

WSR 07-14-052
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 28, 2007, 9:29 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: Medical assistance of the health and recovery services administration (HRSA) is clarifying and updating existing definitions, adding new definitions relating to inpatient and outpatient hospital services, specifically definitions pertaining to payment methodologies for inpatient hospital services, and repealing outdated definitions. Medical assistance is also adding new language that states the department's hospital selective contracting program no longer exists for admissions on and after July 1, 2007.

Citation of Existing Rules Affected by this Order:
 Amending WAC 388-550-1050.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-08-108 on April 4, 2007.

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnd@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 25, 2007.

Robin Arnold-Williams
 Secretary

AMENDATORY SECTION (Amending WSR 04-20-057, filed 10/1/04, effective 11/1/04)

WAC 388-550-1050 Hospital services definitions.

The following definitions and abbreviations ((and)), those found in WAC 388-500-0005, Medical definitions, and definitions and abbreviations found in other sections of this chapter, apply to this chapter.

"**Accommodation costs**" means the expenses incurred by a hospital to provide its patients services for which a separate charge is not customarily made. These expenses include, but are not limited to, room and board, medical social services, psychiatric social services, and the use of certain hospital equipment and facilities.

"**Acquisition cost (AC)**" means the cost of an item excluding shipping, handling, and any applicable taxes as indicated by a manufacturer's invoice.

"**Acute**" means a medical condition of severe intensity with sudden onset. See WAC 388-550-2511 for the definition of "acute" for the acute physical medicine and rehabilitation (Acute PM&R) program.

"**Acute care**" means care provided for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional in order to maintain their health status (see WAC 248-27-015).

"**Acute physical medicine and rehabilitation (Acute PM&R)**" means a comprehensive inpatient rehabilitative program coordinated by an interdisciplinary team at a department-approved rehabilitation facility. The program provides twenty-four-hour specialized nursing services and an intense level of therapy for specific medical conditions for which the client shows significant potential for functional improvement. Acute PM&R is a twenty-four hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation.

"**ADATSA/DASA assessment center**" means an agency contracted by the division of alcohol and substance abuse (DASA) to provide chemical dependency assessment for clients and pregnant women in accordance with the alcoholism and drug addiction treatment and support act (ADATSA). Full plans for a continuum of drug and alcohol treatment services for pregnant women are also developed in ADATSA/DASA assessment centers.

"**Add-on procedure(s)**" means secondary procedure(s) that are performed in addition to another procedure.

"**Administrative day**" means a day of a hospital stay in which an acute inpatient level of care is no longer necessary, and noninpatient hospital placement is appropriate.

"**Administrative day rate**" means the statewide medic-aid average daily nursing facility rate as determined by the department.

"**Admitting diagnosis**" means the medical condition before study, which is initially responsible for the client's admission to the hospital, as defined by the international classification of diseases, 9th revision, clinical modification (ICD-9-CM) diagnostic code, or with the current published ICD-CM coding guidelines used by the department.

"**Advance directive**" means a document, ((such as a living will executed by a client. The advanced directive tells the client's health care providers and others the client's decisions regarding the client's medical care, particularly whether the client or client's representative wishes to accept or refuse extraordinary measures to prolong the client's life-)) recognized under state law, such as a living will, executed by a client, that tells the client's health care providers and others about the client's decisions regarding his or her health care in the event the client should become incapacitated. (See WAC 388-501-0125.)

"**Aggregate capital cost**" means the total cost or the sum of all capital costs.

"**Aggregate cost**" means the total cost or the sum of all constituent costs.

"**Aggregate operating cost**" means the total cost or the sum of all operating costs.

"**Alcoholism and drug addiction treatment and support act (ADATSA)**" means the law and the state-~~(funded)~~ administered program it established which provides medical services for persons who are incapable of gainful employment due to alcoholism or substance addiction.

"**Alcoholism and/or alcohol abuse treatment**" means the provision of medical social services to an eligible client designed to mitigate or reverse the effects of alcoholism or alcohol abuse and to reduce or eliminate alcoholism or alcohol abuse behaviors and restore normal social, physical, and psychological functioning. Alcoholism or alcohol abuse treatment is characterized by the provision of a combination of alcohol education sessions, individual therapy, group therapy, and related activities to detoxified alcoholics and their families.

"**All-patient DRG grouper (AP-DRG)**" means a computer software program that determines the medical and surgical diagnosis related group (DRG) assignments.

"**Allowable**" means the calculated amount for payment, after exclusion of any "nonallowed service or charge," based on the applicable payment method before final adjustments, deductions, and add-ons.

"**Allowed amount**" means the initial calculated amount for any procedure or service, after exclusion of any "nonallowed service or charge," that the department allows as the basis for payment computation before final adjustments, deductions, and add-ons.

"**Allowed charges**" means the maximum amount for any procedure or service that the department allows as the basis for payment computation.

"**Allowed covered charges**" means the maximum amount of charges on a hospital claim recognized by the department as charges for "hospital covered service" and payment computation, after exclusion of any "nonallowed service or charge," and before final adjustments, deductions, and add-ons.

"**Ambulatory surgery**" means a surgical procedure that is not expected to require an inpatient hospital admission.

"**Ancillary hospital costs**" means the expenses incurred by a hospital to provide additional or supporting services to its patients during their hospital stay. See "**ancillary services.**"

"**Ancillary services**" means additional or supporting services provided by a hospital to a patient during the patient's hospital stay. These services include, but are not limited to, laboratory, radiology, drugs, delivery room, operating room, postoperative recovery rooms, and other special items and services.

"**Appropriate level of care**" means the level of care required to best manage a client's illness or injury based on the severity of illness presentation and the intensity of services received.

"**Approved treatment facility**" means a treatment facility, either public or private, profit or nonprofit, approved by DSHS.

"**Audit**" means an assessment, evaluation, examination, or investigation of a health care provider's accounts, books and records, including:

(1) ~~((Medical))~~ Health, financial and billing records pertaining to billed services paid by the department through medicaid, SCHIP, or other state programs, by a person not employed or affiliated with the provider, for the purpose of verifying the service was provided as billed and was allowable under program regulations; and

(2) Financial, statistical and ~~((medical))~~ health records, including mathematical computations and special studies conducted supporting the medicare cost report((s, HCFA)) (Form 2552-96), submitted to ((MAA)) the department for the purpose of establishing program rates ~~((of reimbursement))~~ for payment to hospital providers.

"**Audit claims sample**" means a ~~((subset of the universe of paid claims from which the sample is drawn, whether based upon judgmental factors or random selection. The sample may consist of any number of claims in the population up to one hundred percent.))~~ ~~((See also "random claims sample" and "stratified random sample."))~~ selection of claims reviewed under a defined audit process.

"**Authorization**" - See "**prior authorization**" and "**expedited prior authorization (EPA).**"

"**Average hospital rate**" means ~~((the))~~ an average of hospital rates for any particular type of rate that ~~((MAA))~~ the department uses.

"**Bad debt**" means an operating expense or loss incurred by a hospital because of uncollectible accounts receivables.

"**Beneficiary**" means a recipient of Social Security benefits, or a person designated by an insuring organization as eligible to receive benefits.

"**Billed charge**" means the charge submitted to the department by the provider.

"**Blended rate**" means a mathematically weighted average rate.

"**Bordering city ((area)) hospital**" means a hospital located outside Washington state and located in one of the bordering cities listed in WAC 388-501-0175.

"**BR**" - See "**by report.**"

"**Budget neutrality**" is a concept that means that hospital payments resulting from payment methodology changes and rate changes should be equal to what payments would have been if the payment methodology changes and rate changes were not implemented. (See also "budget neutrality factor.")

"**Budget neutrality factor**" is a factor used by the department to adjust conversion factors, per diem rates, and per case rates in order that modifications to the payment methodology and rates are budget neutral. (See also "budget neutrality.")

"**Bundled services**" means interventions ~~((which))~~ that are integral to the major procedure and are not ~~((reimbursable))~~ paid separately.

"**Buy-in premium**" means a monthly premium the state pays so a client is enrolled in part A and/or part B medicare.

"**By report (BR)**" means a method of ~~((reimbursement))~~ payment in which ~~((MAA))~~ the department determines the amount it will pay for a service when the rate for that service is not included in ~~((MAA's))~~ the department's published fee schedules. Upon request the provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

"Callback" means keeping hospital staff members on duty beyond their regularly scheduled hours, or having them return to the facility after hours to provide unscheduled services which are usually associated with hospital emergency room, surgery, laboratory and radiology services.

"Capital-related costs" or "capital costs" means the component of operating costs related to capital assets, including, but not limited to:

- (1) Net adjusted depreciation expenses;
- (2) Lease and rentals for the use of depreciable assets;
- (3) The costs for betterment and improvements;
- (4) The cost of minor equipment;
- (5) Insurance expenses on depreciable assets;
- (6) Interest expense; and
- (7) Capital-related costs of related organizations that provide services to the hospital.

Capital costs due solely to changes in ownership of the provider's capital assets are excluded.

"CARF" is the official name for Commission on Accreditation of Rehabilitation Facilities. CARF is an international, independent, nonprofit accreditor of human service providers and networks in the areas of aging services, behavioral health, child and youth services, employment and community services, and medical rehabilitation.

"Case mix ((complexity))" means, from the clinical perspective, the condition of the treated patients and the difficulty associated with providing care. Administratively, it means the resource intensity demands that patients place on an institution.

"Case mix index (CMI)" means the arithmetical index that measures the average relative weight of ~~((a case))~~ all cases treated in a hospital during a defined period.

"Charity care" ~~((means necessary hospital health care rendered to indigent persons, to the extent that these persons are unable to pay for the care or to pay the deductibles or coinsurance amounts required by a third party payer, as determined by the department))~~ See chapter 70.170 RCW.

"Chemical dependency" means an alcohol or drug addiction; or dependence on alcohol and one or more other psychoactive chemicals.

"Children's hospital" means a hospital primarily serving children.

"Client" means a person who receives or is eligible to receive services through department of social and health services (DSHS) programs.

"CMS" means Centers for Medicare and Medicaid Services.

"CMS PPS Input Price Index" means a measure, expressed as a percentage, of the annual inflationary costs for hospital services, measured by Global Insight's Data Resources, Inc. (DRI).

"Comorbidity" means of, relating to, or caused by a disease other than the principal disease.

"Complication" means a disease or condition occurring subsequent to or concurrent with another condition and aggravating it.

"Comprehensive hospital abstract reporting system (CHARS)" means the department of health's inpatient hospital data collection, tracking and reporting system.

"Contract hospital-selective contracting" means for dates of admission before July 1, 2007, a licensed hospital located in a selective contracting area, which is awarded a contract to participate in ~~((MAA's))~~ the department's hospital selective contracting program. The department's hospital selective contracting program no longer exists for admissions on and after July 1, 2007.

"Contract hospital" means a hospital contracted by the department to provide specific services.

"Contractual adjustment" means the difference between the amount billed at established charges for the services provided and the amount received or due from a third-party payer under a contract agreement. A contractual adjustment is similar to a trade discount.

"Cost proxy" means an average ratio of costs to charges for ancillary charges or per diem for accommodation cost centers used to determine a hospital's cost for the services where the hospital has medicaid claim charges for the services, but does not report costs in corresponding centers in its medicare cost report.

"Cost report" ~~((means the HCFA Form 2552, Hospital and Hospital Health Care Complex Cost Report, completed and submitted annually by a provider:~~

(1) ~~To Medicare intermediaries at the end of a provider's selected fiscal accounting period to establish hospital-reimbursable costs for per diem and ancillary services; and~~

(2) ~~To Medicaid to establish appropriate DRG and RCC reimbursement))~~ See "medicare cost report".

"Costs" mean ~~((MAA))~~ department-approved operating, medical education, and capital-related costs (capital costs) as reported and identified on the ~~((HCFA 2552 form:))~~ "cost report."

"Cost-based conversion factor (CBCF)" means for dates of admission before August 1, 2007, a hospital-specific dollar amount that reflects a hospital's average cost of treating medicaid and SCHIP clients. It is calculated from the hospital's cost report by dividing the hospital's costs for treating medicaid and SCHIP clients during a base period by the number of medicaid and SCHIP discharges during that same period and adjusting for the hospital's case mix. See also "hospital conversion factor" and "negotiated conversion factor."

"County hospital" means a hospital established under the provisions of chapter 36.62 RCW.

"Covered charges" means billed charges submitted to the department on a claim by the provider, less the noncovered charges indicated on the claim.

"Covered services" See "hospital covered service" and WAC 388-501-0060.

"Critical border hospital" means, on and after August 1, 2007, an acute care hospital located in a bordering city that the department has, through analysis of admissions and hospital days, designated as critical to provide elective health-care for the department's medical assistance clients.

"Current procedural terminology (CPT)" means a systematic listing of descriptive terms and identifying codes for reporting medical services, procedures, and interventions performed by physicians. CPT is copyrighted and published annually by the American Medical Association (AMA).

"Customary charge payment limit" means the limit placed by the department on aggregate DRG payments to a hospital during a given year to assure that DRG payments do not exceed the hospital's charges to the general public for the same services.

"Day outlier" means an inpatient case with a date of admission before August 1, 2007, that requires ((MAA)) the department to make additional payment to the hospital provider but which does not qualify as a high-cost outlier. See **"day outlier payment"** and **"day outlier threshold."** The department's day outlier policy no longer exists for dates of admission on and after August 1, 2007.

"Day outlier payment" means the additional amount paid to a disproportionate share hospital for inpatient claims with dates of admission before August 1, 2007, for a client five years old or younger who has a prolonged inpatient stay which exceeds the day outlier threshold but whose covered charges for care fall short of the high cost outlier threshold. The amount is determined by multiplying the number of days in excess of the day outlier threshold and the administrative day rate.

"Day outlier threshold" means for inpatient claims with dates of admission before August 1, 2007, the average number of days a client stays in the hospital for an applicable DRG before being discharged, plus twenty days.

"Deductible" means the amount a beneficiary is responsible for, before medicare starts paying; or the initial specific dollar amount for which the applicant or client is responsible.

"Department" means the state department of social and health services (DSHS). As used in this chapter, department also means MAA, HRSA, or a successor administration that administers the state's medicaid, SCHIP, and other medical assistance programs.

"Detoxification" means treatment provided to persons who are recovering from the effects of acute or chronic intoxication or withdrawal from alcohol or other drugs.

"((Diabetic)) Diabetes education program" means a comprehensive, multidisciplinary program of instruction offered by ((an MAA)) a department of health (DOH)-approved ((facility)) diabetes education provider to diabetic clients on dealing with diabetes((-, including)). This includes instruction on nutrition, foot care, medication and insulin administration, skin care, glucose monitoring, and recognition of signs/symptoms of diabetes with appropriate treatment of problems or complications.

"Diagnosis code" means a set of numeric or alphanumeric characters assigned by the ICD-9-CM, or successor document, as a shorthand symbol to represent the nature of a disease.

"Diagnosis-related group (DRG)" means a classification system ((which)) that categorizes hospital patients into clinically coherent and homogenous groups with respect to resource use, i.e., similar treatments and statistically similar lengths of stay for patients with related medical conditions. Classification of patients is based on the International Classification of Diseases (ICD-9), the presence of a surgical procedure, patient age, presence or absence of significant comorbidities or complications, and other relevant criteria.

"Direct medical education costs" means the direct costs of providing an approved medical residency program as recognized by medicare.

"Discharging hospital" means the institution releasing a client from the acute care hospital setting.

"Disproportionate share hospital (DSH) payment" means ((additional)) a supplemental payment(s) made by the department to a hospital ((which serves a disproportionate number of Medicaid and other low income clients and which)) that qualifies for one or more of the disproportionate share hospital programs identified in the state plan.

"Disproportionate share hospital (DSH) program" ((means a program that provides additional payments to hospitals which serve a disproportionate number of Medicaid and other low income clients)) is a program through which the department gives consideration to hospitals that serve a disproportionate number of low-income patients with special needs by making payment adjustment to eligible hospitals in accordance with legislative direction and established payment methods. See 1902(a)(13)(A)(iv) of the Social Security Act. See also WAC 388-550-4900 through 388-550-5400.

"Dispute conference" - See **"hospital dispute conference."**

"Distinct unit" means a medicare-certified distinct area for psychiatric or rehabilitation services within an acute care hospital or a department-designated unit in a children's hospital.

"Division of alcohol and substance abuse (DASA)" is the division within DSHS responsible for providing alcohol and drug-related services to help clients recover from alcoholism and drug addiction.

"DRG" - See **"diagnosis-related group."**

"DRG average length-of-stay" means for dates of admission on and after July 1, 2007, the department's average length-of-stay for a DRG classification established during a department DRG rebasing and recalibration project.

"DRG-exempt services" means services which are paid ((for)) through other methodologies than those using inpatient medicaid conversion factors, inpatient state-administered program conversion factors, cost-based conversion factors (CBCF) or negotiated conversion factors (NCF). Some examples are services paid using a per diem rate, a per case rate, or a ratio of costs-to-charges (RCC) rate.

"DRG payment" means the payment made by the department for a client's inpatient hospital stay. This DRG payment allowed amount is calculated by multiplying the ((hospital-specific)) conversion factor by the DRG relative weight ((for the client's medical diagnosis)) assigned by the department to provider's inpatient claim before any outlier payment calculation.

"DRG relative weight" means the average cost or charge of a certain DRG classification divided by the average cost or charge, respectively, for all cases in the entire data base for all DRG((s)) classifications.

"Drug addiction and/or drug abuse treatment" means the provision of medical and rehabilitative social services to an eligible client designed to mitigate or reverse the effects of drug addiction or drug abuse and to reduce or eliminate drug addiction or drug abuse behaviors and restore normal physical and psychological functioning. Drug addiction

or drug abuse treatment is characterized by the provision of a combination of drug and alcohol education sessions, individual therapy, group therapy and related activities to detoxified addicts and their families.

"**DSHS**" means the department of social and health services.

"**Elective procedure or surgery**" means a ~~((non-emergency))~~ nonemergency procedure or surgery that can be scheduled at the client's and provider's convenience.

"**Emergency medical condition**" See WAC 388-500-0005.

"**Emergency medical expense requirement (EMER)**" means a specified amount of expenses for ambulance, emergency room or hospital services, including physician services in a hospital, incurred for an emergency medical condition that a client must incur prior to certification for the psychiatric indigent inpatient (PII) program.

"**Emergency room**" or "**emergency facility**" or "**emergency department**" means an organized, distinct hospital-based facility available twenty-four hours a day for the provision of unscheduled episodic services to patients who present for immediate medical attention, and is capable of providing emergency services including trauma care.

"**Emergency services**" means ~~((medical))~~ healthcare services required by and provided to a patient after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. For department payment to a hospital ~~((reimbursement purposes))~~, inpatient maternity services are treated as emergency services.

"**Equivalency factor (EF)**" means a ~~((conversion))~~ factor that may be used ~~((;))~~ by the department in conjunction with ~~((two))~~ other factors ~~((cost-based conversion factor and the ratable factor;))~~ to determine the level of a state-~~((only))~~ administered program payment. See WAC 388-550-4800.

