's other customers, an interconnecting customer must pay all costs made necessary by the requested interconnection service. Such costs include, but are not limited to, the cost of engineering studies, upgrades to utility facilities made necessary by the interconnection, metering and insurance. If an electrical company demonstrates that an interconnection will produce quantifiable benefits for the electrical company's other customers, it may incur a portion of these costs for commission consideration for recovery in its general rates commensurate with such benefits. If after consideration of any costs approved by the commission for recovery in general rates the remaining costs are less than any amounts paid by the interconnection customer, the electrical company must refund the excess to the interconnection customer.

(e) Interconnection customers must be responsible for all operation, maintenance and code compliance for facilities and equipment on the customer's side of the point of common coupling.

(f) Interconnection service tariffs must describe:

(i) The process, timelines and cost of feasibility and facility impact studies the electrical company may require before allowing interconnection.

(ii) The prioritization or other processes by which the electrical company will manage multiple requests for interconnection service.

(g) Interconnection service tariffs must state:

(i) Specific time frames for electrical companies to respond to interconnection applications.

(ii) Specific time frames for interconnection customers to respond to study and interconnection agreements offered by the electrical company. Time frames must be adequate for the electrical company and the interconnection customer to have adequate opportunity to examine engineering studies and project design options.

(h) The electrical company must make knowledgeable personnel available to answer questions regarding applicability of the interconnection service tariff and otherwise provide assistance to a customer seeking interconnection service. The electrical company must comply with reasonable requests for information including relevant system studies, interconnection studies, and other materials useful for an interconnection customer to understand the circumstances of an interconnection at a particular point on the electrical company's electric system, to the extent provision of such information does not violate confidentiality provisions of prior electrical company agreements.

NEW SECTION

WAC 480-108-100 Dispute resolution. An interconnection customer may ask the commission to review an electrical company's study costs, interconnection facility costs, system upgrade costs, deposit requirements, assignment of costs to the interconnection customer or an electrical company's processing, termination, denial or rejection of an interconnection application by making an informal complaint under WAC 480-07-910, or by filing a formal complaint under WAC 480-07-370.

NEW SECTION

WAC 480-108-110 Required filings—Exceptions. (1) The electrical company must file for commission approval, as part of its tariff, and maintain on file for inspection at its place of business, the charges, terms and conditions for interconnections pursuant to Part 2 of this chapter. Such filing must include model forms of the following documents and contracts:

(a) Application;

(b) Feasibility Study Agreement;

(c) System Impact Study Agreement;

(d) Facilities Study Agreement;

(e) Construction Agreement;

(f) Interconnection Agreement; and

(g) Certificate of Completion.

(2) The commission may grant such exceptions to these rules as may be appropriate in individual cases.

NEW SECTION

WAC 480-108-120 Cumulative effects of interconnections with a nameplate capacity rating greater than 300 kW but no more than 20 MW. Electrical companies will evaluate on an ongoing basis, but not less than once every five years, the cumulative effect, including benefits to its other customers, of interconnections made under Part 2 of this chapter on its electric system and will retain appropriate records of its evaluations.

AMENDATORY SECTION (Amending Docket No. UE-051106, General Order No. R-528, filed 3/6/06, effective 4/6/06)

WAC 480-108-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library or as otherwise indicated. The publications, effective date, references within this chapter, and availability of the resources are as follows:

(1) The National Electrical Code is published by the National Fire Protection Association (NFPA).

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) The National Electrical Code is a copyrighted document. Copies are available from the NFPA at 1 Batterymarch Park, Quincy, Massachusetts, 02169 or at internet address http://www.nfpa.org.

(2) National Electric Safety Code (NESC).

(a) The commission adopts the version published in 2002.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of the National Electric Safety Code are available from the Institute of Electrical and Electronics Engineers at http://standards.ieee.org/nesc.

(3) Institute of Electrical and Electronics Engineers (IEEE) Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems.

(a) The commission adopts the version published in 2003.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 1547 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(4) Institute of Electrical and Electronics Engineers (IEEE) Standard 929, Recommended Practice for Utility Interface of Photovoltaic (PV) Systems.