"**Exempt hospital—DRG payment method**" means a hospital that for a certain patient category is reimbursed for services to ~~((MAA))~~ medical assistance clients through methodologies other than those using ~~((cost-based or negotiated))~~ DRG conversion factors.

"**Exempt hospital—Hospital selective contracting program**" means a hospital that is either not located in a selective contracting area or is exempted by the department from the selective contracting program. The department's hospital selective contracting program no longer exists for admissions on and after July 1, 2007.

"**Expedited prior authorization (EPA)**" means the ~~((MAA))~~ department-delegated process of creating an authorization number for selected medical/dental procedures and related supplies and services in which providers use a set of numeric codes to indicate which ~~((MAA))~~ department-acceptable indications, conditions, diagnoses, and/or ~~((MAA))~~ department-defined criteria are applicable to a particular request for service.

"**Expedited prior authorization (EPA) number**" means an authorization number created by the provider that

certifies that ~~((MAA))~~ the department-published criteria for the medical/dental procedure ~~((s and related supplies and))~~ or supply or services have been met.

"**Experimental**" means a ~~((term to describe a))~~ procedure, ~~((or))~~ course of treatment, drug, or piece of medical equipment, which lacks scientific evidence of safety and effectiveness. See WAC ~~((388-531-0500))~~ 388-531-0050. A service is not "experimental" if the service:

(1) Is generally accepted by the medical profession as effective and appropriate; and

(2) Has been approved by the FDA or other requisite government body if such approval is required.

~~((("Facility triage fee" means the amount MAA will pay a hospital for a medical evaluation or medical screening examination, performed in the hospital's emergency department, for a non-emergent condition of a healthy options client covered under the primary care case management (PCCM) program. This amount corresponds to the professional care level A or level B service.))~~

"**Fee-for-service**" means the general payment ~~((method))~~ process the department uses to ~~((reimburse providers))~~ pay a hospital provider's claim for covered medical services provided to medical assistance clients when the payment for these services ~~((are))~~ is through direct payment to the hospital provider, and is not ~~((covered under MAA's healthy options program))~~ the responsibility of one of the department's managed care organization (MCO) plans, or a mental health division designee.

"**Fiscal intermediary**" means medicare's designated fiscal intermediary for a region and/or category of service.

"**Fixed per diem rate**" means a daily amount used to determine payment for specific services provided in long-term acute care (LTAC) hospitals.

"**Global surgery days**" means the number of preoperative and follow-up days that are included in the ~~((reimbursement))~~ payment to the physician for the major surgical procedure.

"**Graduate medical education costs**" means the direct and indirect costs of providing medical education in teaching hospitals. See "direct medical education costs" and "indirect medical education costs."

"**Grouper**" - See "all-patient DRG grouper (AP-DRG)."

~~((("HCFA 2552" - See "cost report."))~~

"**Health and recovery services administration (HRSA)**" means the successor administration to the medical assistance administration within the department, authorized by the department secretary to administer the acute care portion of Title XIX medicaid, Title XXI SCHIP, and other medical assistance programs, with the exception of certain non-medical services for persons with chronic disabilities.

"**Health care team**" means a group of health care providers involved in the care of a client.

"**High-cost outlier**" means, for dates of admission before August 1, 2007, a claim paid under the DRG payment method that did not meet the definition of "administrative day," and has extraordinarily high costs when compared to other claims in the same DRG ~~((; in which the allowed charges, before January 1, 2001, exceed three times the applicable DRG payment and exceed twenty-eight thousand dol-~~

bars)). For dates of ~~((service))~~ admission on and after January 1, 2001 ~~((and after))~~, to qualify as a high-cost outlier, the ~~((allowed))~~ billed charges, minus the noncovered charges reported on the claim, must exceed three times the applicable DRG payment and exceed thirty-three thousand dollars. The department's high-cost outliers are not applicable for dates of admission on and after July 1, 2007.

"High outlier claim — Medicaid/SCHIP DRG" means, for dates of admission on and after August 1, 2007, a claim paid under the DRG payment method that does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the department. See WAC 388-550-3700.

"High outlier claim — Medicaid/SCHIP per diem" means, for dates of admission on and after August 1, 2007, a claim that is classified by the department as being allowed a high outlier payment that is paid under the per diem payment method, does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the department. See WAC 388-550-3700.

"High outlier claim — State-administered program DRG" means, for dates of admission on and after August 1, 2007, a claim paid under the DRG payment method that does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the department. See WAC 388-550-3700.

"High outlier claim — State-administered program per diem" means, for dates of admission on or after August 1, 2007, a claim that is classified by the department as being allowed as a high outlier payment, that is paid under the per diem payment method, does not meet the definition of "administrative day," and has extraordinarily high costs as determined by the department. See WAC 388-550-3700.

"Hospice" means a medically-directed, interdisciplinary program of palliative services for terminally ill clients and the clients' families. Hospice is provided under arrangement with a ~~((Title XVIII))~~ Washington state-licensed and Title XVIII-certified Washington state hospice.

"Hospital" means an entity ~~((which))~~ that is licensed as an acute care hospital in accordance with applicable state laws and regulations, or the applicable state laws and regulations of the state in which the entity is located when the entity is out-of-state, and ~~((which))~~ is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a Medicare or state-certified distinct rehabilitation unit or a "psychiatric hospital" as defined in this section.

"Hospital base period" means, for purposes of establishing a provider rate, a specific period or timespan used as a reference point or basis for comparison.

"Hospital base period costs" means costs incurred in, or associated with, a specified base period.

"Hospital conversion factor" means a hospital-specific dollar amount that reflects the average cost for a DRG paid case of treating Medicaid and SCHIP clients in a given hospital. See cost-based conversion factor (CBCF) and negotiated conversion factor (NCF).

"Hospital covered service" means a service that is provided by a hospital, ~~((included in the))~~ covered under a medical assistance program and is within the scope of ~~((the))~~ an eligible client's medical ~~((care))~~ assistance program.

"Hospital cost report" - See "cost report."

"Hospital dispute resolution conference" means an informal meeting for deliberation during a provider administrative appeal. For provider audit appeals, see chapter 388-502A WAC. For provider rate appeals, see WAC 388-501-0220.

~~((1))~~ The first dispute resolution conference is usually a meeting between medical assistance administration and hospital staff, to discuss a department action or audit finding(s). The purpose of the meeting is to clarify interpretation of regulations and policies relied on by the department or hospital, provide an opportunity for submission and explanation of additional supporting documentation or information, and/or to verify accuracy of calculations and application of appropriate methodology for findings or administrative actions being appealed. Issues appealed by the provider will be addressed in writing by the department.

~~((2))~~ At the second level of dispute resolution:

(a) For hospital rates issues, the dispute resolution conference is an informal administrative hearing conducted by an MAA administrator for the purpose of resolving contractor/provider rate disagreements with the department's action at the first level of appeal. The dispute resolution conference in this regard is not a formal adjudicative process held in accordance with the Administrative Procedure Act.

(b) For hospital audit issues, the audit dispute resolution hearing will be held by the office of administrative hearings in accordance with WAC 388-560-1000. This hearing is a formal proceeding and is governed by chapter 34.05 RCW-))

~~(("Hospital facility fee" — See "facility triage fee."))~~

"Hospital market basket index" means a measure, expressed as a percentage, of the annual inflationary costs for hospital services~~((, as))~~ measured by Global Insight's Data Resources, Inc. (DRI) and identified as the CMS PPS Input Price Index.

"Hospital peer group" means the peer group categories ~~((adopted))~~ established by the ~~((former Washington state hospital commission))~~ department for ~~((rate-setting purposes))~~ classification of hospitals:

(1) Peer Group A - hospitals identified by the department as rural hospitals ~~((paid under a ratio of costs to charges (RCC) methodology (same as peer group 1)))~~ (excludes all rural hospitals paid by the certified public expenditure (CPE) payment method and critical access hospital (CAH) payment method);

(2) Peer Group B - hospitals identified by the department as urban hospitals without medical education programs ~~((same as peer group 2))~~ (excludes all hospitals paid by the CPE payment method and CAH payment method);

(3) Peer Group C - hospitals identified by the department as urban hospitals with medical education programs (excludes all hospitals paid by the CPE payment method and CAH payment method); ~~((and))~~

(4) Peer Group D - hospitals identified by the department as specialty hospitals and/or hospitals not easily assignable to the other ~~((three))~~ five peer groups;

(5) Peer Group E - hospitals identified by the department as public hospitals participating in the "full cost" public hospital certified public expenditure (CPE) payment program; and

(6) Peer Group F - hospitals identified by the department of health (DOH) as CAHs, and paid by the department using the CAH payment method.

"Hospital selective contracting program" or "selective contracting" means for dates of admission before July 1, 2007, a negotiated bidding program for hospitals within specified geographic areas to provide inpatient hospital services to medical assistance clients. The department's hospital selective contracting program no longer exists for dates of admission on and after July 1, 2007.

~~("Indigent patient" means a patient who has exhausted any third-party sources, including Medicare and Medicaid, and whose income is equal to or below two hundred percent of the federal poverty standards (adjusted for family size), or is otherwise not sufficient to enable the individual to pay for his or her care, or to pay deductibles or co-insurance amounts required by a third-party payor.)~~

"Indirect medical education costs" means the indirect costs of providing an approved medical residency program as recognized by medicare.

"Inflation adjustment" means, for cost inflation, the hospital inflation adjustment. This adjustment is determined by using the inflation factor method ~~((and guidance indicated))~~ supported by the legislature ((in the budget notes to the biennium appropriations bill)). For charge inflation, it means the inflation factor determined by comparing average discharge charges for the industry from one year to the next, as found in the comprehensive hospital abstract reporting system (CHARS) standard reports three and four.

"Informed consent" means that an individual consents to a procedure after the provider who obtained a properly completed consent form has done all of the following:

- (1) Disclosed and discussed the patient's diagnosis;
- (2) Offered the patient an opportunity to ask questions about the procedure and to request information in writing;
- (3) Given the patient a copy of the consent form;
- (4) Communicated effectively using any language interpretation or special communication device necessary per 42 C.F.R. 441.257; and
- (5) Given the patient oral information about all of the following:

(a) The patient's right to not obtain the procedure, including potential risks, benefits, and the consequences of not obtaining the procedure;

(b) Alternatives to the procedure including potential risks, benefits, and consequences; and

(c) The procedure itself, including potential risks, benefits, and consequences.

"Inpatient hospital" means a hospital authorized by the department of health to provide inpatient services.

"Inpatient hospital admission" means an admission to a hospital based on an evaluation of the client using objective clinical indicators for the purpose of providing medically necessary inpatient care, including assessment, monitoring, and therapeutic services as required to best manage the client's illness or injury, and that is documented in the client's ~~((medical))~~ health record.

"Inpatient medicaid conversion factor" means a dollar amount that represents selected hospitals' average costs of treating medicaid and SCHIP clients. The conversion factor

is a rate that is multiplied by a DRG relative weight to pay medicaid and SCHIP claims under the DRG payment method. See WAC 388-550-3450 for how this conversion factor is calculated.

"Inpatient services" means healthcare services provided directly or indirectly to a client subsequent to the client's inpatient hospital admission and prior to discharge.

"Inpatient state-administered program conversion factor" means a dollar amount used as a rate reduced from the inpatient medicaid conversion factor to pay a hospital for inpatient services provided to a client eligible under a state-administered program. The conversion factor is multiplied by a DRG relative weight to pay claims under the DRG payment method.

"Intermediary" - See **"fiscal intermediary."**

"International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) Edition" means the systematic listing that transforms verbal descriptions of diseases, injuries, conditions and procedures into numerical or alpha numerical designations (coding).

"Length of stay (LOS)" means the number of days of inpatient hospitalization, calculated by adding the total number of days from the admission date to the discharge date, and subtracting one day. ((See also "PAS length of stay (LOS).")

"Length of stay extension request" means a request from a hospital provider for the department, or in the case of psychiatric admission, the appropriate ~~((regional support network (RSN)))~~ mental health division designee, to approve a client's hospital stay exceeding the average length of stay for the client's diagnosis and age.

"Lifetime hospitalization reserve" means, under the medicare Part A benefit, the nonrenewable sixty hospital days that a beneficiary is entitled to use during his or her lifetime for hospital stays extending beyond ninety days per benefit period. See also **"reserve days."**

"Long term acute care (LTAC) services" means inpatient intensive long-term care services provided in department-approved LTAC hospitals to eligible medical assistance clients who meet criteria for level 1 or level 2 services. See WAC 388-550-2565 through 388-550-2596.

"Low-cost outlier" means a case having a date of admission before August 1, 2007, with extraordinarily low costs when compared to other cases in the same DRG ~~((, in which the allowed charges before January 1, 2001, are less than ten percent of the applicable DRG payment or less than four hundred dollars)).~~ For dates of ~~((service))~~ admission on and after January 1, 2001, to qualify as a low-cost outlier, the allowed charges must be less than the greater of ten percent of the applicable DRG payment or ~~((less than))~~ four hundred and fifty dollars. The department's low-cost outliers are not applicable for dates of admission on and after August 1, 2007.

"Low income utilization rate (LIUR)" means a rate determined by a formula represented as (A/B)+(C/D) in the same period in which:

- (1) The numerator A is the hospital's total patient services revenue under the state plan, plus the amount of cash subsidies for patient services received directly from state and local governments ~~((in a period));~~

(2) The denominator B is the hospital's total patient services revenue (including the amount of such cash subsidies) ~~((in the same period as the numerator));~~

(3) The numerator C is the hospital's total inpatient service charge attributable to charity care ~~((in a period))~~, less the portion of cash subsidies described in (1) of this definition in the period reasonably attributable to inpatient hospital services. The amount shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under the state plan); and

(4) The denominator D is the hospital's total charge for inpatient hospital services ~~((in the same period as the numerator)).~~

"Major diagnostic category (MDC)" means one of the ~~((twenty-five))~~ mutually exclusive groupings of principal diagnosis areas in the AP-DRG classification system. The diagnoses in each MDC correspond to a single major organ system or etiology and, in general, are associated with a particular medical specialty.

"Market basket index" - See **"hospital market basket index."**

"MDC" - See **"major diagnostic category."**

~~((**"Medicaid"** is the state and federally funded aid program that covers the categorically needy (CNP) and medically needy (MNP) programs.))~~

"Medicaid cost proxy" means a figure developed to approximate or represent a missing cost figure.

"Medicaid inpatient utilization rate (MIPUR)" means a ratio expressed by the following formula represented as X/Y in which:

(1) The numerator X is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under the state plan in a period.

(2) The denominator Y is the hospital's total number of inpatient days in the same period as the numerator's. Inpatient day includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

"Medical assistance administration (MAA)" ~~((is))~~ means the health and recovery services administration (HRSA), or a successor administration, within ((DSHS) the department authorized by the department's secretary to administer the acute care portion of the Title XIX medicaid, Title XXI state children's health insurance program (SCHIP), and ~~((the state funded medical care programs))~~ other medical assistance programs, with the exception of certain nonmedical services for persons with chronic disabilities.

"Medical assistance program" means ~~((both Medicaid and medical care services programs))~~ any healthcare program administered through HRSA.

"Medical care services" means the state-administered limited scope of care ~~((financed by state funds and))~~ provided to general assistance-unemployable (GAU) recipients, and ~~((ADATSA clients))~~ recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

"Medical education costs" means the expenses incurred by a hospital to operate and maintain a formally organized graduate medical education program.

"Medical screening evaluation" means the service(s) provided by a physician or other practitioner to determine whether an emergent medical condition exists. ~~((See also **"facility triage fee."**))~~

"Medical stabilization" means a return to a state of constant and steady function. It is commonly used to mean the patient is adequately supported to prevent further deterioration.

~~((**"Medically indigent person"** means a person certified by the department of social and health services as eligible for the limited casualty program medically indigent (LCP-MI) program. See also **"indigent patient."**))~~

"Medicare cost report" means the ~~((annual cost data reported by a hospital to Medicare on the HCFA form 2552))~~ medicare cost report (Form 2552-96), or successor document, completed and submitted annually by a hospital provider:

(1) To medicare intermediaries at the end of a provider's selected fiscal accounting period to establish hospital reimbursable costs for per diem and ancillary services; and

(2) To medicaid to establish appropriate DRG and other rates for payment of services rendered.

"Medicare crossover" means a claim involving a client who is eligible for both medicare benefits and medicaid.

"Medicare fee schedule (MFS)" means the official ~~((HCFA))~~ CMS publication of medicare policies and relative value units for the resource based relative value scale (RBRVS) ~~((reimbursement))~~ payment program.

"Medicare Part A" ~~((means that part of the Medicare program that helps pay for inpatient hospital services, which may include, but are not limited to:~~

~~(1) A semi-private room;~~

~~(2) Meals;~~

~~(3) Regular nursing services;~~

~~(4) Operating room;~~

~~(5) Special care units;~~

~~(6) Drugs and medical supplies;~~

~~(7) Laboratory services;~~

~~(8) X-ray and other imaging services; and~~

~~(9) Rehabilitation services.~~

Medicare hospital insurance also helps pay for post-hospital skilled nursing facility care, some specified home health care, and hospice care for certain terminally ill beneficiaries)
See WAC 388-500-0005.

"Medicare Part B" ~~((means that part of the Medicare program that helps pay for, but is not limited to:~~

~~(1) Physician services;~~

~~(2) Outpatient hospital services;~~

~~(3) Diagnostic tests and imaging services;~~

~~(4) Outpatient physical therapy;~~

~~(5) Speech pathology services;~~

~~(6) Medical equipment and supplies;~~

~~(7) Ambulance;~~

~~(8) Mental health services; and~~

~~(9) Home health services))~~ See WAC 388-500-0005.

"Medicare buy-in premium" - See **"buy-in premium."**

"Medicare payment principles" means the rules published in the federal register regarding ~~((reimbursement))~~ payment for services provided to medicare clients.

"Mental health division designee" or "MHD designee" means a professional contact person authorized by MHD, who operates under the direction of a Regional Support Network (RSN) or a prepaid inpatient health plan (PIHP). See WAC 388-550-2600.

"Mentally incompetent" means a person who has been declared mentally incompetent by a federal, state, or local court of competent jurisdiction ((for any purpose, unless the person has been declared competent for purposes which include the ability to consent to sterilization)).

"Multiple occupancy rate" means the rate customarily charged for a hospital room with two to four patient beds.

"National Drug Code (NDC)" means the eleven digit number the manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The eleven-digit NDC is composed of a five-four-two grouping. The first five digits comprise the labeler code assigned to the manufacturer by the Federal Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"Negotiated conversion factor (NCF)" means, for dates of admission before July 1, 2007, a negotiated hospital-specific dollar amount which is used in lieu of the cost-based conversion factor as the multiplier for the applicable DRG weight to determine the DRG payment for a selective contracting program hospital. See also **"hospital conversion factor"** and **"cost-based conversion factor."** The department's hospital selective contracting program no longer exists for dates of admission on and after July 1, 2007.

"Newborn" or "neonate" or "neonatal" means a person younger than twenty-nine days old. However, a person who has been admitted to an acute care hospital setting as a newborn and is transferred to another acute care hospital setting is still considered a newborn for payment purposes.

"Nonallowed service or charge" means a service or charge that is not recognized for payment by the department, and cannot be billed to the client except under the conditions identified in WAC 388-502-0160.

"Noncontract hospital" means, for dates of admission before July 1, 2007 a licensed hospital located in a selective contracting area (SCA) but which does not have a contract to participate in the hospital selective contracting program. The department's hospital selective contracting program no longer exists for dates of admission on and after July 1, 2007.

"Noncovered charges" means billed charges submitted to the department by a provider on a claim that are indicated by the provider on the claim as noncovered.

"Noncovered service or charge" means a service or charge that is not ((reimbursed)) considered or paid by the department as a "hospital covered service," and cannot be billed to the client except under the conditions identified in WAC 388-502-0160.

"((Nonemergent)) Nonemergency hospital admission" means any inpatient hospitalization of a patient who does not have an emergent medical condition, as defined in WAC 388-500-0005((-Emergency services)).

"Nonparticipating hospital" means a noncontract hospital. See **"noncontract hospital."**

"Observation services" means healthcare services furnished by a hospital on the hospital's premises, including use of a bed and periodic monitoring by hospital staff, which are reasonable and necessary to evaluate an outpatient's condition or determine the need for possible admission to the hospital as an inpatient.

"Operating costs" means all expenses incurred in providing accommodation and ancillary services, excluding capital and medical education costs.

"OPPS" - See **"outpatient prospective payment system."**

"OPPS adjustment" means the legislative mandated reduction in the outpatient adjustment factor made to account for the delay of OPPS implementation.

"OPPS outpatient adjustment factor" means the outpatient adjustment factor reduced by the OPPS and adjustment factor as a result of legislative mandate.

"Orthotic device" or "orthotic" means a corrective or supportive device that:

- (1) Prevents or corrects physical deformity or malfunction; or
- (2) Supports a weak or deformed portion of the body.

"Out-of-state hospital" means any hospital located outside the state of Washington and outside the designated ((border areas)) bordering cities in Oregon and Idaho (See WAC 388-501-0175). For medical assistance clients requiring psychiatric services, "out-of-state hospital" means any hospital located outside the state of Washington.

"Outlier set-aside factor" means the amount by which a hospital's cost-based conversion factor is reduced for payments of high cost outlier cases. The department's outlier set-aside factor is not applicable for dates of admission on and after August 1, 2007.

"Outlier set-aside pool" means the total amount of payments for high cost outliers which are funded annually based on payments for high cost outliers during the year. The department's outlier set-aside pool is not applicable for dates of admission on and after August 1, 2007.

"Outliers" means cases with extraordinarily high or low costs when compared to other cases in the same DRG.

"Outpatient" means a patient who is receiving ((medical)) healthcare services in other than an inpatient hospital setting.

"Outpatient care" means ((medical care)) healthcare provided other than inpatient services in a hospital setting.

"Outpatient hospital" means a hospital authorized by the department of health to provide outpatient services.

"Outpatient hospital services" means those healthcare services that are within a hospital's licensure and provided to a client who is designated as an outpatient.

"Outpatient observation" - See **"observation services."**

"Outpatient prospective payment system (OPPS)" means the payment system used by ((MAA)) the department to calculate reimbursement to hospitals for the facility component of outpatient services. This system uses ambulatory payment classifications (APCs) as the primary basis of payment.

"Outpatient short stay" - See **"observation services"** and **"outpatient hospital services."**

"Outpatient surgery" means a surgical procedure that is not expected to require an inpatient hospital admission.

"Pain treatment facility" means ~~((an MAA-approved))~~ a department-approved inpatient facility for pain management, in which a multidisciplinary approach is used to teach clients various techniques to live with chronic pain.

"Participating hospital" means a licensed hospital that accepts ~~((MAA))~~ department clients.

"PAS length of stay (LOS)" means, for dates of admission before August 1, 2007, the average length of an inpatient hospital stay for patients based on diagnosis and age, as determined by the Commission of Professional and Hospital Activities and published in a book entitled *Length of Stay by Diagnosis, Western Region*. See also **"professional activity study (PAS)."**

"Patient consent" means the informed consent of the patient and/or the patient's legal guardian, as evidenced by the patient's or guardian's signature on a consent form, for the procedure(s) to be performed upon or for the treatment to be provided to the patient.

"Peer group" - See **"hospital peer group."**

"Peer group cap" means, for dates of admission before August 1, 2007, the reimbursement limit set for hospital peer groups B and C, established at the seventieth percentile of all hospitals within the same peer group for aggregate operating, capital, and direct medical education costs.

~~((**"Per diem charge"** means the daily room charge, per client, billed by the facility for room and board services that are covered by the department. This is sometimes referred to as "room rate.")~~)

"Per diem rate" means a daily rate used to calculate payment for services provided as a "hospital covered service."

"Personal comfort items" means items and services which primarily serve the comfort or convenience of a client and do not contribute meaningfully to the treatment of an illness or injury ~~((or the functioning of a malformed body member))~~.

"PM&R" - See **"Acute PM&R."**

~~((**"Physician standby"** means physician attendee without direct face-to-face patient contact and does not involve provision of care or services.~~)

"Physician's current procedural terminology (CPT)" - See **"CPT."**)

"Plan of treatment" or **"plan of care"** means the written plan of care for a patient which includes, but is not limited to, the physician's order for treatment and visits by the disciplines involved, the certification period, medications, and rationale indicating need for services.

"PPS" See **"prospective payment system."**

~~((**"Pregnant and postpartum women (PPW)"** means eligible female clients who are pregnant or until the end of the month which includes the sixtieth day following the end of the pregnancy.)~~)

"Primary care case management (PCCM)" means the coordination of healthcare services under the department's Indian health center or tribal clinic managed care program. See WAC 388-538-068.

"Principal diagnosis" means the condition established after study to be chiefly responsible for the admission of the patient to the hospital for care.

"Principal procedure" means a procedure performed for definitive treatment rather than diagnostic or exploratory purposes, or because it was necessary due to a complication.

"Prior authorization" means a process by which clients or providers must request and receive ~~((MAA))~~ department or a department designee's approval for certain ((medical)) healthcare services, equipment, or supplies, based on medical necessity, before the services are provided to clients, as a precondition for payment to the provider ((reimbursement)). Expedited prior authorization and limitation extension are forms of prior authorization.

"Private room rate" means the rate customarily charged by a hospital for a one-bed room.

"Professional activity study (PAS)" means the compilation of inpatient hospital data by diagnosis and age, conducted by the Commission of Professional and Hospital Activities, which resulted in the determination of an average length of stay for patients. The data are published in a book entitled *Length of Stay by Diagnosis, Western Region*.

"Professional component" means the part of a procedure or service that relies on the physician's professional skill or training, or the part of a ~~((reimbursement))~~ payment that recognizes the physician's cognitive skill.

"Prognosis" means the probable outcome of a patient's illness, including the likelihood of improvement or deterioration in the severity of the illness, the likelihood for recurrence, and the patient's probable life span as a result of the illness.

~~((**"Prolonged service"** means direct face-to-face patient services provided by a physician, either in the inpatient or outpatient setting, which involve time beyond what is usual for such services.)~~)

"Prospective payment system (PPS)" means a system that sets payment rates for a predetermined period for defined services, before the services are provided. The payment rates are based on economic forecasts and the projected cost of services for the predetermined period.

"Prosthetic device" or **"prosthetic"** means a replacement, corrective, or supportive device prescribed by a physician or other licensed practitioner ~~((of the healing arts))~~, within the scope of his or her practice as defined by state law, to:

- (1) Artificially replace a missing portion of the body;
 - (2) Prevent or correct physical deformity or malfunction;
- or
- (3) Support a weak or deformed portion of the body.

"Psychiatric hospital(s)" means a medicare-certified distinct ((part)) psychiatric unit((s)), a medicare-certified psychiatric hospital((s)), ((and)) or a state-designated pediatric distinct ((part)) psychiatric unit((s)) in a medicare-certified acute care hospital((s)). ~~((State-owned psychiatric hospitals))~~ Eastern State Hospital and Western State Hospital are excluded from this definition.

"Psychiatric indigent inpatient (PII) program" means a state-administered program established by the department specifically for mental health clients identified in

need of voluntary emergency inpatient psychiatric care by a mental health division designee. See WAC 388-865-0217.

"Psychiatric indigent person" means a person certified by the department as eligible for the psychiatric indigent inpatient (PII) program.

"Public hospital district" means a hospital district established under chapter 70.44 RCW.

~~("Random claims sample" means a sample in which all of the items are selected randomly, using a random number table or computer program, based on a scientific method of assuring that each item has an equal chance of being included in the sample. See also "audit claims sample" and "stratified random sample.")~~

"Ratable" means a ~~((hospital-specific adjustment))~~ factor ~~((applied))~~ used to ~~((the cost-based conversion factor (CBCF))~~ calculate a reduction factor used to reduce medic-aid level rates to determine state~~((-only))~~ administered program claim payment ~~((rates))~~ to hospitals.

"Ratio of costs-to-charges (RCC)" means a method used to pay hospitals for some services exempt from the DRG payment method. It also refers to the factor or rate applied to a hospital's allowed covered charges for medically necessary services to determine estimated costs, as determined by the department, and payment to the hospital for ~~((these))~~ some DRG-exempt services.

"RCC" - See "ratio of costs-to-charges."

"Rebasing" means the process of recalculating the ~~((hospital cost-based))~~ conversion factors, per diems, per case rates, or RCC rates using historical data.

"Recalibration" means the process of recalculating DRG relative weights using historical data.

"Regional support network (RSN)" means a county authority or a group of county authorities recognized and certified by the department, that contracts with the department per chapters 38.52, 71.05, 71.24, 71.34, and 74.09 RCW and chapters 275-54, 275-55, and 275-57 WAC, to manage the provision of mental health services to medical assistance clients.

"Rehabilitation accreditation commission, The" - See "CARF."

"Rehabilitation units" means specifically identified rehabilitation hospitals and designated rehabilitation units of ~~((general))~~ hospitals that meet department and/or medicare criteria for distinct ~~((part))~~ rehabilitation units.

"Relative weights" - See "DRG relative weights."

"Remote hospitals" means, for claims with dates of admission before July 1, 2007, hospitals that meet the following criteria during the hospital selective contracting (HSC) waiver application period:

- (1) Are located within Washington state;
- (2) Are more than ten miles from the nearest hospital in the HSC competitive area; and
- (3) Have fewer than seventy-five beds; and
- (4) Have fewer than five hundred medicaid and SCHIP admissions within the previous waiver period.

"Reserve days" means the days beyond the ninetieth day of hospitalization of a medicare patient for a benefit period or spell of illness. See also "lifetime hospitalization reserve."

"Retrospective payment system" means a system that sets payment rates for defined services according to historic costs. The payment rates reflect economic conditions experienced in the past.

"Revenue code" means a nationally-assigned coding system for billing inpatient and outpatient hospital services, home health services, and hospice services.

"Room and board" means the services a hospital facility provides a patient during the patient's hospital stay. These services include, but are not limited to, a routine or special care hospital room and related furnishings, routine supplies, dietary and nursing services, and the use of certain hospital equipment and facilities.

"Rural health clinic" means a clinic that is located in areas designed by the Bureau of Census as rural and by the Secretary of the Department of Health and Human Services (DHHS), ~~((Education and Welfare (DHEW)))~~ as medically underserved.

"Rural hospital" means ~~((a rural health care))~~ an acute care healthcare facility capable of providing or assuring availability of inpatient and outpatient hospital health services in a rural area.

"Secondary diagnosis" means a diagnosis other than the principal diagnosis for which an inpatient is admitted to a hospital.

"Selective contracting area (SCA)" means, for dates of admission before July 1, 2007, an area in which hospitals participate in negotiated bidding for hospital contracts. The boundaries of an SCA are based on historical patterns of hospital use by medicaid ((patients)) and SCHIP clients. This definition is not applicable for dates of admission on and after July 1, 2007.

"Semi-private room rate" means a rate customarily charged for a hospital room with two to four beds; this charge is generally lower than a private room rate and higher than a ward room. See also "multiple occupancy rate."

"Seven-day readmission" means the situation in which a client who was admitted as an inpatient and discharged from the hospital has returned to inpatient status to the same or a different hospital within seven days.

"Special care unit" means a department of health (DOH) or medicare-certified hospital unit where intensive care, coronary care, psychiatric intensive care, burn treatment or other specialized care is provided.

"Specialty hospitals" means children's hospitals, psychiatric hospitals, cancer research centers or other hospitals which specialize in treating a particular group of patients or diseases.

"Spendedown" means the process ~~((of assigning excess income for the medically needy program, or excess income and/or resources for the medically indigent program, to the client's cost of medical care. The client must incur medical expenses equal to the excess income (spendedown) before medical care can be authorized))~~ by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department. See chapter 388-519 WAC.

"Stat laboratory charges" means the charges by a laboratory for performing a test or tests immediately. "Stat." is

the abbreviation for the Latin word "statim" meaning immediately.

"State children's health insurance program (SCHIP)" means the federal Title XXI program under which medical care is provided to uninsured children younger than age nineteen.

"State plan" means the plan filed by the department with the ((Health Care Financing Administration (HCFA))) Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (DHHS), outlining how the state will administer medicaid and SCHIP services, including the hospital program.

((**"Stratified random sample"** means a sample consisting of claims drawn randomly, using statistical formulas, from each stratum of a universe of paid claims stratified according to the dollar value of the claims. See also **"audit claims sample"** and **"random claims sample."**))

"Subacute care" means care provided to a patient which is less intensive than that given at an acute care hospital. Skilled nursing, nursing care facilities and other facilities provide subacute care services.

"Surgery" means the medical diagnosis and treatment of injury, deformity or disease by manual and instrumental operations. For reimbursement purposes, surgical procedures are those designated in CPT as procedure codes 10000 to 69999.

"Swing-bed day" means a day in which ((an inpatient)) a client is receiving skilled nursing services in a hospital designated swing bed at the hospital's census hour. The hospital swing bed must be certified by the ((health care financing administration (HCFA))) Centers for Medicare and Medicaid Services (CMS) for both acute care and skilled nursing services.

((**"Teaching hospital"** means, for purposes of the teaching hospital assistance program disproportionate share hospital (THAPDSH), the University of Washington Medical Center and Harborview Medical Center.))

"Technical component" means the part of a procedure or service that relates to the equipment set-up and technician's time, or the part of a ((reimbursement)) procedure and service payment that recognizes the equipment cost and technician time.

"Tertiary care hospital" means a specialty care hospital providing highly specialized services to clients with more complex medical needs than acute care services.

"Total patient days" means all patient days in a hospital for a given reporting period, excluding days for skilled nursing, nursing care, and observation days.

"Transfer" means to move a client from one acute care facility or distinct unit to another.

"Transferring hospital" means the hospital or distinct unit that transfers a client to another acute care facility.

"Trauma care facility" means a facility certified by the department of health as a level I, II, III, IV, or V facility. See chapter 246-976 WAC.

"Trauma care service" - See department of health's WAC 246-976-935.

"UB-04" is the uniform billing document required for use nationally, beginning on May 23, 2007, by hospitals, nursing facilities, hospital-based skilled nursing facilities,

home health agencies, and hospice agencies in billing third party payers for services provided to patients. This includes the current national uniform billing data element specifications developed by the National Uniform Billing Committee and approved and/or modified by the Washington State Payer Group or the department.

"UB-92" ((means)) is the uniform billing document ((intended for use nationally by hospitals, nonhospital-based acute PM&R (Level B) nursing facilities, hospital-based skilled nursing facilities, home health, and hospice agencies in billing third party payers for services provided to patients)) discontinued for billing claims submitted on and after May 23, 2007.

"Unbundled services" means ((services which are excluded from the DRG payment to a hospital)) interventions that are not integral to the major procedure and that are paid separately.

"Uncompensated care" - See **"charity care."**

"Uniform cost reporting requirements" means a standard accounting and reporting format as defined by medicare.

"Uninsured ((indigent)) patient" means an individual who ((has no health insurance coverage or has insufficient health insurance or other resources to cover the cost of)) is not covered by insurance for provided inpatient and/or outpatient hospital services.

"Usual and customary charge (UCC)" means the charge customarily made to the general public for a health-care procedure or service, or the rate charged other contractors for the service if the general public is not served.

"Vendor rate increase" means an inflation adjustment determined by the legislature, that may be used to periodically increase ((reimbursement)) rates for payment to vendors, including ((health care)) healthcare providers, that do business with the state.

WSR 07-14-053

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 28, 2007, 9:31 a.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The rules update and clarify information regarding the department's inpatient psychiatric services coverage (including adding applicable definitions), payment policy, and general policy for hospital care. The rules also clarify how the department pays a hospital for covered dental-related services that are provided in the hospital's operating room. Also, effective for dates of admission on and after July 1, 2007, the base community psychiatric hospitalization payment method for medicaid and state children's health insurance program (SCHIP) clients and non-medicaid and non-SCHIP clients is no longer used. (A "non-medicaid or non-SCHIP client" is defined as a client eligible under the general assistance-unemployable (GA-U) program, the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA), the psychiatric indigent inpatient (PII) program, or other

state-administered program, as determined by the department.)

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-1100, 388-550-2600, and 388-550-2650.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-10-093 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-550-1100 (5)(b)(iv) as an inpatient stay is not indicated;

WAC 388-550-2600 (2)(a)(i) Is assigned... ~~administrative~~ prior authorization...

WAC 388-550-2600 (2)(b) "Certification" means a clinical determination by a an MHD... The certification process occurs concurrently with the ~~administrative~~ prior authorization process.

WAC 388-550-2600 (2)(c) "~~I.D.~~" "IMD" See...

WAC 388-550-2600 (2)(d) "~~Institution for Mental Diseases (I.D.)~~ (IMD)" means a... The MHD designates... for an ~~I.D.~~ IMD.

WAC 388-550-2600 (2)(j) "Prior authorization" means an administrative process by which hospital ~~provides~~ providers must obtain a an MHD designee's ~~certification~~ authorization for a client's... The ~~administrative~~ prior authorization...

WAC 388-550-2600 (2)(l) "Retrospective authorization" means a process... unit providers must obtain a an MHD designee's certification after services have been initiated for a medical assistance client. Retrospective authorization can be prior to discharge or after discharge. This process... prevented a prior authorization request, or when the client has been determined to be eligible for medical assistance after discharge.

WAC 388-550-2600 (3)(c) Hospitals that provide active psychiatric treatment (~~according to WAC 246-322-0170~~) outside of a physician according to WAC 246-322-170.

WAC 388-550-2600 (3)(d) Free-standing... as an institution for mental diseases (~~I.D.~~) (IMD).

WAC 388-550-2600(4) An MHD designee has the authority to approve or deny a request for initial certification for a client's voluntary inpatient psychiatric admission and will respond to the hospital's or hospital unit's request for initial certification within two hours of the request. An MHD designee's certification and authorization, or a denial, will be provided within twelve hours of the request. Authorization must be requested prior to admission. If the hospital chooses to admit a client without prior authorization due to staff shortages, the request for an initial certification must be submitted the same calendar day (which begins at midnight) as the admission. In this case, the hospital assumes the risk for denial as the MHD designee may or may not authorize the care for that day.