(a) The commission adopts the version published in 2000.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 929 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(5) American National Standards Institute (ANSI) Standard C37.90, IEEE Standard for Relays and Relay Systems Associated with Electric Power Apparatus.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard C37.90 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(6) Institute of Electrical and Electronics Engineers (IEEE) Standard 519, Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems.

(a) The commission adopts the version published in 1992.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 519 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(7) Institute of Electrical and Electronics Engineers (IEEE) Standard 141, Recommended Practice for Electric Power Distribution for Industrial Plants.

(a) The commission adopts the version published in 1994 and reaffirmed in 1999.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of IEEE Standard 141 are available from the Institute of Electrical and Electronics Engineers at http://www.ieee.org/web/standards/home.

(8) Underwriters Laboratories (UL), including UL Standard 1741, Inverters, Converters, and Controllers for Use in Independent Power Systems.

(a) The commission adopts the version published in 2005.

(b) This publication is referenced in WAC 480-108-020.

(c) UL Standard 1741 is available from Underwriters Laboratory at http://www.ul.com.

((~~(8)~~)) (9) Occupational Safety and Health Administration (OSHA) Standard at 29 CFR 1910.269.

(a) The commission adopts the version published in 1994.

(b) This publication is referenced in WAC 480-108-020.

(c) Copies of Title 29 Code of Federal Regulations are available from the U.S. Government Online Bookstore, http://bookstore.gpo.gov/, and from various third-party vendors.

((~~(9)~~)) (10) Washington Industrial Safety and Health Administration (WISHA) Standard, chapter 296-155 WAC.

(a) The commission adopts the version in effect on March 1, 2006.

(b) This publication is referenced in WAC 480-108-020.

(c) The WISHA Standard is available from the Washington Department of Labor and Industries at P.O. Box 44000, Olympia, WA 98504-4000, or at internet address http://www.lni.wa.gov.

WSR 07-14-155
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES
[Filed July 5, 2007, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-108.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation system.

Hearing Location(s): L&I Building, Room S118, 7273 Linderson Way S.W., Tumwater, WA 98501, on August 10, 2007, at 1:30 p.m.

Date of Intended Adoption: August 21, 2007.

Submit Written Comments to: Diane Doherty, Program Manager, Retrospective Rating, P.O. Box 44180, Olympia, WA 98504-4180, e-mail DOHR235@lni.wa.gov, fax (360) 902-4258, by 5 p.m., August 10, 2007.

Assistance for Persons with Disabilities: Contact Office of Information and Assistance by August 6, 2007, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing changes to existing rules applicable to the retrospective rating program. Rule changes would better explain how retrospective rating adjustments are calculated and allow the department to use multiple loss development factors in adjustment calculations for claims. WAC 296-17-90402 and 296-17-90445 would be revised.

Reasons Supporting Proposal: Current rules limit the department to using a single loss development factor for non-pension claims when calculating retrospective rating adjustments. Since 2006, the department has been using multiple loss development factors in calculating base rates, and the department is proposing expanding the practice to retrospective rating adjustment calculations to improve the accuracy of adjustment calculations. Also employers and organizations that participate in the retrospective rating program have asked L&I to clarify certain existing retrospective rating programs described above. These rules are needed to administer the retrospective rating program authorized by RCW 51.18.010.

Statutory Authority for Adoption: RCW 51.18.010 and 51.16.035.

Statute Being Implemented: RCW 51.18.010 and 51.16.035.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Bill Moomau, Tumwater, (360) 902-4774; Implementation: Diane Doherty, Tumwater, (360) 902-4835; and Enforcement: Robert Malooly, Tumwater, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case the agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f) and because the content of the rules is specifically dictated by statute described in RCW 34.05.310 (4)(e).

A cost-benefit analysis is not required under RCW 34.05.328. In this case, the agency is exempt from conducting a cost-benefit analysis since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules is specifically dictated by statute described in RCW 34.05.328 (5)(b)(v).