WAC 388-550-2600(4) (5)(b)(i)(C) Be prior... See subsection (7) (8) of this section... (D)(II) Proper treatment... of a physician (according to WAC 246-322-170);

WAC 388-550-2600(4) (5)(b)(i)(D)(V) For admission to long term inpatient psychiatric care, the client has been diagnosed with a severe psychiatric disorder that warrants extended care in the most intensive, restrictive setting. The

client's principle diagnosis must be an MHD covered diagnosis.

WAC 388-550-2600(4) (5)(b)(i)(D)(V)(III)(A) Does not require prior authorization by a ~~an~~ MHD...

WAC 388-550-2600(5) (6)(b)(iii) When submitting a claim, must include... copy of ~~Involuntary treatment Act Patient Claim Information for (DSHS 13-628)~~ an initial certification authorization for admission to inpatient psychiatric care form, or an extension certification authorization for continued inpatient psychiatric care form.

WAC 388-550-2600(6) (7) To be paid... request from a an MHD designee...

WAC 388-550-2600(6) (7)(a) If the client... must notify the MHD designee ~~prior to the change of status within twenty-four hours of the change. Changes in legal status may result in issuance of a new certification and authorization. Any previously authorized days under the previous legal status that are past the date of the change in legal status are not billable.~~ (b) If an application... must be submitted ~~by the close of the next business day within twenty-four hours of the application;~~ (c) If there is... diagnosis to a ~~mental disorder~~ an MHD covered diagnosis, the request for certification and prior authorization must be submitted within ~~two business days~~ twenty-four hours of the change; (d) If there is a request... to the end of the initial ~~allowed~~ authorized days of services...

WAC 388-550-2600(6) (7)(d) If there is... end of the initial ~~allowed~~ authorized days of services (see subsections (10) ~~and~~ (11) and (12) of this section for payment...

WAC 388-550-2600(6) (7)(f) If a client who has been authorized for inpatient care by the MHD designee has been discharged or left against medical advice prior to the expiration of previously authorized days, a hospital provider or hospital unit provider must notify the MHD designee within twenty-four hours of discharge. Any previously authorized days past the date the client was discharged or left the hospital are not billable.

WAC 388-550-2600(7) (8) ~~A~~ An MHD designee... extension, or transfer ~~that was not prior authorized~~ when the hospital provider or hospital unit provider did not notify the MHD designee within the notification timeframes stated in this section. For a retrospective certification request prior to discharge, The the MHD designee responds to the hospital or hospital unit within three working days two hours of the request, and provides certification and authorization or a denial within twelve hours of the request. For retrospective certification requests after the discharge, the hospital or hospital unit must submit all the required clinical information to the MHD designee within thirty days of discharge. The MHD designee provides a response within thirty days of the receipt of the required clinical documentation. All retrospective certifications must meet the requirements in this section. An authorization or denial is based on the client's condition and the services provided at the time of admission and over the course of the hospital stay, until the date of notification or discharge, as applicable. in accordance with the requirements of this section, and bases an approval or denial: (a) ~~On the client's condition at the time of admission to the hospital or hospital unit if the request is for retrospective authorization of admission;~~ or (b) On the client's condition at the time

of the end of the allowable day of service in that hospital or hospital unit if the request is for retrospective authorization for a length of stay extension or for a transfer.

WAC 388-550-2600(8) (9).

WAC 388-550-2600(9) (10).

WAC 388-550-2600(10) (11).

WAC 388-550-2600(11) (12) The number of ~~paid~~ initial days authorized for an involuntary psychiatric admission is limited to twenty days from the date of detention. ~~If the length of stay exceeds twenty days, the~~ The hospital provider or hospital unit provider must submit the extension certification authorization for continued inpatient psychiatric care form request a length of stay extension prior to the twentieth day of service twenty-four hours prior to the expiration of the previously authorized days. Extension requests may not be denied for a person detained under ITA unless a less restrictive alternative is identified by the MHD designee and approved by the court. Extension requests may not be denied for youths detained under ITA who have been referred to the children's long-term inpatient program unless a less restrictive alternative is identified by the MHD designee and approved by the court.

WAC 388-550-2600(12) (13) The department pays the administrative day rate for any authorized days of ~~voluntary inpatient psychiatric stay~~ that meet the administrative day definition in WAC 388-550-1050, and when all of the following conditions are met: (a) The client's legal status is voluntary admission; (b) The client's condition is no longer medically necessary; (c) The client's condition no longer meets the intensity of service criteria; (d) Less restrictive alternative treatments are not available, posing barrier to the client's safe discharge; and (e) The hospital or hospital unit and the MHD designee mutually agree that the administrative day is appropriate.

WAC 388-550-2600(13) (14) The hospital provider or hospital unit provider will use the MHD approved due process for conflict resolution regarding medical necessity determinations provided by the MHD designee.

WAC 388-550-2600(14) (15) In order for a an MHD designee... plan of care, a the hospital...

WAC 388-550-2600(15) (16) If the number of...

A final cost-benefit analysis is available by contacting Larry Linn, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1856, fax (360) 753-9152, e-mail linnld@dsh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 25, 2007.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 01-16-142, filed 7/31/01, effective 8/31/01)

WAC 388-550-1100 Hospital ((~~coverage~~) care — General. (1) The ((~~medical assistance administration (MAA) covers~~)) department:

(a) Pays for the admission of an eligible medical assistance client to a hospital only when the client's attending physician orders admission and when the admission and treatment provided ((meet the requirements of)):

(i) Are covered according to WAC 388-501-0050, 388-501-0060 and 388-501-0065;

(ii) Are medically necessary as defined in WAC 388-500-0005;

(iii) Are determined according to WAC 388-501-0165 when prior authorization is required;

(iv) Are authorized when required under this chapter; and

(v) Meet applicable state and federal requirements.

(b) For ((~~nonemergent~~)) hospital admissions, defines "attending physician" ((means)) as the client's primary care provider, or the primary provider of care to the client at the time of ((hospitalization. For emergent admissions, "attending physician" means the staff member who has hospital admitting privileges and evaluates the client's medical condition upon the client's arrival at the hospital)) admission.

(2) Medical record documentation of hospital services must meet the requirements in WAC 388-502-0020(((+; Records and reports — Medical record system))).

(3) ((~~In areas where the choice of hospitals is limited by managed care or selective contracting, the department is not responsible for payment under fee-for-service for hospital care and/or services:~~

(a) Provided to clients enrolled in an MAA managed care plan, unless the services are excluded from the health carrier's capitation contract with MAA and are covered under the medical assistance program; or)) The department:

(a) Pays for a hospital covered service provided to an eligible medical assistance client enrolled in a department managed care organization (MCO) plan, under the fee-for-service program if the service is excluded from the MCO's capitation contract with the department and meets prior authorization requirements. (See WAC 388-550-2600 for inpatient psychiatric services.)

(b) ((~~Received by a Medicaid-eligible~~)) Does not pay for nonemergency services provided to a medical assistance client from a nonparticipating hospital in a selective contracting area (SCA) unless exclusions in WAC 388-550-4600 and 388-550-4700 apply. The department's selective contracting program and selective contracting payment limitations end for hospital claims with dates of admission before July 1, 2007.

(4) The department ((~~provides chemical-dependent pregnant Medicaid-eligible clients~~)) pays up to twenty-six days of

inpatient hospital care for hospital-based detoxification, medical stabilization, and drug treatment ~~((when:~~

~~(a) An alcoholism, drug addiction and treatment support act ADATSA assessment center verifies the need for the inpatient care; and~~

~~(b) The hospital chemical dependency treatment unit is certified by the division of alcohol and substance abuse)) for chemical dependent pregnant clients eligible under the chemical-using pregnant (CUP) women program.~~

~~See ((WAC 388-550-6250 for outpatient hospital services for chemical dependent pregnant Medicaid clients)) WAC 388-533-0701 through 0730.~~

~~(5) The department ((covers)) pays for inpatient hospital detoxification of acute alcohol or other drug intoxication ((only in a hospital having a detoxification provider agreement with MAA to perform these services)) when the services are provided to an eligible client:~~

~~(a) In a detoxification unit in a hospital that has a detoxification provider agreement with the department to perform these services and the services are approved by the division of alcohol and substance abuse (DASA); or~~

~~(b) In an acute hospital and all of the following criteria are met:~~

~~(i) The hospital does not have a detoxification specific provider agreement with DASA;~~

~~(ii) The hospital provides the care in a medical unit;~~

~~(iii) Non-hospital based detoxification is not medically appropriate for the client;~~

~~(iv) The client does not require medically necessary inpatient psychiatric care and it is determined that an approval from a regional support network (RSN) or a mental health division (MHD) designee as an inpatient stay is not indicated;~~

~~(v) The client's stay qualifies as an inpatient stay;~~

~~(vi) The client is not participating in the department's chemical-using pregnant (CUP) women program; and~~

~~(vii) The client's principal diagnosis meets the department's medical inpatient detoxification criteria listed in the department's published billing instructions.~~

~~(6) The department covers medically necessary dental-related services provided to an eligible client((s)) in a ((hospital setting for the care or treatment of teeth, jaws, or structures directly supporting the teeth:~~

~~(a) If the procedure requires hospitalization; and~~

~~(b) A physician or dentist provides or directly supervises such services)) hospital-based dental clinic when the services:~~

~~(a) Are provided in accordance with chapter 388-535 WAC; and~~

~~(b) Are billed on the American Dental Association (ADA) or health care financing administration (HCFA) claim form.~~

~~(7) The department pays a hospital((s)) for covered dental-related services ((provided in special care units when the provisions in WAC 388-550-2900(13) are met)), including oral and maxillofacial surgeries, that are provided in the hospital's operating room, when:~~

~~(a) The covered dental-related services are medically necessary and provided in accordance with chapter 388-535 WAC;~~

~~(b) The covered dental-related services are billed on a UB claim form; and~~

~~(c) At least on of the following is true:~~

~~(i) The dental-related service(s) is provided to an eligible medical assistance client on an emergency basis;~~

~~(ii) The client is eligible under the division of developmental disability program;~~

~~(iii) The client is age eight or younger; or~~

~~(iv) The dental service is prior authorized by the department.~~

~~(8) ((All services are subject to review and approval as stated in WAC 388-501-0050.~~

~~(9)) For inpatient voluntary or involuntary psychiatric admissions, see WAC 388-550-2600 ((and chapter 246-318 WAC)).~~

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-2600 Inpatient psychiatric services.

~~((For psychiatric hospitalizations, including involuntary admissions, see chapter 246-318 [246-320] WAC)) (1) The department, on behalf of the mental health division (MHD), regional support networks (RSNs) and prepaid inpatient health plans (PIHPs), pays for covered inpatient psychiatric services for a voluntary or involuntary inpatient psychiatric admission of an eligible medical assistance client, subject to the limitation and restrictions in this section and other published rules.~~

~~(2) The following definitions and abbreviations and those found in WAC 388-550-0005 and 388-550-1050 apply to this section (where there is any discrepancy, this section prevails):~~

~~(a) "Authorization number" refers to a number that is required on a claim in order for a provider to be paid for providing psychiatric inpatient services to a medical assistance client. An authorization number:~~

~~(i) Is assigned when the certification process and prior authorization process has occurred;~~

~~(ii) Identifies a specific request for the provision of psychiatric inpatient services to a medical assistance client;~~

~~(iii) Verifies when prior or retrospective authorization has occurred;~~

~~(iv) Will not be rescinded once assigned; and~~

~~(v) Does not guarantee payment.~~

~~(b) "Certification" means a clinical determination by an MHD designee that a client's need for a voluntary or involuntary inpatient psychiatric admission, length of stay extension, or transfer has been reviewed and, based on the information provided, meets the requirements for medical necessity for inpatient psychiatric care. The certification process occurs concurrently with the prior authorization process.~~

~~(c) "IMD" See "Institution for Mental Diseases."~~

~~(d) "Institution for Mental Diseases (IMD)" means a hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. The MHD designates whether a facility meets the definition for an IMD.~~

(e) "Involuntary admission" refer to chapters 71.05 and 71.34 RCW.

(f) "Mental health division (MHD)" is the unit within the department of social and health services (DSHS) authorized to contract for and monitor delivery of mental health programs. MHD is also known as the state mental health authority.

(g) "Mental health division designee" or "MHD designee" means a professional contact person authorized by MHD, who operates under the direction of a regional support network (RSN) or a prepaid inpatient health plan (PIHP).

(h) "PIHP" see "Prepaid inpatient health plan."

(i) "Prepaid inpatient health plan (PIHP)" see WAC 388-865-0300.

(j) "Prior authorization" means an administrative process by which hospital providers must obtain an MHD designee's for a client's inpatient psychiatric admission, length of stay extension, or transfer. The prior authorization process occurs concurrently with the certification process.

(k) "Regional support network (RSN)" see WAC 388-865-0200.

(l) "Retrospective authorization" means a process by which hospital providers and hospital unit providers must obtain an MHD designee's certification after services have been initiated for a medical assistance client. Retrospective authorization can be prior to discharge or after discharge. This process is allowed only when circumstances beyond the control of the hospital or hospital unit provider prevented a prior authorization request, or when the client has been determined to be eligible for medical assistance after discharge.

(m) "RSN" see "regional support network."

(n) "Voluntary admission" refer to chapters 71.05 and 71.34 RCW.

(3) The following department of health (DOH)-licensed hospitals and hospital units are eligible to be paid for providing inpatient psychiatric services to eligible medical assistance clients, subject to the limitations listed:

(a) Medicare-certified distinct part psychiatric units;

(b) State-designated pediatric psychiatric units;

(c) Hospitals that provide active psychiatric treatment outside of a medicare-certified or state-designated psychiatric unit, under the supervision of a physician according to WAC 246-322-170; and

(d) Free-standing psychiatric hospitals approved as an institution for mental diseases (IMD).

(4) An MHD designee has the authority to approve or deny a request for initial certification for a client's voluntary inpatient psychiatric admission and will respond to the hospital's or hospital unit's request for initial certification within two hours of the request. An MHD designee's certification and authorization, or a denial, will be provided within twelve hours of the request. Authorization must be requested prior to admission. If the hospital chooses to admit the client without prior authorization due to staff shortages, the request for an initial certification must be submitted the same calendar day (which begins at midnight) as the admission. In this case, the hospital assumes the risk for denial as the MHD designee may or may not authorize the care for that day.

(5) To be paid for a voluntary inpatient psychiatric admission:

(a) The hospital provider or hospital unit provider must meet the applicable general conditions of payment criteria in WAC 388-502-0100; and

(b) The voluntary inpatient psychiatric admission must meet the following:

(i) For a client eligible for medical assistance, the admission to voluntary inpatient psychiatric care must:

(A) Be medically necessary as defined in WAC 388-500-0005;

(B) Be ordered by an agent of the hospital who has the clinical or administrative authority to approve an admission;

(C) Be prior authorized and meet certification and prior authorization requirements as defined in subsection (2) of this section. See subsection (8) of this section for a voluntary inpatient psychiatric admission that was not prior authorized and requires retrospective authorization by the client's MHD designee; and

(D) Be verified by receipt of a certification form dated and signed by an MHD designee (see subsection (2) of this section). The form must document at least the following:

(I) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(II) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician (according to WAC 246-322-170);

(III) The inpatient services can reasonably be expected to improve the client's level of functioning or prevent further regression of functioning;

(IV) The client has been diagnosed as having an emotional or behavioral disorder, or both, as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association; and

(V) The client's principle diagnosis must be an MHD covered diagnosis.

(ii) For a client eligible for both medicare and a medical assistance program, the department pays secondary to medicare.

(iii) For a client eligible for both medicare and a medical assistance program and who has not exhausted medicare lifetime benefits, the hospital provider or hospital unit provider must notify the MHD designee of the client's admission if the dual eligibility status is known. The admission:

(A) Does not require prior authorization by an MHD designee; and

(B) Must be in accordance with medicare standards.

(iv) For a client eligible for both medicare and a medical assistance program who has exhausted medicare lifetime benefits, the admission must have prior authorization by a MHD designee.

(v) When a liable third party is identified (other than medicare) for a client eligible for a medical assistance program, the hospital provider or hospital unit provider must obtain a MHD designee's authorization for the admission.

(6) To be paid for an involuntary inpatient psychiatric admission:

(a) The involuntary inpatient psychiatric admission must be in accordance with the admission criteria specified in chapters 71.05 and 71.34 RCW; and

(b) The hospital provider or hospital unit provider:

(i) Must be certified by the MHD in accordance with chapter 388-865 WAC;

(ii) Must meet the applicable general conditions of payment criteria in WAC 388-502-0100; and

(iii) When submitting a claim, must include a completed and signed copy of an Initial Certification Authorization form Admission to Inpatient Psychiatric Care form, or an Extension Certification Authorization for Continued Inpatient Psychiatric Care form.

(7) To be paid for providing continued inpatient psychiatric services to a medical assistance client who has already been admitted, the hospital provider or hospital unit provider must request from an MHD designee within the time frames specified, certification and authorization as defined in subsection (2) of this section for any of the following circumstances:

(a) If the client converts from involuntary (legal) status to voluntary status, or from voluntary to involuntary (legal) status as described in chapter 71.05 or 71.34 RCW, the hospital provider or hospital unit provider must notify the MHD designee within twenty-four hours of the change. Changes in legal status may result in issuance of a new certification and authorization. Any previously authorized days under the previous legal status that are past the date of the change in legal status are not billable;

(b) If an application is made for determination of a patient's medical assistance eligibility, the request for certification and prior authorization must be submitted within twenty-four hours of the application;

(c) If there is a change in the client's principal ICD9-CM diagnosis to an MHD covered diagnosis, the request for certification and prior authorization must be submitted within twenty-four hours of the change;

(d) If there is a request for a length of stay extension for the client, the request for certification and prior authorization must be submitted prior to the end of the initial authorized days of services (see subsections (11) and (12) of this section for payment methodology and payment limitations); and

(e) If the client is to be transferred from one community hospital to another community hospital for continued inpatient psychiatric care, the request for certification and prior authorization must be submitted prior to the transfer.

(f) If a client who has been authorized for inpatient care by the MHD designee has been discharged or left against medical advice prior to the expiration of previously authorized days, a hospital provider or hospital unit provider must notify the MHD designee within twenty-four hours of discharge. Any previously authorized days past the date the client was discharged or left the hospital are not billable.

(8) An MHD designee has the authority to approve or deny a request for retrospective certification for a client's voluntary inpatient psychiatric admission, length of stay extension, or transfer when the hospital provider or hospital unit provider did not notify the MHD designee within the notification timeframes stated in this section. For a retrospective certification request prior to discharge, the MHD designee responds to the hospital or hospital unit within two hours of the request, and provides certification and authorization or a denial within twelve hours of the request. For retrospective certification requests after the discharge, the hospital or hos-

pital unit must submit all the required clinical information to the MHD designee within thirty days of discharge. The MHD designee provides a response within thirty days of the receipt of the required clinical documentation. All retrospective certifications must meet the requirements in this section. An authorization or denial is based on the client's condition and the services provided at the time of admission and over the course of the hospital stay, until the date of notification or discharge, as applicable.

(9) To be paid for a psychiatric inpatient admission of an eligible medical assistance client, the hospital provider or hospital unit provider must submit on the claim form the authorization (see subsection (2)(a) for definition of prior authorization and retrospective authorization).

(10) The department uses the payment methods described in WAC 388-550-2650 through 388-550-5600, as appropriate, to pay a hospital and hospital unit for providing psychiatric services to medical assistance clients, unless otherwise specified in this section.

(11) Covered days for a voluntary psychiatric admission are determined by a MHD designee utilizing MHD approved utilization review criteria.

(12) The number of initial days authorized for an involuntary psychiatric admission is limited to twenty days from date of detention. The hospital provider or hospital unit provider must submit the Extension Certification Authorization for Continued Inpatient Psychiatric Care form twenty-four hours prior to the expiration of the previously authorized days. Extension requests may not be denied for a person detained under ITA unless a less restrictive alternative is identified by the MHD designee and approved by the court. Extension requests may not be denied for youths detained under ITA who have been referred to the children's long-term inpatient program unless a less restrictive alternative is identified by the MHD designee and approved by the court.

(13) The department pays the administrative day rate for any authorized days that meet the administrative day definition in WAC 388-550-1050, and when all of the following conditions are met:

(a) The client's legal status is voluntary admission;

(b) The client's condition is no longer medically necessary;

(c) The client's condition no longer meets the intensity of service criteria;

(d) Less restrictive alternative treatments are not available, posing barrier to the client's safe discharge; and

(e) The hospital or hospital unit and the MHD designee mutually agree that the administrative day is appropriate.

(14) The hospital provider or hospital unit provider will use the MHD approved due process for conflict resolution regarding medical necessity determinations provided by the MHD designee.

(15) In order for an MHD designee to implement and participate in a medical assistance client's plan of care, the hospital provider or hospital unit provider must provide any clinical and cost of care information to the MHD designee upon request. This requirement applies to all medical assistance clients admitted for:

(a) Voluntary inpatient psychiatric services; and

(b) Involuntary inpatient psychiatric services, regardless of payment source.

(16) If the number of days billed exceeds the number of days authorized by the MHD designee for any claims paid, the department will recover any unauthorized days paid.

AMENDATORY SECTION (Amending WSR 07-06-043, filed 3/1/07, effective 4/1/07)

WAC 388-550-2650 Base community psychiatric hospitalization payment method for medicaid and SCHIP clients and non-medicaid and non-SCHIP clients. (1) Effective for dates of admission from July 1, 2005 through June 30, 2007, and in accordance with legislative directive, the department implemented two separate base community psychiatric hospitalization payment rates, one for medicaid and SCHIP clients and one for non-medicaid and non-SCHIP clients. Effective for dates of admission on and after July 1, 2007, the base community psychiatric hospitalization payment method for medicaid and SCHIP clients and non-medicaid and non-SCHIP clients is no longer used. (For the purpose of this section, a "non-medicaid or non-SCHIP client" is defined as a client eligible under the general assistance-unemployable (GA-U) program, the Alcoholism and Drug Addiction Treatment and Support Act (ADATSA), the psychiatric indigent inpatient (PII) program, or other state-administered program, as determined by the department.)

(a) The medicaid base community psychiatric hospital payment rate is a minimum per diem for claims for psychiatric services provided to medicaid and SCHIP covered patients, paid to hospitals that accept commitments under the involuntary treatment act (ITA).

(b) The non-medicaid base community psychiatric hospital payment rate is a minimum allowable per diem for claims for psychiatric services provided to indigent patients paid to hospitals that accept commitments under the ITA.

(2) For the purposes of this section, "allowable" means the calculated allowed amount for payment based on the payment method before adjustments, deductions, or add-ons.

(3) To be eligible for payment under the base community psychiatric hospitalization payment method:

(a) A client's inpatient psychiatric voluntary hospitalization must:

(i) Be medically necessary as defined in WAC 388-500-0005. In addition, the department considers medical necessity to be met when:

(A) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(B) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician;

(C) The inpatient services can be reasonably expected to improve the client's condition or prevent further regression so that the services will no longer be needed; and

(D) The client, at the time of admission, is diagnosed as having an emotional/behavioral disturbance as a result of a mental disorder as defined in the current published Diagnostic and Statistical Manual of the American Psychiatric Association. The department does not consider detoxification to be psychiatric in nature.

(ii) Be approved by the professional in charge of the hospital or hospital unit.

(iii) Be authorized by the appropriate mental health division (MHD) designee prior to admission for covered diagnoses.

(iv) Meet the criteria in WAC 388-550-2600.

(b) A client's inpatient psychiatric involuntary hospitalization must:

(i) Be in accordance with the admission criteria in chapters 71.05 and 71.34 RCW.

(ii) Be certified by a MHD designee.

(iii) Be approved by the professional in charge of the hospital or hospital unit.

(iv) Be prior authorized by the regional support network (RSN) or its designee.

(v) Meet the criteria in WAC 388-550-2600.

(4) The provider requesting payment must complete the appropriate sections of the Involuntary Treatment Act patient claim information (form DSHS 13-628) in triplicate and route both the form and each claim form submitted for payment, to the county involuntary treatment office.

(5) Payment for all claims is based on covered days within a client's approved length of stay (LOS), subject to client eligibility and department-covered services.

(6) The medicaid base community psychiatric hospitalization payment rate applies only to a medicaid or SCHIP client admitted to a non-state-owned free-standing psychiatric hospital located in Washington state.

(7) The non-medicaid base community psychiatric hospitalization payment rate applies only to a non-medicaid or SCHIP client admitted to a hospital:

(a) Designated by the department as an ITA-certified hospital; or

(b) That has a department-certified ITA bed that was used to provide ITA services at the time of the non-medicaid or non-SCHIP admission.

(8) For inpatient hospital psychiatric services provided to eligible clients for dates of admission on and after July 1, 2005, through June 30, 2007, the department pays:

(a) A hospital's department of health (DOH)-certified distinct psychiatric unit as follows:

(i) For medicaid and SCHIP clients, inpatient hospital psychiatric services are paid using the department-specific non-diagnosis related group (DRG) payment method.

(ii) For non-medicaid and non-SCHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-~~(only)~~ administered program DRG allowable (including the high cost outlier allowable, if applicable), or the department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(b) A hospital without a DOH-certified distinct psychiatric unit as follows:

(i) For medicaid and SCHIP clients, inpatient hospital psychiatric services are paid using:

(A) The DRG payment method; or

(B) The department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system.

(ii) For non-medicaid and SCHIP clients, the allowable for inpatient hospital psychiatric services is the greater of:

(A) The state-~~((only))~~ administered program DRG allowable (including the high cost outlier allowable, if applicable), or the department-specified non-DRG payment method if no relative weight exists for the DRG in the department's payment system; or

(B) The non-medicaid base community psychiatric hospitalization payment rate multiplied by the covered days.

(c) A non-state-owned free-standing psychiatric hospital as follows:

(i) For medicaid and SCHIP clients, inpatient hospital psychiatric services are paid using as the allowable, the greater of:

(A) The ratio of costs-to-charges (RCC) allowable; or

(B) The medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(ii) For non-medicaid and non-SCHIP clients, inpatient hospital psychiatric services are paid the same as for medicaid and SCHIP clients, except the base community inpatient psychiatric hospital payment rate is the non-medicaid rate, and the RCC allowable is the state-~~((only))~~ administered program RCC allowable.

(d) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the certified public expenditure (CPE) payment program, as follows:

(i) For medicaid and SCHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 388-550-4650.

(ii) For non-medicaid and non-SCHIP clients, inpatient hospital psychiatric services are paid using the methods identified in WAC 388-550-4650 in conjunction with the non-medicaid base community psychiatric hospitalization payment rate multiplied by covered days.

(e) A hospital, or a distinct psychiatric unit of a hospital, that is participating in the critical access hospital (CAH) program, as follows:

(i) For medicaid and SCHIP clients, inpatient hospital psychiatric services are paid using the department-specified non-DRG payment method.

(ii) For non-medicaid non-SCHIP clients, inpatient hospital psychiatric services are paid using the department-specified non-DRG payment method.

state guidelines. The rules add new sections to: Ensure all disproportionate share hospital (DSH) programs are identified in rule and ensure that sufficient program detail is provided; amend sections pertaining to DSH requirements to ensure consistency with federal guidelines; describe how hospitals qualify for DSH payments; add definitions that apply to DSH payments; amend sections pertaining to the certified public expenditure (CPE) payment program to clarify CPE payment program policies and ensure consistency with federal guidelines embodied in the state plan; and amend sections pertaining to supplemental distributions to approved trauma centers in response to hospital provider input to the department; and incorporate into rule that the department is terminating the upper payment limit (UPL) program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-4925, 388-550-4935, 388-550-4670, 388-550-4900, 388-550-5000, 388-550-5125, 388-550-5130, 388-550-5150, 388-550-5200, 388-550-5210, 388-550-5220, 388-550-5400, 388-550-5410, 388-550-5425, and 388-550-5450.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.500.

Adopted under notice filed as WSR 07-10-101, 07-10-102, and 07-10-103 on May 1, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-550-4900(2) No hospital has a legal entitlement to any DSH payment. &A hospital may receive DSH...

WAC 388-550-4900 (3)(a) "Base year" means the hospital fiscal year or medicare cost report year that ended during...

Subsection (3)(g) "Low income utilization rate (LIUR)" means...the sum of these two percentages: (1) the ratio of payments...for patient charity care charges services provided...the ratio of inpatient charity care charges...

Subsection (3)(h) "Medicaid inpatient utilization rate (MIPUR)" means...its hospital fiscal year or medicare cost report year, divided by...

Subsection (3)(i) "Medicare cost report year" means the twelve-month period included in the annual cost report a medicare-certified hospital or institutional provider is required by law to submit to its fiscal intermediary.

Subsection (3)(j) "Nonrural hospital" means...

Subsection (3)~~(j)~~(k)

Subsection (3)~~(k)~~(l) "Service year" means the one...services. The service year may refer to a hospital's fiscal year or medicare cost report year, or to the a state fiscal year.

Subsection (3)~~(l)~~(m)

Subsection (3)~~(m)~~(n) "Uninsured patient" means an individual...When determining the cost...whether the service would have been covered under medicaid and how much the department would have paid for the service had the patient been eligible for medicaid.

WAC 388-550-4900(4) To be considered for a DSH payment for each SFY, a...by the due date. The due date will be posted on the department's web site. ~~The department will also send notice, by electronic mail, of the DSH application due date to all hospitals that applied for or received DSH payments in the previous SFY.~~

WSR 07-14-090

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed June 29, 2007, 2:35 p.m., effective August 1, 2007]

Effective Date of Rule: August 1, 2007.

Purpose: The department's new rules and amendments to existing rules ensure clear and consistent policies for hospital reimbursement and ensure compliance with federal and

WAC 388-550-4900 (10)(e) Plus any adjustments required and/or authorized by federal statute or regulation.

WAC 388-550-4900(18) If a hospital's submission of incorrect information...recoup the overpayment amount, ~~with interest~~, in accordance with the provisions of...

WAC 388-550-4935(3) A hospital that did not...for DSH unless it ~~meets the obstetric services requirement continues to be classified as an acute care hospital serving pediatric and/or adult patients~~. See WAC 388-550-4900 (5)(b). ~~The hospital must also meet the for the obstetric services and utilization rate requirement requirements for DSH eligibility. See WAC 388-550-4900 (5)(a).~~

WAC 388-550-5125(3) The department makes PIIDSH payments to a an eligible hospital on a claim-specific basis.

WAC 388-550-5130 (section caption) Payment method—Institution for mental diseases disproportionate share hospital (IMDDSH) and institution for mental diseases (IMD) state grants.

WAC 388-550-5130(1) A ~~mental psychiatric~~ hospital owned and operated by the state of Washington...

WAC 388-550-5130(2) For the purposes of the IMDDSH program, the following definitions apply:

(a) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than sixteen beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(b) "Psychiatric community hospital" means a psychiatric hospital other than a state-owned and operated hospital.

(c) "Psychiatric hospital" means an institution which is primarily engaged in providing psychiatric services for the diagnosis and treatment of mentally ill persons. The term applies to a medicare-certified distinct psychiatric care unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital.

(d) "State-owned and operated psychiatric hospital" means Eastern State Hospital and Western State Hospital.

WAC 388-550-5130(3) Except as provided in subsection (4) of this section, a A free-standing psychiatric community hospital facility, regardless of location, is...

(a) ...

(b) Any other disproportionate...payment from the department. See WAC 388-550-4800 regarding payment for psychiatric claims for clients eligible under the medical care services programs.

WAC 388-550-5130(~~(3)~~)(4) A ~~free-standing~~ psychiatric facility community hospital within the state of Washington that is designated by the department as an IMD is eligible to receive IMDDSH payments if:

(a) IMDDSH funds remain available after the amounts appropriated for state-owned and operated psychiatric hospitals are exhausted; and

(b) The legislature provides funds specifically for this purpose.

WAC 388-550-5130(5) A psychiatric community hospital within the state of Washington that is designated by the department as an IMD is eligible to receive a state grant amount from the department if the legislature appropriates

~~general funds—state for IMDs~~ funds specifically for this purpose.

WAC 388-550-5130(6) An institution for mental diseases located out-of-state ~~IMD out of state~~, including an IMD located in a designated bordering city, is not eligible to receive a Washington state grant amount.

WAC 388-550-5130 (~~(4)~~)(7) Under...

WAC 388-550-5200 (1)(d) Be an in-state hospital. A hospital located out-of-state; or in a designated...

WAC 388-550-5220 (2)(d) Be a hospital that does not...as defined in WAC 388-550-~~5210~~4900 (3)(m).

WAC 388-550-5210(3) The department pays...each hospital's individual ~~SRHAPDSH~~ SRIAPDSH payment...

WAC 388-550-5210(4) The department's...an exception is required by federal statute or regulation. The...

WAC 388-550-5220 (2)(c) ~~Be an in-state or bordering city hospital that provided charity services to clients during the base year; and~~ (d) Be a hospital that does no...; and

Subsection (2)(d) Be an in-state or designated bordering city hospital that provided charity services to clients during the base year. For DSH purposes, the department considers as nonrural any hospital located in a designated bordering city.

WAC 388-550-5400(2) The PHDSH payments to a...according to WAC 388-550-4900(10).

WAC 388-550-5400(4) A hospital receiving payment...with the services provided during ~~the~~ state fiscal year 2006.

WAC 388-550-5410 (1)(c) Uninsured patients...must not include ~~the cost of~~ services that medicaid would not have paid for covered had the patients been medicaid eligible; and

WAC 388-550-5410(3)

(i) For state fiscal year (SFY) 2006, the deadline for all CPE hospitals to submit the federally required medicaid cost report schedules is June 30, 2007.

(ii) ~~For SFY 2007 and thereafter, each CPE hospital is required to submit the medicaid cost report schedules to the department within thirty days after the medicaid cost report is due to its medicare fiscal intermediary.~~

(iii) For hospitals with a December 31 year end, partial year medicaid cost report schedules for the period July 1, 2005 through December 31, 2005 must be submitted to the department by August 31, 2007.

(ii) For SFY 2007 and thereafter, each CPE hospital is required to submit the medicaid cost report schedules to the department within thirty days after the medicare cost report is due to its medicare fiscal intermediary.

A final cost-benefit analysis is available by contacting Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1835, fax (360) 753-9152, e-mail wimpeah@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 11, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 11, Repealed 0.

Date Adopted: June 29, 2007.

Blake D. Chard
for Robin Arnold Williams
Secretary

AMENDATORY SECTION (Amending WSR 06-11-100, filed 5/17/06, effective 6/17/06)

WAC 388-550-4670 CPE payment program—"Hold harmless" provision. ~~((+))~~ To meet legislative requirements, the department includes a "hold harmless" provision for hospital providers eligible for the certified public expenditure (CPE) payment program. Under the ~~((+))~~hold harmless~~((+))~~ provision, hospitals eligible for payments under the CPE payment program will receive no less in combined state and federal payments than they would have received under the methodologies otherwise in effect ~~((during state fiscal year (SFY) 2005))~~ as described in this section.

~~((2))~~ As part of the "hold harmless" payment calculation, the department ~~reprices inpatient hospital claims paid during the service year, beginning with service year SFY 2006, to determine how these claims would have been paid under the payment methodologies in effect during SFY 2005.~~

~~(3)~~ The department makes the final "hold harmless" calculation after the department receives the hospital's final audited Medicare cost report and audited financial statements for the service year. The department calculates the federally required prospective cost settlement at the same time. Any adjustments to state grants payments due to the cost settlement calculations will be made as payment adjustments to the next year's state grants. (1) For each state fiscal year, the department calculates what the hospital would have been paid under the methodologies otherwise in effect for the state fiscal year (SFY) as the sum of:

(a) The total payments for inpatient claims for patients admitted during the fiscal year, calculated by repricing the claims using:

(i) For SFYs 2006 and 2007, the inpatient payment method in effect during SFY 2005;

(ii) For SFYs 2008 and beyond, the payment method that would otherwise be in effect during the CPE payment program year if the CPE payment program had not been enacted; and

(b) The total net disproportionate share hospital and state grant payments paid for SFY 2005.

(2) For each SFY, the department determines total payments made under the program during the fiscal year, including the allowable federal portion of inpatient claims and disproportionate share hospital (DSH) payments, and the state and federal shares of any supplemental upper payment limit payments.

(3) The amount determined in subsection (2) of this section is subtracted from the amount calculated in subsection

(1) of this section to determine the gross state grant amount necessary to hold the hospital harmless. Prepaid hold harmless grants prepaid for the same SFY referred to in subsection (2) of this section are deducted from the gross hold harmless amount to determine the net amount due to or from the hospital.

(a) The department calculates an interim hold harmless grant amount approximately ten months after the SFY to include the paid claims for the same SFY admissions. Claims are subject to utilization review prior to the interim hold harmless calculation.

(b) The department calculates the final hold harmless grant amount at such time as the final allowable federal portions of program payments are determined. The procedure is the same as the interim grant calculation but it includes all additional claims that have been paid or adjusted since the interim hold harmless calculation. Claims are subject to utilization review prior to the final calculation of the hold harmless amount due to or from the hospital.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-4900 Disproportionate share hospital (DSH) payments—General provisions. (1) As required by section 1902 (a)(13)(A) of the Social Security Act, the department gives consideration to hospitals that serve a disproportionate number of low-income clients with special needs by making a payment adjustment to eligible hospitals in accordance with legislative direction and established prospective payment methods. The department considers this adjustment a disproportionate share hospital (DSH) payment.

(1) To qualify for a DSH payment for each state fiscal year (SFY), an in-state or bordering city hospital provider must submit to the department, the hospital's completed and final DSH application by the due date specified in that year's application letter.

(2) A hospital is a disproportionate share hospital eligible for the low-income disproportionate share hospital (LIDSH) program for a specific SFY if the hospital submits a DSH application for that specific year in compliance with subsection (1) and if both the following apply:

(a) The hospital's Medicaid inpatient utilization rate (MIPUR) is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, or the hospital's low-income utilization rate (LIUR) exceeds twenty-five percent; and

(b) At least two obstetricians who have staff privileges at the hospital have agreed to provide obstetric services to eligible individuals at the hospital. For the purpose of establishing DSH eligibility, "obstetric services" is defined as routine nonemergency delivery of babies. This requirement for two obstetricians with staff privileges does not apply to a hospital:

(i) That provides inpatient services predominantly to individuals under eighteen years of age; or

(ii) That did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(3) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(4) The department may consider a hospital a disproportionate share hospital for programs other than the LIDSH program if the hospital submits a DSH application for the specific year and meets the following criteria for the year specified in the application:

(a) The hospital has a MIPUR of not less than one percent; and

(b) The hospital meets the requirement of subsection (2)(b) of this section.