July 5, 2007
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 02-23-089, filed 11/20/02, effective 1/1/03)

WAC 296-17-90402 Definitions. To reduce misunderstandings that can result by our use of certain words or phrases, we have developed definitions that govern what these words or phrases will mean for retro purposes.

Account: An individual employer's industrial insurance account and related subaccounts, or in the case of a retro group it means the sponsoring organization's industrial insurance account.

Account in good standing: A phrase we use when an employer and/or sponsoring organization is current with all payments due L&I and in compliance with L&I laws, rules and regulations at the time of enrollment or reenrollment. For an account to be in good standing you must:

• Have an active L&I industrial insurance account.

• Submit all reports required by L&I when they were due.

• Pay all industrial insurance premium payments, assessments, penalties and interest when due.

Note: This requirement also includes the payment of other fees, fines, penalties and assessments established by the department such as safety violations and computer access fees. An account may be deemed to be in good standing if the employer or group (sponsoring organization) is current with an L&I approved written repayment agreement.

• Not participate in the activities described in WAC 296-17-90428 concerning the direct payment of medical services.

Note: Organizations that sponsor a group must also file the safety plan when applicable (WAC 296-17-90409) and the annual safety report required in WAC 296-17-90411 to be in good standing.

Adjustment: The process of calculating retrospective premium, and any resulting refund or assessment.

Note: For the first adjustment of a coverage period, retrospective premium is compared to the standard premium due. The difference will be refunded if the retrospective premium is lower than the standard premium due. You will be assessed the difference if the retrospective premium is higher than the standard premium due. In subsequent adjustments of the coverage period, the new retrospective premium is compared to the prior net retrospective premium to determine the amount of refund or assessment.

RETROSPECTIVE PREMIUM ADJUSTMENT FOR: PAGE 1

NOTTA-REAL COMPANY INC EG05

STATE OF WASHINGTON
DEPT OF LABOR AND INDUSTRIES
INSURANCE SERVICES
PROGRAM/SYSTEM A2522235

9999 MAIN ST NW
SAMSONVILLE, WA 98000

COVERAGE PERIOD	RETRO ID	ADJUSTMENT NUMBER	ADJUSTMENT DATE	RETROSPECTIVE RATING PLAN	MAXIMUM PREMIUM RATIO
07/01/99 - 06/30/00	999999	2	05/09/02	B	1.45

RETROSPECTIVE PREMIUM CALCULATION

BASIC PREMIUM RATIO	.000	X	STANDARD PREMIUM DUE	204,602			
PLUS							
LOSS CONVERSION FACTOR	.983	X	TOTAL INCURRED LOSSES (DEVELOPED)	96,334	EQUALS	INDICATED RETROSPECTIVE PREMIUM	94,696
MAXIMUM PREMIUM RATIO	1.45	X	STANDARD PREMIUM DUE	204,602	EQUALS	MAXIMUM PREMIUM	296,673
						@ >= 301,804	DEVELOPED LOSSES
MINIMUM PREMIUM RATIO	.000	X	STANDARD PREMIUM DUE	204,602	EQUALS	MINIMUM PREMIUM	0
						@ <= 0	DEVELOPED LOSSES

BREAK-EVEN DEVELOPED LOSSES = 208,140

RETROSPECTIVE PREMIUM 94,696

ADDITIONAL PREMIUM OR REFUND CALCULATION

PRIOR RETROSPECTIVE PREMIUM PAID	135,979	-	RETROSPECTIVE PREMIUM	94,696	EQUALS	ADDITIONAL PREMIUM DUE	0
						OR	
						PREMIUM REFUND	41,283

PRIOR ADJUSTMENTS

ADJ NO	EMPLOYER MEMBERS	SIZE GROUP	STANDARD PREMIUM DUE	TOTAL INCURRED LOSSES (DEVELOPED)	RETRO PREMIUM	REFUND AMOUNT	ADDITIONAL PREMIUM DUE	ADDITIONAL PREMIUM PAID
1.00	2	26	204,602	138,331	135,979	68,623	0	0

Basic premium ratio (BPR): A component of the retrospective rating premium formula. The BPR represents a charge for administrative costs (except claims handling) and an insurance charge that covers the cost of having retrospective premium limited by the selected maximum premium ratio.