(5) To determine a hospital's eligibility for any DSH program, the department uses the criteria in this section and the information derived from the DSH application submitted by the hospital, subject to the following:

(a) Charity care. If the hospital's DSH application and audited financial statement for the relevant fiscal year do not agree on the amount for charity care, the department uses the lower amount claimed.

(b) Bad debt. If the hospital's DSH application does not allocate bad debt between insured and uninsured patients, the department assigns the entire amount of bad debt to insured patients.

(c) Total inpatient hospital days. If the hospital's DSH application lists a total number of inpatient hospital days that is lower than the total number in the hospital's Medicare cost report, the department uses the higher number to determine the hospital's MIPUR. The department may use the lower number to determine the hospital's MIPUR if, within ten business days of the department's written notification to the hospital of the discrepancy, the hospital submits documentation that supports the lower number of inpatient hospital days listed on the DSH application. Acceptable documentation includes, but is not limited to, a revised cost report submitted to Medicare that shows the correct data.

(6) Hospitals must submit annually to the department a copy of the hospital's charity and bad debt policy as part of the individual hospital's DSH application.

(7) The department administers the low-income disproportionate share hospital (LIDSH) program and may administer any of the following DSH programs:

(a) General assistance-unemployable disproportionate share hospital (GAUDSH);

(b) Small rural hospital assistance program disproportionate share hospital (SRHAPDSH);

(c) Small rural hospital indigent assistance program disproportionate share hospital (SRHIAPDSH);

(d) Nonrural hospital indigent assistance program disproportionate share hospital (NRHIAPDSH);

(e) Public hospital disproportionate share hospital (PHDSH); and

(f) Psychiatric indigent inpatient disproportionate share hospital (PHDSH).

(8) The department allows a hospital to receive any one or all of the DSH payment adjustments discussed in subsection (7) of this section when the hospital:

(a) Meets the requirements in subsection (4) of this section; and

(b) Meets the eligibility requirements for the particular DSH payment program, as discussed in WAC 388-550-5000 through 388-550-5400.

(9) The department ensures each hospital's total DSH payments do not exceed the individual hospital's DSH limit, defined as:

(a) The cost to the hospital of providing services to Medicaid clients, including clients served under Medicaid managed care programs;

(b) Less the amount paid by the state under the non-DSH payment provision of the state plan;

(c) Plus the cost to the hospital of providing services to uninsured patients;

(d) Less any cash payments made by uninsured clients; and

(e) Plus any adjustments required and/or authorized by federal regulation.

(10) The department's total annual DSH payments cannot exceed the state's DSH allotment for the federal fiscal year.

If the department's statewide allotment is exceeded, the department may adjust future DSH payments to each hospital to compensate for the amount overpaid. Adjustments will be made in the following program order:

(a) PHDSH;

(b) SRHAPDSH;

(c) NRHIAPDSH;

(d) SRHIAPDSH;

(e) GAUDSH;

(f) PHDSH; and

(g) LIDSH)) (42 USC 1396 (a)(13)(A)) and RCW 74.09.730, the department makes payment adjustments to eligible hospitals that serve a disproportionate number of low-income clients with special needs. These adjustments are also known as disproportionate share hospital (DSH) payments.

(2) No hospital has a legal entitlement to any DSH payment. A hospital may receive DSH payments only if:

(a) It satisfies the requirements of 42 USC 1396r-4;

(b) It satisfies all the requirements of department rules and policies; and

(c) The legislature appropriates sufficient funds.

(3) For purposes of eligibility for DSH payments, the following definitions apply:

(a) "Base year" means the hospital fiscal year or medicare cost report year that ended during the calendar year immediately preceding the year in which the state fiscal year for which the DSH application is being made begins.

(b) "Case mix index (CMI)" means the average of diagnosis related group (DRG) weights for all of an individual hospital's DRG-paid medicaid claims during the state fiscal year (SFY) two years prior to the SFY for which the DSH application is being made.

(c) "Charity care" means necessary hospital care rendered to persons unable to pay for the hospital services or unable to pay the deductibles or coinsurance amounts required by a third-party payer. The charity care amount is determined in accordance with the hospital's published charity care policy.

(d) "Disproportionate share hospital (DSH) cap" means the maximum amount per state fiscal year that the state can distribute in DSH payments to hospitals (statewide DSH cap), or the maximum amount of DSH payments a hospital may receive during a state fiscal year (hospital-specific DSH cap).

(e) "DSH reporting data file (DRDF)" means the information submitted by hospitals to the department which the department uses to verify medicaid patient eligibility and patient days.

(f) "Hospital-specific DSH cap" means the maximum amount of DSH payments a hospital may receive from the department during a state fiscal year. For a critical access hospital (CAH), the DSH cap is based strictly on the net cost to the hospital of providing services to uninsured patients.

(g) "Low income utilization rate (LIUR)" means the sum of these two percentages: (1) the ratio of payments received by the hospital for patient services provided to clients under medicaid (including managed care) and state-administered programs, plus cash subsidies received by the hospital from state and local governments for patient services, divided by total payments received by the hospital from all patient categories; plus (2) the ratio of inpatient charity care charges (excluding contractual allowances), divided by total billed charges for inpatient services. The department uses LIUR as one criterion to determine a hospital's eligibility for the low income disproportionate share hospital (LIDSH) program. To qualify for LIDSH, a hospital's LIUR must be greater than twenty-five percent.

(h) "Medicaid inpatient utilization rate (MIPUR)" means the number of inpatient days of service provided by a hospital to medicaid clients during its hospital fiscal year or medicare cost report year, divided by the number of inpatient days of service provided by that hospital to all patients during the same period.

(i) "Medicare cost report year" means the twelve-month period included in the annual cost report a medicare-certified hospital or institutional provider is required by law to submit to its fiscal intermediary.

(j) "Nonrural hospital" means a hospital that is not a peer group E hospital or a small rural hospital and is located inside the state of Washington or in a designated bordering city. For DSH purposes, the department considers as nonrural any hospital located in a designated bordering city.

(k) "Obstetric services" means routine, nonemergency delivery of babies.

(l) "Service year" means the one year period used to measure the costs and associated charges for hospital services. The service year may refer to a hospital's fiscal year or medicare cost report year, or to a state fiscal year.

(m) "Small rural hospital" means a hospital that is not a peer group E hospital, has fewer than seventy-five acute licensed beds, is located inside the state of Washington, and is located in a city or town with a nonstudent population of no more than seventeen thousand one hundred fifteen in calendar year 2006 as determined by the Washington State office of financial management estimate. The nonstudent population ceiling increases cumulatively by two percent each succeeding state fiscal year.

(n) "Uninsured patient" means an individual who does not have health insurance that would apply to the hospital service the individual sought and received. An individual who did have health insurance that applied to the hospital service the individual sought and received, is considered an insured individual for DSH program purposes, even if the insurer did not pay the full charges for the services. When determining the cost of a hospital service provided to an uninsured patient, the department uses as a guide whether the service would have been covered under medicaid.

(4) To be considered for a DSH payment for each SFY, a hospital located in the state of Washington or in a designated bordering city must submit to the department a completed and final DSH application by the due date. The due date will be posted on the department's website.

(5) A hospital is a disproportionate share hospital for a specific SFY if the hospital submits a completed DSH application for that specific year, if it satisfies the utilization rate requirement (discussed in (a) of this subsection), and the obstetric services requirement (discussed in (b) of this subsection).

(a) The hospital must have a medicaid inpatient utilization rate (MIPUR) greater than one percent; and

(b) Unless one of the exceptions described in (i)(A) or (B) of this subsection applies, the hospital must have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to eligible individuals.

(i) The obstetric services requirement does not apply to a hospital that:

(A) Provides inpatient services predominantly to individuals younger than age eighteen; or

(B) Did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(ii) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(6) To determine a hospital's eligibility for any DSH program, the department uses the criteria in this section and the information obtained from the DSH application submitted by the hospital, subject to the following:

(a) Charity care. If the hospital's DSH application and audited financial statements for the relevant fiscal year do not agree on the amount for charity care, the department uses the lower amount listed. For purposes of calculating a hospital's LIUR, the department allows a hospital to claim charity care amounts related to inpatient services only. A hospital must submit a copy of its charity care policy for the relevant fiscal year as part of the hospital's DSH application.

(b) Total inpatient hospital days. If the hospital's DSH application and its medicare cost report do not agree on the number of total inpatient hospital days, the department uses the higher number listed to determine the hospital's MIPUR. Labor and delivery days count towards total inpatient hospital days. Nursing facility and swing bed days do not count towards total inpatient hospital days.

(7) The department administers the following DSH programs (depending on legislative budget appropriations):

(a) Low income disproportionate share hospital (LIDSH);

(b) Institution for mental diseases disproportionate share hospital (IMDDSH);

(c) General assistance-unemployable disproportionate share hospital (GAUDSH);

(d) Small rural disproportionate share hospital (SRDSH);

(e) Small rural indigent assistance disproportionate share hospital (SRIADSH);

(f) Nonrural indigent assistance disproportionate share hospital (NRIADSH);

(g) Public hospital disproportionate share hospital (PHDSH); and

(h) Psychiatric indigent inpatient disproportionate share hospital (PIIDSH).

(8) Except for IMDDSH, the department allows a hospital to receive any one or all of the DSH payment adjustments it qualifies for, up to the individual hospital's DSH cap (see subsection (10) of this section). See WAC 388-550-5130 regarding IMDDSH. To be eligible for payment under multiple DSH programs, a hospital must meet:

(a) The basic requirements in subsection (5) of this section; and

(b) The eligibility requirements for the particular DSH payment, as discussed in the applicable DSH program WAC.

(9) For each SFY, the department calculates DSH payments due an eligible hospital using data from the hospital's base year. The department does not use base year data for GAUDSH and PIIDSH payments, which are calculated based on specific claims data.

(10) The department's total DSH payments to a hospital for any given SFY cannot exceed the individual hospital's annual DSH limit (also known as the hospital-specific DSH cap) for that SFY. Except for critical access hospitals (CAHs), the department determines a hospital's DSH cap as follows:

(a) The cost to the hospital of providing services to medicaid clients, including clients served under medicaid managed care organization (MCO) plans;

(b) Less the amount paid by the state under the non-DSH payment provision of the medicaid state plan;

(c) Plus the cost to the hospital of providing services to uninsured patients;

(d) Less any cash payments made by or on behalf of uninsured patients; and

(e) Plus any adjustments required and/or authorized by federal statute or regulation.

(11) A CAH's DSH cap is based strictly on the cost to the hospital of providing services to uninsured patients. In calculating a CAH's DSH cap, the department deducts payments received by the hospital from and on behalf of the uninsured patients from the hospital's costs of services for the uninsured patients.

(12) In any given federal fiscal year, the total of the department's DSH payments cannot exceed the statewide DSH cap as published in the federal register.

(13) If the department's DSH payments for any given federal fiscal year exceed the statewide DSH cap, the department will adjust DSH payments to each hospital to account

for the amount overpaid. The department makes adjustments in the following program order:

(a) PHDSH;

(b) SRIADSH;

(c) SRDSH;

(d) NRIADSH;

(e) GAUDSH;

(f) PIIDSH;

(g) IMDDSH; and

(h) LIDSH.

(14) If the statewide DSH cap is exceeded, the department will recoup DSH payments made under the various DSH programs, in the order of precedence described in subsection (13) of this section, starting with PHDSH, until the amount exceeding the statewide DSH cap is reduced to zero. See specific program WACs for description of how amounts to be recouped are determined.

(15) The total amount the department may distribute annually under a particular DSH program is capped by legislative appropriation, except for PHDSH, GAUDSH, and PIIDSH, which are not fixed pools. Any changes in payment amount to a hospital in a particular DSH pool means a redistribution of payments within that DSH pool. When necessary, the department will recoup from hospitals to make additional payments to other hospitals within that DSH pool.

(16) If funds in a specific DSH program need to be redistributed because of legislative, administrative, or other state action, only those hospitals eligible for that DSH program will be involved in the redistribution.

(a) If an individual hospital has been overpaid by a specified amount, the department will recoup that overpayment amount from the hospital and redistribute it among the other eligible hospitals in the DSH pool. The additional DSH payment to be given to each of the other hospitals from the recouped amount is proportional to each hospital's share of the particular DSH pool.

(b) If an individual hospital has been underpaid by a specified amount, the department will pay that hospital the additional amount owed by recouping from the other hospitals in the DSH pool. The amount to be recouped from each of the other hospitals is proportional to each hospital's share of the particular DSH pool.

(17) All information submitted by a hospital related to its DSH application is subject to audit. The department may audit any, none, or all DSH applications for a given state fiscal year. The department determines the extent and timing of the audits. For example, the department may choose to do a desk review upon receipt of an individual hospital's DSH application and/or supporting documentation, or audit all hospitals that qualified for a particular DSH program after payments have been distributed under that program.

(18) If a hospital's submission of incorrect information or failure to submit correct information results in DSH overpayment to that hospital, the department will recoup the overpayment amount, in accordance with the provisions of RCW 74.09.220 and RCW 43.20B.695.

(19) DSH calculations use fiscal year data, and DSH payments are distributed based on funding for a specific state fiscal year. Therefore, unless otherwise specified, changes

and clarifications to DSH program rules apply for the full state fiscal year in which the rules are adopted.

NEW SECTION

WAC 388-550-4925 Eligibility for DSH programs—

New hospital providers. To be eligible for disproportionate share hospital (DSH) payments, a new hospital provider must have claims data, audited financial statements, and an "as filed" or finalized medicare cost report for the hospital base year used by the department in calculating DSH payments for the state fiscal year (SFY) for which the hospital provider is applying. See WAC 388-550-4900(9).

NEW SECTION

WAC 388-550-4935 DSH eligibility—Change in hospital ownership. (1) For purposes of eligibility for disproportionate share hospital (DSH) payments, a change in hospital ownership has occurred if any of the criteria in WAC 388-550-4200(1) is met.

(2) To be considered eligible for DSH, a hospital whose ownership has changed must notify the department in writing no later than thirty days after the change in ownership becomes final. The notice must include the new entity's fiscal year end.

(3) A hospital that did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted, and changes ownership after that date is not eligible for DSH unless it continues to be classified as an acute care hospital serving pediatric and/or adult patients. See WAC 388-550-4900(5) for the obstetric services and utilization rate requirements for DSH eligibility.

(4) If the fiscal year reported on a hospital's medicare cost report does not exactly match the fiscal year reported on the hospital's DSH application to the department, and if therefore the utilization data reported to the department do not agree, the department will use as the data source the document that gives the higher number of total inpatient hospital days for purposes of calculating the hospital's medicaid inpatient utilization rate (MIPUR). See WAC 388-550-4900(6)(b).

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5000 Payment method—Low income disproportionate share hospital (LIDSH). (1) A hospital that is not a peer group E hospital but serves the department's clients is eligible for a low-income disproportionate share hospital (LIDSH) payment adjustment if the hospital meets the requirements of WAC 388-550-4900 ~~((1) through (3))~~ (5).

(2) Hospitals considered eligible under the criteria in subsection (1) of this section receive LIDSH payments. The total LIDSH payment amounts equal the funding set by the state's appropriations act for LIDSH. The amount that the state appropriates for LIDSH may vary from year to year.

(3) The department ~~((distributes))~~ determines LIDSH payments to each LIDSH eligible hospital using ~~((a prospec-~~

~~ive payment method. The department determines the standardized Medicaid inpatient utilization rate (MIPUR) by) three factors:~~

~~(a) ((Dividing)) The hospital's ((MIPUR by the average MIPUR of all LIDSH-eligible hospitals)) medicaid inpatient utilization rate (MIPUR); ((then))~~

~~(b) ((Multiplying)) The hospital's medicaid case mix index (CMI) as determined by the department; and~~

~~(c) The hospital's Title XIX medicaid discharges for the applicable hospital fiscal year.~~

~~(4) The department calculates the LIDSH payment to an eligible hospital as follows. The department:~~

~~(a) Divides the hospital's MIPUR by the average MIPUR of all LIDSH-eligible hospitals; then~~

~~(b) Multiplies the ((hospital's standardized MIPUR)) result derived in subsection (a) by the hospital's most recent DRG payment method ~~((rebased))~~ medicaid case mix index, and then by the hospital's ((most recent fiscal)) base year Title XIX ~~((admissions))~~ discharges; then~~

~~(c) ((Multiplying the product by an initial random base amount)) Converts the product to a percentage of the sum of all such products for individual hospitals; and ((then))~~

~~(d) ((Comparing the sum of all annual LIDSH payments to the appropriated amount. If the amounts differ, the department progressively selects a new base amount by successive approximation until the sum of the LIDSH payments to hospitals equals)) Multiplies this percentage by the legislatively appropriated amount for LIDSH.~~

~~((4)) (5) For DSH program purposes, a hospital's medicaid CMI is the average diagnosis related group (DRG) weight for all of the hospital's medicaid DRG-paid claims during the state fiscal year used as the base year for the DSH application. It is possible that the CMI the department uses for DSH calculations will not be the same as the CMI the department uses in other hospital rate calculations.~~

~~(6) After each applicable state fiscal year has ended, the department will not make changes to the LIDSH payment distribution that has resulted from calculations identified in subsection ~~((3))~~ (4) of this section. ((However, hospitals may still submit corrected DSH application data to the department after June 15 and prior to July 1 of the applicable state fiscal year to correct calculation of the MIPUR or low income utilization rate (LIUR) for historical record keeping. See WAC 388-550-5550 for rules regarding public notice for changes in Medicaid payment rates for hospital services)) The department will recalculate the LIDSH payment distribution only when the applicable state fiscal year has not yet ended at the time the alleged need for an LIDSH adjustment is identified, and if the department considers the recalculation necessary and appropriate under its regulations.~~

~~(7) Consistent with the provisions of subsection (6) of this section, the department applies any adjustments to the DSH payment distribution required by legislative, administrative, or other state action, to other DSH programs in accordance with the provisions of WAC 388-550-4900 (13) through (16).~~

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5125 Payment method—Psychiatric indigent inpatient disproportionate share hospital (PIIDSH). (1) Effective for dates of admission on and after July 1, 2003, a hospital is eligible for the psychiatric indigent inpatient disproportionate share hospital (PIIDSH) payment if the hospital:

(a) Meets the criteria in WAC 388-550-4900 ~~((2)(b) through (4)(a))~~ (5);

(b) Is ~~((an in-state or bordering city hospital))~~ not designated an institution for mental diseases (IMD);

(c) Provides services to clients eligible under the psychiatric indigent inpatient (PII) program. See WAC 388-865-0217 for more information regarding the PII program; and

(d) ~~((Qualifies under Section 1923(d) of the Social Security Act))~~ Is located within the state of Washington. A hospital located out-of-state, including a hospital located in a designated bordering city, is not eligible to receive PIIDSH payments.

(2) PIIDSH is available only for emergency, voluntary inpatient psychiatric care. PIIDSH is not available for charges for nonhospital services associated with the inpatient psychiatric care.

(3) The department ~~((determines the))~~ makes PIIDSH ~~((payment for each eligible hospital using a prospective payment method, in accordance with WAC 388-550-4800))~~ payments to an eligible hospital on a claim-specific basis.

NEW SECTION

WAC 388-550-5130 Payment method—Institution for mental diseases disproportionate share hospital (IMDDSH) and institution for mental diseases (IMD) state grants. (1) A psychiatric hospital owned and operated by the state of Washington is eligible to receive payments under the institution for mental diseases disproportionate share hospital (IMDDSH) program.

(2) For the purposes of the IMDDSH program, the following definitions apply:

(a) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than sixteen beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(b) "Psychiatric community hospital" means a psychiatric hospital other than a state-owned and operated hospital.

(c) "Psychiatric hospital" means an institution which is primarily engaged in providing psychiatric services for the diagnosis and treatment of mentally ill persons. The term applies to a medicare-certified distinct psychiatric care unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital.

(d) "State-owned and operated psychiatric hospital" means Eastern State Hospital and Western State Hospital.

(3) Except as provided in subsection (4) of this section, a psychiatric community hospital, regardless of location, is not eligible to receive:

(a) IMDDSH payments; or

(b) Any other disproportionate share hospital (DSH) payment from the department. See WAC 388-550-4800 regarding payment for psychiatric claims for clients eligible under the medical care services programs.

(4) A psychiatric community hospital within the state of Washington that is designated by the department as an IMD is eligible to receive IMDDSH payment if:

(a) IMDDSH funds remain available after the amounts appropriated for state-owned and operated psychiatric hospitals are exhausted; and

(b) The legislature provides funds specifically for this purpose.

(5) A psychiatric community hospital within the state of Washington that is designated by the department as an IMD is eligible to receive a state grant amount from the department if the legislature appropriates funds specifically for this purpose.

(6) An institution for mental diseases located out-of-state, including an IMD located in a designated bordering city, is not eligible to receive a Washington State grant amount.

(7) Under federal law, 42 USC 1396r-4 (h)(2), the state's annual IMDDSH expenditures are capped at thirty-three percent of the state's annual statewide DSH cap. This amount represents the maximum that the state can spend in any given fiscal year on IMDDSH, but the state is under no obligation to actually spend that amount.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5150 Payment method—General assistance-unemployable disproportionate share hospital (GAUDSH). (1) A hospital is eligible for the general assistance-unemployable disproportionate share hospital (GAUDSH) payment if the hospital:

(a) Meets the criteria in WAC 388-550-4900 ~~((2)(b) through (4)(a))~~;

(b) Is an in-state or designated bordering city hospital;

(c) Provides services to clients eligible under the medical care services program; and

(d) Has a ~~((low-income utilization rate (LIUR)))~~ medicaid inpatient utilization rate (MIPUR) of one percent or more.

(2) The department determines the GAUDSH payment for each eligible hospital ~~((using a prospective payment method.))~~ in accordance with WAC 388-550-4800 ~~((except that the payment is not reduced by the additional three percent specified in WAC 388-550-4800(4)))~~.

(3) The department makes GAUDSH payments to a hospital on a claim-specific basis.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5200 Payment method—~~((SRHAP-DSH))~~ Small rural disproportionate share hospital (SRDSH). (1) The department makes small rural ~~((hospital assistance program))~~ disproportionate share hospital ~~((SRHAPDSH))~~ (SRDSH) payments to qualifying small rural hospitals ~~((through the disproportionate share hospital (DSH) program.~~

(2)) To qualify for ~~((a-SRHAPDSH))~~ an SRDSH payment, a hospital must:

(a) Not be a peer group E hospital;
 (b) Meet the criteria in WAC 388-550-4900 ~~((2)(b) through (4)(a))~~ (5);

(c) Have fewer than seventy-five acute licensed beds; and

(d) Be an in-state hospital. A hospital located out-of-state or in a designated bordering city is not eligible to receive SRDSH payments;

~~((d) Be a small rural hospital with fewer than seventy-five acute licensed beds; and~~

~~(e)) (2) In addition, for the ((SRHAPDSH)) SRDSH program ((year)) to be implemented for state fiscal year (SFY) ((beginning)) 2008, which begins on July 1, ((2002)) 2007, the city or town must have a nonstudent population of ((fifteen)) no more than seventeen thousand ((five)) one hundred ((or less)) fifteen in calendar year 2006, as determined by the Washington State office of financial management estimate.~~

For each subsequent SFY, the nonstudent population ~~((requirement))~~ ceiling is increased cumulatively by two percent.

(3) The department pays hospitals qualifying for ~~((SRHAPDSH))~~ SRDSH payments from a legislatively appropriated pool. The department determines each hospital's individual ~~((SRHAPDSH))~~ SRDSH payment from the total dollars in the pool using percentages established ~~((through the following prospective payment method))~~ as follows:

(a) At the time the ~~((SRHAPDSH))~~ SRDSH payment is to be made, the department calculates each hospital's profitability margin based on ~~((the most recent, completed year-end))~~ the hospital's base year data ((using)) and audited financial statements ((from the hospital)).

(b) The department determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) The department:

(i) Identifies the medicaid payment amounts made by the department to the individual hospital ~~((s most recent, completed SFY Medicaid reimbursement amounts))~~ during the SFY two years prior to the current SFY for which DSH application is being made. These medicaid payment amounts are based on historical data considered to be complete; then

(ii) Multiplies the total medicaid ((reimbursement)) payment amount determined in subsection (i) by the individual hospital's assigned profit factor (1.1 or 1.0) to identify a revised medicaid ((reimbursement)) payment amount; ~~((then))~~ and

(iii) Divides the revised medicaid ((reimbursement)) payment amount for the individual hospital by the sum of the revised medicaid ((reimbursement)) payment amounts for all qualifying hospitals during the same period.

(4) The department's ~~((SRHAPDSH))~~ SRDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured ~~((medi-~~

~~gent))~~ patients for that hospital unless an exception is ~~((identified))~~ required by federal statute or regulation.

(5) The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5210 Payment method—~~((SRHAPDSH))~~ Small rural indigent assistance disproportionate share hospital (SRIADSH) program. (1) The department makes small rural ~~((hospital))~~ indigent assistance ~~((program))~~ disproportionate share hospital ~~((SRHAPDSH))~~ (SRIADSH) program payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an ~~((SRHAPDSH))~~ SRIADSH payment, a hospital must:

(a) Not be a peer group E hospital;
 (b) Meet the criteria in WAC 388-550-4900 ~~((2)(b) through (4)(a))~~ (5);

(c) Have fewer than seventy-five acute licensed beds; and

(d) Be an in-state hospital that provided charity services to clients during the ((most recent, completed fiscal)) base year. A hospital located out-of-state or in a designated bordering city is not eligible to receive SRIADSH payments; and

~~((d) Be a small rural hospital with fewer than seventy-five acute licensed beds; and))~~

~~((e)) ((For state fiscal year (SFY) beginning July 1, 2003;))~~ Be located in a city or town ((that has)) with a nonstudent population of ((fifteen)) no more than seventeen thousand ((eight)) one hundred ((ten or less)) fifteen in calendar year 2006, as determined by the Washington State office of financial management estimate. This estimated nonstudent population ceiling is used for SFY 2008, which begins July 1, 2007. For each subsequent SFY, the nonstudent population ~~((requirement))~~ ceiling is increased cumulatively by two percent.

(3) The department pays hospitals qualifying for ~~((SRHAPDSH))~~ SRIADSH payments from a legislatively appropriated pool. The department determines each hospital's individual ~~((SRHAPDSH))~~ SRIADSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the ~~((SRHAPDSH))~~ SRIADSH payment is to be made, the department calculates each hospital's profitability margin based on the ~~((most recent, completed year-end))~~ hospital's base year data ((using)) and audited financial statements ((from the hospital)).

(b) The department determines the average profitability margin for ~~((the qualifying))~~ all hospitals qualifying for SRIADSH.

(c) Any qualifying hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other qualifying hospitals receive a profit factor of 1.0.

(d) The department:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of revised costs by dividing its revised cost amount by the sum of the revised charity cost amounts for all qualifying hospitals during the same period.

(4) The department's (~~(SRHIAPDSH))~~ SRIADSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured indigent patients for that hospital unless an exception is (~~(identified))~~ required by federal statute or regulation. The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5220 Payment method—(~~(NRHIAPDSH))~~ Nonrural indigent assistance disproportionate share hospital (NRIADSH). (1) The department makes nonrural (~~(hospital))~~ indigent assistance (~~(program))~~ disproportionate share hospital (~~(NRHIAPDSH))~~ (NRIADSH) payments to qualifying nonrural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an (~~(NRHIAPDSH))~~ NRIADSH payment, a hospital must:

(a) Not be a peer group E hospital;

(b) Meet the criteria in WAC 388-550-4900 (~~((2)(b) through (4)(a))~~) (5);

(c) (~~Be an in-state or bordering city hospital that provided charity services to clients during the most recent, completed fiscal year; and~~

~~(d))~~ Be a hospital that does not qualify as a small rural hospital as defined in WAC (~~(388-550-5210))~~ 388-550-4900 (3)(m); and

(d) Be an in-state or designated bordering city hospital that provided charity services to clients during the base year. For DSH purposes, the department considers as nonrural any hospital located in a designated bordering city.

(3) The department pays hospitals qualifying for (~~(NRHIAPDSH))~~ NRIADSH payments from a legislatively appropriated pool. The department determines each hospital's individual (~~(NRHIAPDSH))~~ NRIADSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the (~~(NRHIAPDSH))~~ NRIADSH payment is to be made, the department calculates each hospital's profitability margin based on the (~~(most recent, completed year-end))~~ hospital's base year data ((using)) and audited financial statements (~~(from the hospital))~~.

(b) The department determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) The department:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of the (~~(NRHIAPDSH))~~ NRIADSH revised costs by dividing the hospital's revised cost amount by the total revised charity costs for all qualifying hospitals during the same period.

(4) The department's (~~(NRHIAPDSH))~~ NRIADSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured indigent patients for the hospital unless an exception is (~~(identified))~~ required by federal statute or regulation. The department reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5400 Payment method—Public hospital disproportionate share hospital (PHDSH). (1) The department's public hospital disproportionate share hospital (PHDSH) program is a public hospital program for:

(a) Public hospitals located in the state of Washington that are:

(i) Owned by a public hospital district(~~(s))~~; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(2) The (~~(department pays))~~ PHDSH payments to a hospital((s)) eligible under this program (~~(a payment equal to))~~ may not exceed the hospital's (~~(individual))~~ disproportionate share hospital (DSH) ((payment limit)) cap calculated according to WAC 388-550-4900(10). The (~~(resulting amount is multiplied by))~~ hospital receives only the federal matching assistance percentage (~~(in effect for Washington State at the time of the payment. This amount is sent to the hospital))~~ of the total computable payment amount.

(3) Hospitals receiving payment under (~~(this DSH))~~ the PHDSH program must (~~(certify that funds have been spent on uncompensated care at the hospital equal to or in excess of the payment amount before applying the federal matching assistance percentage))~~ provide the local match for the federal funds through certified public expenditures (CPE). Payments are limited to costs incurred by the participating hospitals.

(4) A hospital receiving payment under the PHDSH program must submit to the department federally required medicaid cost report schedules apportioning inpatient and outpatient costs, beginning with the services provided during state fiscal year 2006. See WAC 388-550-5410.

(5) PHDSH payments are subject to the availability of DSH funds under the statewide DSH cap. If the statewide DSH cap is exceeded, the department will recoup PHDSH payments first, but only from hospitals that received total

inpatient and DSH payments above the hold harmless level, and only to the extent of the excess amount above the hold harmless level. See WAC 388-550-4900 (13) and (14), and WAC 388-550-4670.

NEW SECTION

WAC 388-550-5410 Medicaid cost report schedules.

(1) A certified public expenditure (CPE) hospital must annually submit to the department federally required medicaid cost report schedules, using schedules approved by the centers for medicare and medicaid services (CMS), that apportion inpatient and outpatient costs to medicaid clients and uninsured patients for the service year, as follows:

- (a) Title XIX fee-for-service claims;
- (b) Medicaid managed care organization (MCO) plan claims;
- (c) Uninsured patients (individuals who are not covered under any health care insurance plan for the hospital service provided). The cost report schedules for uninsured patients must not include services that medicaid would not have covered had the patients been medicaid eligible; and
- (d) State-administered program patients. State-administered program patients are reported separately and are not to be included on the Uninsured patient cost report schedule. The department will provide Provider Statistics and Reimbursements (PS&R) reports for the state-administered program claims.

(2) The department requires each CPE hospital to submit medicaid cost report schedules to the department for services provided to patients discharged on or after July 1, 2005.

(3) A CPE hospital must:

(a) Use the information on individualized PS&R reports provided by the department when completing the medicaid cost report schedules. The department provides the hospital with the PS&R reports at least thirty days prior to the appropriate deadline.

(i) For state fiscal year (SFY) 2006, the deadline for all CPE hospitals to submit the federally required medicaid cost report schedules is June 30, 2007.

(ii) For hospitals with a December 31 year end, partial year medicaid cost report schedules for the period July 1, 2005 through December 31, 2005 must be submitted to the department by August 31, 2007.

(iii) For SFY 2007 and thereafter, each CPE hospital is required to submit the medicaid cost report schedules to the department within thirty days after the medicare cost report is due to its medicare fiscal intermediary.

(b) Complete the cost report schedules for medicaid MCO plan and the uninsured patients using the hospital provider's records.

(c) Comply with the department's instructions regarding how to complete the required cost report schedules.

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5425 Upper payment limit (UPL) payments for inpatient hospital services. (1) ~~((Each state fiscal year, in accordance with legislative direction and established prospective payment methods, the department creates an~~

~~upper payment limit (UPL) payment pool that provides supplemental payments for inpatient hospital services to a hospital provider of Title XIX Medicaid services that is classified as either a:~~

~~(a) Washington state owned or state operated hospital; or~~

~~(b) Nonstate government-owned hospital.~~

~~(2) UPL payments for inpatient hospital services are subject to:~~

~~(a) Federal approval for federal matching funds; and~~

~~(b) A department analysis of the Medicare UPL for hospital payment.~~

~~(3) The department determines each payment year's UPL payment for inpatient hospital services by:~~

~~(a) Using the charge and payment data from the department's payment system for inpatient hospital services for the base year; and~~

~~(b) Calculating the cumulative difference between Medicare payments and Title XIX payments, including third party liability payment for all eligible hospitals during the most recent state fiscal year.~~

~~(4) UPL payments for inpatient hospital services:~~

~~(a) Are determined for participating eligible hospitals during each federal fiscal year;~~

~~(b) Are paid by the department on a periodic basis to one or more of the participating eligible hospitals; and~~

~~(c) Must be used by the receiving hospital(s) to improve health care services to low income patients)) The upper payment limit (UPL) program is terminated effective July 1, 2007. The department will not make UPL payments after June 30, 2007.~~

AMENDATORY SECTION (Amending WSR 06-08-046, filed 3/30/06, effective 4/30/06)

WAC 388-550-5450 Supplemental distributions to approved trauma service centers. (1) ~~The ((department's))~~ trauma care fund (TCF) is an amount legislatively appropriated to ~~((DSHS))~~ the department each biennium, at the legislature's sole discretion, for the purpose of supplementing the department's payments to eligible trauma service centers for providing qualified trauma services to eligible medicaid fee-for-service clients. Claims for trauma care provided to clients enrolled in the department's managed care programs are not eligible for supplemental distributions from the TCF.

(2) Beginning with trauma services provided after June 30, 2003, the department makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section and subject to legislative action.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level 1, Level 2, or Level 3 adult or pediatric trauma service center;

(b) Meet the provider requirements in this section and other applicable WAC;

(c) Meet the billing requirements in this section and other applicable WAC;

(d) Submit all information the department requires to ensure services are being provided; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) ~~((For qualified hospitals, determined as a percentage of a fixed amount per quarter. Each eligible hospital's share per quarter is based on the amount paid by the department to that hospital for inpatient and outpatient trauma care the hospital provides to Medicaid clients during that quarter, expressed as a percentage of the following total))~~ Allocated into five fixed payment pools of equal amounts. Timing of payments is described in subsection (5) of this section. Distributions from the payment pools to the individual hospitals are determined by first summing each eligible hospital's qualifying payments since the beginning of the service year and expressing this amount as a percentage of total payments to all eligible hospitals for qualifying services provided during the service year to date. Each hospital's payment percentage is multiplied by the available amount in the current period pool to determine the portion of the pool to be paid to each qualifying hospital. Eligible hospitals and qualifying payments are described in (i) through (iii) of this subsection:

(i) Qualifying payments are the department's payments to Level 1, Level 2, and Level 3 trauma service centers for qualified medicaid trauma cases ((in that quarter)) since the beginning of the service year. The department determines the countable payment ((per quarter)) for trauma care provided to medicaid clients based on date of service, not date of payment;

(ii) The department's payments to Level 1, Level 2, and Level 3 hospitals for trauma cases transferred in ~~((during that quarter))~~ since the beginning of the service year. A Level 1, Level 2, or Level 3 hospital that receives a transferred trauma case from any lower level hospital is eligible for the enhanced payment, regardless of the client's Injury Severity Score (ISS). An ISS is a summary rating system for traumatic anatomic injuries; and

(iii) The department's payments to Level 2 and Level 3 hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in subsection (4)(b) of this section) that ~~((are))~~ these hospitals transferred to a higher level designated trauma service center ((during that quarter)) since the beginning of the service year.

(b) Paid only for a medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of subsection (4)(c).

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level 1, Level 2, or Level 3 adult or pediatric trauma service center;

(ii) A hospital that transfers the trauma case qualifies for payment only if:

(A) It is designated or recognized by DOH as an approved Level 2 or Level 3 adult or pediatric trauma service center; and

(B) The ISS requirements in (b)(i) or (b)(ii) of this subsection are met.

(ii) A hospital that DOH designates or recognizes as an approved Level 4 or Level 5 trauma service center does not qualify for supplemental distributions for ~~((transferred))~~ trauma cases that are transferred in or transferred out, even when the transferred cases meet the ISS criteria in subsection (4)(b) of this section.

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by the department to:

(i) Trauma service centers designated or recognized as Level 4 or Level 5;

(ii) Critical access hospitals (CAHs), except when the CAH is also a Level 3 trauma service center. Beginning with qualifying trauma services provided in state fiscal year (SFY) 2007, the department allows a hospital with this dual status to receive distributions from the TCF; or

(iii) Any hospital for follow-up surgical services related to the qualifying trauma incident but provided to the client after the client has been discharged for the initial qualifying injury.