Case reserve: L&I's estimate of the cost associated with a specific claim.

Coverage period: A twelve-month period beginning January 1 and ending December 31, or April 1 through March 31, or July 1 through June 30, or October 1 through September 30. Only claims with a date-of-injury within the selected coverage period and the standard premium due for the same coverage period are used to calculate retrospective premium. Effective with the October 1, 2000, coverage period and all subsequent coverage periods thereafter, each coverage period will have three mandatory adjustments and no optional adjustments. The first adjustment will occur nine months after the coverage period has ended. Each subsequent valuation will take place in twelve-month intervals.

Note: The coverage period for a retro group is selected by the sponsoring organization and the coverage period of an individual enrollment is selected by the employer.

Date of enrollment or reenrollment: A phrase used by L&I to establish when participation in retro begins. The date of enrollment or reenrollment is the first day of the coverage period.

Note: A sponsoring organization can add new group members each quarter during the coverage period. We refer to this as "staggered enrollment." Employers seeking to participate in an organization's group after the coverage period has begun must meet all of the application requirements found in WAC 296-17-90413. Staggered enrollment applications must be received in our Tumwater office by the 15th calendar day of the month prior to the selected quarter (i.e., December 15 for January 1; March 15 for April 1; June 15 for July 1; or September 15 for October 1). If the due date falls on a weekend or holiday, the application will be due on the next business day. Employers that participate in a retro group on a staggered enrollment basis are required to participate for the remainder of the coverage period unless they sell or close the enrolled business or become self-insured.

Developed losses, a.k.a. total incurred losses (developed): A component of the retrospective rating premium formula determined on each valuation date. Developed losses are determined by summing up the result of multiplying the incurred losses by the applicable pure loss development factors and then by the performance adjustment factor. ((~~Based on historical trends we know that the total incurred losses for claims in a coverage period tend to increase over time. This can be the result of claim reopenings, changes in time loss duration, increased medical utilization, etc. The developed losses computation anticipates and distributes these increases among all the participants in a coverage period.~~

~~**Note:** Developed losses for pension claims are determined by multiplying their incurred losses by the applicable performance adjustment factor. For nonpension claims, developed losses are determined by multiplying their incurred losses by the applicable loss development factors.~~))

Freeze date: See valuation date.

Group: Employer members of an organization who have agreed to have their retrospective premium calculated using the combined applicable standard premium and related developed loss data of the participants as a whole.

Homogeneity: A word used to convey the requirement that retro groups be made up of like businesses.

Incurred losses: A cost measure of a claim. For open claims, incurred losses are the total of costs paid-to-date which have been assigned to a given employer account, or the case reserve established by the department, whichever is greater. For closed claims, incurred losses are the total of costs paid-to-date which have been assigned to a given employer account, regardless of any case reserve that may have been established.

Loss conversion factor (LCF): A component of the retrospective premium formula, the LCF represents an expense charge for claims handling and the present value of developed losses.

Note: LCF can be found in WAC 296-17-90493 through 296-17-90497.

Loss development factor (LDF): ((~~These are actuarially determined factors that are multiplied by incurred losses of nonpension retro claims to produce developed losses. LDFs are unique to each coverage period, but are the same for every nonpension retro claim in the coverage period.~~

~~**Note:** LDFs are periodically recalculated. LDFs shown on retro reports have already been adjusted by the applicable performance adjustment factor.~~))

For each coverage period and valuation date, the department calculates accident and medical aid loss development factors by type of claim. Each loss development factor is calculated by multiplying the pure loss development factor by the performance adjustment factor for the same coverage period and valuation date.

Loss ratio: The numerical result of dividing developed losses by standard premium.

Note: The retrospective premium calculation will generate a net refund if the basic premium ratio (BPR) + (Loss Ratio x the Loss conversion factor (LCF)) is less than 1. The BPR and LCF are determined by the plan selected by the individual enrollee, or in the case of a group by the sponsoring organization and the premium size of the individual enrollee or the group. Once these have been selected the retro group can only influence the loss ratio to determine the amount of refund. L&I suggests an evaluation of each claim to determine if there are trends and patterns and that the sponsoring organization implement workplace safety measures to eliminate or reduce loss regardless of the loss ratio.

Maximum premium ratio (MPR): A factor preselected by the organization (group) or individually enrolled employer. The MPR is multiplied by the standard premium (SP) to determine the maximum retrospective premium requirement for a given coverage period.

Note: MPRs can be found in WAC 296-17-90493 through 296-17-90497.

Member of a group: These are the individual employers that participate in a group plan of a sponsoring organization.

Minimum premium ratio (MnPR): An actuarially determined factor applicable to plans A1, A2 and A3. The MnPR is multiplied by the standard premium (SP) to determine the minimum retrospective premium requirement for a given coverage period.

Note: MnPRs can be found in WAC 296-17-90494 through 296-17-90496.

Pension claim: A claim designated as a fatality or total permanent disability.

Performance adjustment factor (PAF): An actuarially determined factor unique to each retro coverage period that ensures that aggregate refunds reflect the relative performance of retro versus nonretro state fund employers.

Plan: A numeric table developed by L&I used to calculate the retrospective premium requirement of a group or individually enrolled employer.

Note: A group or individually enrolled employer preselects from one of five plans (A, A1, A2, A3 or B). The selected plan (along with the MPR and standard premium volume) determines the minimum premium, basic premium and the loss conversion factor that is applied to the developed losses used in the retrospective premium calculation.

Premium: Money paid (due) from an employer for workers' compensation insurance. It does not include money paid as fees, fines, penalties or deposits.

Pure developed loss: The pure developed loss amount is determined by summing up the result of multiplying the incurred losses by the applicable pure loss development factors. This amount is used when pure developed loss amounts from a single accident are capped at a predetermined loss limitation amount.

Pure loss development factor (pure LDF): For each coverage period and valuation date, the department calculates accident and medical aid pure loss development factors by type of claim. Based on historical trends we know that the total incurred losses for claims in a coverage period tend to increase over time. This can be the result of claim reopenings and other changes in the condition of a claim. These factors anticipate and distribute these increases among all the claims in a coverage period. For enrollments during 2007 and prior, the department will only consider pension and nonpension claim types. For enrollments starting during 2008 and afterwards, the department will consider fatality, total permanent disability, permanent partial disability, time loss, miscellaneous accident fund and medical only types of claims.

Qualified employer: A phrase used by L&I to describe an employer that has an industrial insurance account and that the account is in good standing at the time of enrollment or reenrollment.

Retrospective premium: The net premium for a group or individually enrolled employer after an adjustment for a given coverage period. The retrospective premium is determined using the formulas and provisions found in WAC 296-17-90446.

Standard premium: A phrase used by L&I to denote the total accident fund and medical aid fund premiums paid (due) by a group or individually enrolled employer for a given coverage period.

Note: The supplemental pension assessment portion of total premiums due (paid) is not included. If the group includes employers subject to the staggered enrollment provision of the retro rules, the standard premium is the total accident fund and medical aid fund premiums due (paid) for the calendar months in which they have been accepted into a group.

Type of claim: The following claims are defined as follows in order of the severity of the claim:

Fatality: Any claim, which is not a total permanent disability claim, where death either results or is expected to result from the work related injury or illness.

Total permanent disability: Any claim where a total permanent disability pension has been awarded or is expected to be awarded.

Permanent partial disability: Any claim, which is not a pension claim, where a permanent partial disability award either has been awarded or is expected to be awarded.

Time loss: Any claim, which is not a pension nor a permanent partial disability claim, where time loss or loss of earning power benefits have either been awarded or are expected to be awarded.

Miscellaneous accident fund: Any claim, which is not a pension, permanent partial disability, nor time loss claim, to which other miscellaneous benefits have been awarded or are expected to be awarded from the accident fund.

Medical only: Any claim where the only insurance benefits awarded or expected to be awarded to the claim are medical aid fund benefits.

Valuation date: The date selected by L&I in which incurred losses for applicable claims are measured and captured for the purpose of calculating retrospective premium.

Note: Changes in incurred losses that occur after the valuation date will not be considered until the next applicable valuation date. The first valuation date is nine months after the coverage period ends. All subsequent valuations will occur in twelve-month intervals.

AMENDATORY SECTION (Amending WSR 02-23-089, filed 11/20/02, effective 1/1/03)

WAC 296-17-90445 Valuation of coverage period. Our responsibility:

• Nine months after the coverage period has ended, we will do an initial valuation of the losses for each employer and group participating in retrospective rating.

Note: Effective with the October 1, 2000, coverage period and all subsequent coverage periods thereafter, each retrospective rating plan has three mandatory valuations and no optional valuations. The first valuation takes place roughly nine months from the last day of the coverage period. Each subsequent valuation will occur at twelve-month intervals from the initial evaluation date.

Example: Assume that your coverage period began July 1, 2001, and ended June 30, 2002 (twelve calendar months). Our first valuation date would occur the end of March 2003. This is roughly nine months from the last day of the coverage period.

• On the valuation date, all claims with injury dates that fall within the coverage period are valuated and the incurred losses that have been established for these claims are "captured" or "frozen."

Note: Our valuation is limited to the open or closed status of a claim on the evaluation date. We do not consider adjudicative decisions (i.e., claim allowance, case reserve, wage determination and dependent status) surrounding a claim in our valuation.

• During the adjustment process we convert the captured incurred loss of each claim into developed losses using the appropriate loss development and performance adjustment factors. Retrospective premium is then calculated using the applicable formulas and tables in the retrospective rating manual.

• Prior to the application of the performance adjustment factor, we will cap the pure developed loss value for any one claim or group of claims arising from a single accident that has collective pure developed losses in excess of five hundred thousand dollars at a maximum of five hundred thousand dollars.

• Since the standard premium used in the retro calculation is based on premiums reported but not necessarily paid, we will deduct from the standard premium calculation any unpaid member premiums.

Note: A sponsoring organization and L&I can enter into an agreement for an alternate debt recovery method.

• Approximately twenty days after the valuation date, if entitled, we will send you your premium refund.

Note: If you participate in an individual plan or retro group, we will not issue a refund check if it is less than ten dollars. If a refund is less than ten dollars, we will credit the amount to your industrial insurance account and you can deduct the amount from your next premium payment. All retro group refunds are paid directly to the sponsoring organization. It is the responsibility of the sponsoring organization to distribute any refund to the group members. L&I does not regulate how refunds are distributed to group members. Employers that participate in retro are not required to share any of their retro refund with employees nor can they charge employees in the event of an additional assessment.

• We will send you a bill if you owe us additional premium.

Note: If you owe additional premium, it is due thirty days after we communicate the decision to you. We will charge penalties on any additional premium not paid when it is due (RCW 51.48.210). If you (employer in an individual plan or sponsoring organization of a retro group) are entitled to a refund for one coverage period and owe additional premiums for another coverage period, we will deduct the additional premiums due L&I from the refund. We will refund the difference to you. In the event that this adjustment still leaves a premium balance due, we will send you a bill for the balance. If an organization sponsors multiple retro groups and one group earns a refund and the other owes additional premium from a retro adjustment, we will deduct the additional premium from the refund due and issue a net refund to the organization for the difference or bill them for the remaining additional premium as applicable.

WSR 07-14-158
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed July 5, 2007, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-20-076.

Title of Rule and Other Identifying Information: Retired volunteer medical workers: WAC 246-12-010 Definitions, this section was missed on the filing of WSR 07-14-129 and needs to be added.

Hearing Location(s): Department of Health, Rooms 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on August 10, 2007, at 9:00 a.m.

Date of Intended Adoption: August 10, 2007.

Submit Written Comments to: Susan Gragg, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, e-mail susan.gragg@doh.wa.gov, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2406, by August 1, 2007.

Assistance for Persons with Disabilities: Contact Susan Gragg by August 1, 2007, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules create a retired volunteer medical worker license classification; set conditions limiting when licensee may practice under this license; set requirements to obtain and renew the license and establish continuing competency requirements.

Reasons Supporting Proposal: Chapter 72, Laws of 2006 (passed as ESHB 1850 and codified as RCW 18.130.360) requires the department of health to create rules establishing enforceable standards for this new license category.

Statutory Authority for Adoption: RCW 18.130.050 and 18.130.360.

Statute Being Implemented: Chapter 72, Laws of 2006.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Gragg, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4941.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules would not impose more than minor costs to businesses, if any. A copy of the statement may be obtained by contacting Susan Gragg, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Gragg, Department of Health, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-4941, fax (360) 236-2406, e-mail susan.gragg@doh.wa.gov.

July 5, 2007
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-12-010 Definitions. (1) "Business": A business is an adult family home provider owned by a corporation regulated under chapter 18.48 RCW; a pharmaceutical firm regulated under chapter 18.64 RCW; or a nursing pool regulated under chapter 18.52C RCW; or a health care assistant regulated under chapter 18.135 RCW.

(2) "Credential": A credential is a license, certification, or registration issued to a person to practice a regulated health care profession. Whether the credential is a license, certification or registration is determined by the law regulating the profession.

(3) "Declaration": A declaration is a statement signed by the practitioner on a form provided by the department of health for verifying continuing education, AIDS training, or other requirements. When required, declarations must be completed and signed to be effective verification to the department.

(4) "Disciplinary suspension": The regulatory entity places the credential in disciplinary suspension status when there is a finding of unprofessional conduct. Refer to the Uniform Disciplinary Act (RCW 18.130.160).

(5) "Local organization for emergency services or management": Has the same meaning as that found in RCW 38.52.010.

(6) "Mandated suspension": The department of health places the credential in mandated suspension status when a

law requires suspension of a credential under certain circumstances. This suspension is nondiscretionary for the department of health. Examples of mandated suspension are default on a student loan and failure to pay child support. The practitioner may not practice while on mandated suspension. The credential must be returned to active status before the practitioner may practice. See Part 6 of this chapter.

(((6))) (7) "Practitioner": A practitioner is an individual health care provider listed under the Uniform Disciplinary Act, RCW 18.130.040.

(((7))) (8) "Regulatory entities": A "regulatory entity" is a board, commission, or the secretary of the department of health designated as the authority to regulate one or more professions or occupations in this state. Practitioner health care practice acts and the Uniform Disciplinary Act (UDA) designate whether it is a board, commission, or the secretary of the department of health which has the authority to adopt rules, discipline health care providers, and determine requirements for initial licensure and continuing education requirements.

The regulatory entity determines whether disciplinary action should be taken on a credential for unprofessional conduct. These actions may include revocation, suspension, practice limitations or conditions upon the practitioner.

(((8))) (9) "Renewal": Every credential requires renewal. The renewal cycle is either one ((year or)), two, or three years, depending on the profession.

(((9))) (10) "Secretary": The secretary is the secretary of the department of health or his or her designee.

(((10))) (11) "Status": All credentials are subject to the Uniform Disciplinary Act (UDA) regardless of status. A credential status may be in any one of the following:

(a) Most credentials are in **"active"** status. These practitioners are authorized to practice the profession. These practitioners need to renew the credential each renewal cycle. See Part 2 of this chapter.

(b) The department of health places the credential in **"expired"** status if the credential is not renewed on time. While in expired status, the practitioner is not authorized to practice. Practice on an expired status is a violation of law and subject to disciplinary action. See Part 2 of this chapter.

(c) A practitioner may place the credential in **"inactive"** status if authorized by the regulatory entity. This means the practitioner is not practicing the profession. See Part 4 of this chapter.

(d) A practitioner may place the credential in **"retired active"** status if authorized by the regulatory entity. This means the practitioner can practice only intermittently or in emergencies. See Part 5 of this chapter.