(5) Distributions for an SFY are divided into five "quarters" and paid as follows:

(a) Each quarterly distribution paid by the department from the TCF totals twenty percent of the amount designated by the department for that SFY;

(b) The first quarterly supplemental distribution from the TCF is made six months after the SFY begins;

(c) Subsequent quarterly payments are made approximately every four months after the first quarterly payment is made, except as described in subsection (d);

(d) The "fifth quarter" final distribution from the TCF for the same SFY is:

(i) Made one year after the end of the SFY;

(ii) Based on the SFY that the TCF designated amount relates to; and

(iii) Distributed based on each eligible hospital's percentage of the total payments made by the department to all designated trauma service centers for qualified trauma cases during the relevant fiscal year.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) The department may consider a request for a claim adjustment submitted by a provider only if the request is received by the department within one year from the date of the initial trauma service;

(b) The department does not allow any carryover of liabilities for a supplemental distribution from the TCF ~~((after a date specified by the department as the last date to make))~~ beyond three hundred sixty-five calendar days from the date of discharge (inpatient) or date of service (outpatient). The deadline for making adjustments to a trauma claim ((for an SFY)) is the same as the deadline for submitting the initial claim to the department. WAC 388-502-0150(7) does not apply to TCF claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by the department in

any biennium cannot exceed the amount appropriated by the legislature for that biennium. The department has the authority to take whatever actions necessary to ensure the department stays within the TCF appropriation.

WSR 07-14-096
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 05-16—Filed June 29, 2007, 4:39 p.m., effective July 30, 2007]

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

Purpose: To amend outdated rules to respond to emerging needs of clients and stakeholders.

Citation of Existing Rules Affected by this Order: Amending Chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund and chapter 173-95A WAC, Uses and limitations of the centennial clean water fund.

Statutory Authority for Adoption: RCW 90.48.035 Rule-making authority.

Adopted under notice filed as WSR 07-06-085 on March 7, 2007.

Changes Other than Editing from Proposed to Adopted Version: **I. Introduction:**

- ◆ **Identify the reasons for adopting this rule (RCW 34.05.325 (6)(a)(i)):** Explain the need for the rule or amendment. Discuss the legislative background/federal law/statutory authority.

The purpose of the proposed rule changes is to respond to new funding initiatives and priorities identified by ecology, Environmental Protection Agency (EPA), and other stakeholders and clients. It has been almost seven years since the last time the rules were updated.

Centennial clean water program (Centennial): In 1986 the Washington state legislature established the water quality account in chapter 70.146 RCW Water pollution control facilities financing. Centennial is a grant fund within the water quality account and ecology's water quality program has administered the fund since its inception. Through the Centennial fund, ecology provides grants to local governments and tribes for water pollution control facilities and nonpoint activities designed to prevent and control water pollution to Washington state's surface and ground water.

Water pollution control revolving fund (revolving fund): The United States Congress established the revolving fund program as part of the Clean Water Act amendments in 1987. The EPA awards ecology annual grants for the purpose of making loans to local governments and tribes. Ecology provides a 20% match and capitalizes the grant funds to provide low-cost financing for projects such as publicly owned wastewater treatment facilities, nonpoint source pollution control, and comprehensive estuary conservation and management programs.

Ecology is authorized to adopt rules under RCW 90.48.035 Rule-making authority.

The department shall have the authority to, and shall promulgate, amend, or rescind such rules and regulations as it shall deem necessary to carry out the provisions of this chap-

ter, including but not limited to rules and regulations relating to standards of quality for waters of the state and for substances discharged therein in order to maintain the highest possible standards of all waters of the state in accordance with the public policy as declared in RCW 90.48.010.

- ◆ **Identify the adoption date of rule and effective date of rule.**

Adoption date: June 29, 2007.

Effective date: July 30, 2007.

Implementation would occur for the fiscal year 2009 funding cycle, which begins on September 1, 2007.

II. Describe Differences Between Proposed and Final Rule

- ◆ Describe the differences between the text of the proposed rule as published in the Washington state register and the text of the rule as adopted, other than editing changes. State the reasons for the differences (RCW 34.05.325 (6)(a)(ii)):
- ◆ How to read the following differences in the proposed and final rule:
 - Listed first: Changes to the Washington state water pollution control revolving fund.
 - Listed second: Changes to the Centennial clean water program.
 - Official comments from clients and stakeholders are quoted exactly as spoken or written.
 - Deletions have strikethroughs and are in red font.
 - Additions are underlined and in green font.
 - The page number corresponding to the draft rule cited is included at the end of each explanation for change.

Differences between proposed and final of chapter 173-98 WAC, Uses of the Washington state water pollution control revolving fund:

WAC 173-98-030(59) Definitions: Deleted the word "this" in two places and replaced with the word "a loan" in both places (page 23).

(59) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of this a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

WAC 173-98-030(64) Definitions: Deleted the word "protection" and replaced with the correct word "policy" (page 24).

State environmental review process (SERP) means the National Environmental ~~Protection~~ Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

WAC 173-98-040(2) Water pollution control revolving fund uses: Corrected language that was not clear and clarified eligibility by adding language from SEC. 601 (a) and (b) of the Clean Water Act (page 32).

To provide loans for nonpoint source pollution control management ~~programs including planning and implementing elements of the projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plans under section 320 of the act.~~

WAC 173-98-100(6) Water pollution control revolving fund uses: Added language to clarify the intent of SEC. 601 of the Clean Water Act SEC (page 38).

Confined animal feeding operations (CAFO) water pollution control projects located in federally designated national estuaries;

WAC 173-98-110(31) Noneligible: Added language to avoid an unintentional categorical exclusion of water quantity (page 49).

Water quantity or other water resource projects that solely address water quantity issues.

WAC 173-98-300 (4)(a)(v) Wastewater treatment facilities construction: It was discovered that two words were missing that helped describe the calculations used to determine financial burden (page 55).

The applicant's current and future debt service on the project;

WAC 173-98-430(3) Repayment: Subsection (3) of this rule was deleted entirely, because it allowed ecology's director to extend the start date of loan repayment, which is not consistent with SEC. 603 (5)(1)(B) of the Clean Water Act. Deleting subsection (3) also changed the numbering order (page 63).

~~(3) The director may extend the first repayment due date if it is not detrimental to the perpetuity of the revolving fund. However, this will not change the total length of the loan terms, rather, the loan amount will be amortized over a shorter period of time;~~

WAC 173-98-520 (4)(a) Ceiling amounts: Added language to clarify intent. Left unchanged, this language could have been interpreted to limit funding to only 10% of the engineer's estimate instead of an additional 10% of the engineer's original estimate (page 69 and 70).

If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

WAC 173-98-530(4) Step process for water pollution control facilities: This section had an incomplete sentence and a few words were missing. The incomplete sentence was deleted and words were added to complete the intent (pages 71 and 72).

Combined steps for smaller design-construct projects (step four): In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one of the timeframes the funding

~~agreement is signed~~ year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

WAC 173-98-600(1) Design-build and design-build-operate project requirements: Changed the word "statues" to "statutes" (page 74).

Design-build or design-build-operate projects must be consistent with applicable ~~statues~~ statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

WAC 173-98-720(3) State environmental review process: Changed the word "significance" to "significant" (page 81).

All mitigation measures committed to in documents developed in the SERP process, such as the environmental checklist, environmental report, SEPA environmental impact statement (EIS), the finding of no ~~significance~~ significant impact/environmental assessment, or record of decision/federal EIS will become revolving fund loan agreement conditions. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

WAC 173-98-800 (2)(c) Starting a project: Copied exact language from WAC 173-98-220 and duplicated it here as subsection (2)(c), because it adds additional clarification. This is not new language (page 84).

Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan offers that do not result in a signed agreement are automatically terminated. see WAC 173-98-220 "Final offer and applicant list."

Differences between proposed and final of chapter 173-95A WAC, Uses of the Centennial clean water program:

WAC 173-95A-020(60) Definitions: Deleted the word "protection" and replaced with the correct word "policy" (page 19).

State environmental review process (SERP) means the National Environmental ~~Protection~~ Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

WAC 173-95A-120(26) Projects ineligible for centennial program funding: Added language to avoid an unintentional categorical exclusion of water quantity (page 32).

Water quantity or other water resource projects that solely address water quantity issues.

WAC 173-95A-400 (4)(a)(iii) Wastewater treatment facilities construction: It was discovered that two words were missing that helped describe the calculations used to determine financial burden (page 39).

The applicant's current and future debt service on the project;

WAC 173-95A-420(5) Storm water projects: It was discovered that this example did not capture the actual intent of the rule and therefore added no value. Language was clarified to capture the intent of WAC 173-95A-420(3) in this section. This clarification does not change the meaning of the rule (page 45 and 46).

Matching requirements, percent of grant, and grant ceiling amounts. Storm water-hardship grants are fifty percent grants with a fifty percent cash-matching requirement.

The maximum amount available for a storm water-hardship grant is \$500,000.

For example:

When a grant applicant whose service area population is twenty-five thousand or less can demonstrate that its MHI is below sixty percent or less of the average statewide MHI, the applicant may be eligible for a fifty percent grant, not to exceed five hundred thousand dollars.

WAC 173-95A-520 (5)(a) Ceiling amounts: Added language to clarify intent. Left unchanged, this language could have been interpreted to limit funding to only 10% of the engineer's estimate instead of an additional 10% of the engineer's original estimate (page 48 and 49).

If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

WAC 173-95A-540(3) Step process for facilities: This section had an incomplete sentence and a few words were missing. The incomplete sentence was deleted and words were added to complete the intent (page 51).

Combined steps for smaller design-construct projects (step four): In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one ~~of the timeframes the funding agreement is signed~~ year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

WAC 173-95A-700 (2)(c) Starting a project: Copied exact language from WAC 173-95A-320 and duplicated it here as subsection (2)(c), because it adds additional clarification. This is not new language (page 59).

Loan and grant offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan and grant offers that do not result in a signed agreement are automatically terminated, see WAC 173-95A-320 "Final offer and applicant list."

III. Summarize Comments

Comment Numbered by Commenter				
Comment No.	First Name	Last Name	Organization	Page
1, 2	Cheryl	Sonnen	Asotin County Conservation District	9

Comment No.	First Name	Last Name	Organization	Page
3, 4, 5	Charlie	Kessler	Stevens County Conservation District	10-11
6	Dana	Cowger	Varela & Associates, Inc.	11
7	Dave	Rountry	Ecology, Southwest Regional Office	14
8	Russell	Clark	Mayor, City of Rock Island	14
9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21	Robert	Masonis	Director, American Rivers, NW Region	15-21

Comment by Topic	
Topic	Comment numbers correspond to commenter in the table above
Rule Amendment Process	1, 5, 6, 7, 9
Best Management Practices Eligibility	1, 3, 7
Allocation of Centennial Funds Activities/Facilities	1, 6, 7
On-Site Septic Repair and Replacement Local Loan Program	4
Definition of: -Water Pollution Control Activities	10, 11, 17, 18,
Definition of: -Low Impact Development	12
Land Acquisition for Wetland Preservation	13
Eligibility of Low Impact Development Techniques	14
Water Quantity	15, 19
The Growth Management Act	16, 20
Cost Effectiveness Analysis for Water Pollution Control facilities	21

- ◆ Summarize all comments received regarding the proposed rule and respond to comments by category or subject matter. You must indicate how the final rule reflects agency consideration of the comments or why it fails to do so (RCW 34.05.325 (6)(a)(iii)):

Comment No. 1 (public hearing excerpt):

Cheryl Sonnen: "Hi, I'm Cheryl Sonnen with the Asotin County Conservation District, and my address is 720 Sixth Street, Suite B in Clarkston, WA 99403. I have provided a lot of information to ecology requesting that the BMP list be expanded. And, I appreciate that ecology has listened to that request and that they've supported that in this rule to expand the BMPs on a case-to-case basis, and I will be working with my project managers and the regional folks to get more information on what those BMPs are. But I appreciate that that has been put into rule."

Ecology's Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 2 (public hearing excerpt cont.):

Cheryl Sonnen: Asotin County Conservation District.

"I also wanted to let you know that I support the idea of expanding or having the flexibility between the facilities and the activities projects and the flexibility to shift that money as needed. Thank you."

Ecology's Response:

Currently two-thirds of the competitive funding is set aside for facilities hardship grants, and one-third is set aside for nonpoint activities grants.

This new rule language will allow ecology to distribute competitive Centennial funds according to the scores given to projects on the final offer and applicant list. In other words, ecology will stream competitive funds to projects receiving the highest scores and in descending order. In addition, the two major project categories (activities and facilities) cannot receive more than two-thirds of the competitive funding. This will provide a safety net of at least one-third of the funding for each category. The remaining one-third will be allocated based on the competitive process.

Ecology held outreach sessions regarding these rules at statewide conferences, such as the Infrastructure Assistance Coordinating Council and the Washington Association of District Employees. To help frame this issue, ecology conducted several client and stakeholder workshops and formed several workgroups involving internal staff and community representatives from the water quality financial assistance program. Based on this outreach, ecology is satisfied that this approach is fair and will result in the funding of the highest priority water quality projects for both activities and facilities projects.

Comment No. 3 (public hearing excerpt):

Charlie Kessler: "Charlie Kessler, Stevens County Conservation District, 232 Williams Lake Road, Colville, WA. I, too, would like to say that I appreciate ecology listening to the conservation districts when it came to talking about best management practices and putting some flexibility into the rule."

Ecology's Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 4 (public hearing excerpt cont.):

Charlie Kessler: Stevens County Conservation District.

"Also, I appreciate what they are doing in the septic tank area, because that's one of the concerns we have in Stevens County; how to repair or replace failing septic systems for people who really can't afford it."

Ecology's Response:

In June of 2005, ecology sponsored a statewide workshop to learn more about the ongoing difficulties that local governments and tribes experience with failing on-site septic systems. In response to comments received at the workshop, ecology proposed rule revisions in September 2005, to expand its local loan program to include grants and offer public bodies more flexibility in managing local loan funds.

Since the initiation of the rule amendment process, the 2006 Washington state legislature appropriated \$7.5M to repair and replace on-site septic systems in the Puget Sound area as part of the Puget Sound initiative. This legislation compliments [complements] this rule. However, the appropriation is directed to the Puget Sound area.

Ecology is very pleased to offer an expanded on-site repair and replacement local loan program that includes grants and loans awarded on a statewide basis, because failing on-site septic systems are a statewide water quality problem.

Comment No. 5 (public hearing excerpt cont.):

Charlie Kessler: Stevens County Conservation District.

"So, I'm also a part of the Water Quality Financial Assistance Council and have appreciated the whole process of incorporating the comments of diverse groups throughout the state."

Ecology's Response:

Ecology recognizes and appreciates the advice and guidance provided by members of our financial assistance council. This comment reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 6 (written comment):

Dana V. Cowger, P.E.—Vice President, VERELA & ASSOCIATES, INC.

Proposed rule revision: "Funding Allocation Revision For Facilities vs. Activities":

"The proposed rule change will have the greatest impact on the small communities of Washington, many of which are under DOE mandated schedules for implementing treatment upgrades. This rule change will directly impact funding availability to these communities for required treatment improvements which will otherwise be unaffordable for the communities. Most of the small communities we represent will be directly impacted by this rule change.

I believe this change is occurring without really hearing from the small communities in the state who are directly impacted by this change. The obvious question is, why have communities not commented to ecology? I believe their silence is not due to lack of interest but due to a lack of knowledge and understanding that this directly impacts them. Small communities, their staff and elected officials are made up of nontechnical volunteer citizens who work full-time jobs (apart from the city or town) while on the side carrying out city business as best as they can. They do not have access to the information and consequently they remain uninformed on the pertinent points of these rule changes and do not understand the impact to their communities. They do not have staff responsible for monitoring and staying current on these rules. They rely on ecology to craft a program which takes into account their community's best interests.

Coupled with the fact that the rule change seems somewhat innocuous on surface, it therefore goes unnoticed to the average small city. This change will, in fact, reduce funding available for wastewater treatment plant upgrades for communities who have limited resources to fund upgrades. It is not prudent to make this change under these circumstances.

Contrast the above situation with the group of organizations that represent nonpoint activity projects (where the funding will be diverted). Nonpoint projects are sponsored by more sophisticated groups consisting of conservation districts, health districts, fish and game departments, public utilities districts, Indian tribes, etc. These groups generally have full-time staff actively engaged and knowledgeable of the funding process, the rules and the funding allocations. In many cases the individuals seeking the funding have a personal stake in obtaining the funding (I suppose much like consulting firms like Varela & Associates) and whose ongoing salaries may be dependent on whether grants are received or not. These groups are informed and involved; they can and do offer supporting comments and input on the proposed rule changes.

Due to the difference in the representation of the two contrasting interest groups (i.e. facilities vs. activities), the comments expected from either group can hardly be compared with equal weight. The point is that input is that the small communities being adversely impacted by the proposed rule change are not easily accessed by the process. Whereas the favorably affected projects have interest groups which are more involved and aware of the process.

I believe adopting this rule revision amounts to an unfunded mandate by ecology. This is particularly pointed, given that ecology's funding for this program is not being cut (i.e. the legislature is not decreasing ecology's funding for this program). Rather, ecology (not the legislature) is reallocating existing funding from a mandated function (i.e. facilities) and redirecting it to activities projects which are generally more flexible regarding timeframe and optional regarding urgency and need for funds. I do not feel this is in the best interests of the small communities of Washington and their residents. I would propose that this change not be made unless at the same time a relaxation of the compliance deadlines facing the small communities can also be granted.

I respect the fact that DOE, in its judgment, is making an effort to distribute the available funding to the best and highest use they deem appropriate. However, I do not feel this proposed reallocation of funding achieves that. It is detrimental to the efforts of small communities trying to comply with DOE imposed compliance deadlines toward achieving water quality goals."

Ecology's Response:

Ecology is proposing a competitive process in which applicants must compete for the funding on an equitable basis, rather than receive funding priority based on hardship status alone.

Currently two-thirds of the competitive funding is set aside for facilities hardship grants, and one-third is set aside for nonpoint activities grants.

This new rule language will allow ecology to distribute competitive Centennial funds according to the scores given to projects during a competitive project-rating process. In other words, ecology will stream competitive funds to projects receiving the highest scores and in descending order.

To ensure funding availability for the two major project categories that ecology funds (activities and facilities), a limit is set on how much funding one category can receive. No category can receive more than two-thirds of the competitive

funding, which means that at least one-third will be left for the other category.

This will provide a safety net of at least one-third of the funding for each category as illustrated below:

Facilities hardship projects - at least 1/3

Activities-type projects - at least 1/3

Activities or facilities projects - 1/3 (depending on project score)

It is correct that this competitive method could result in less funding for hardship communities (as low as one-third of the competitive funding). It is also possible for hardship communities to receive two-thirds of the competitive funding. It depends on the score given for the application during the competitive evaluation process in relation to other water quality projects.

Ecology is satisfied that this approach to the allocation of competitive Centennial funding will result in the funding of the highest priority water quality projects statewide.

Also, it is important to note that this distribution only applies to competitive Centennial funds. This will not affect federal three hundred nineteen grants, legislative provisos, or dedicated funding that is appropriated through the legislature for small communities.

Ecology is sensitive to the needs of small, financially distressed communities and the negative impact that high sewer user fees can pose. Ecology will continue to consider these impacts when it revises the water quality funding application for the fiscal year 2009 funding cycle.

Outreach efforts:

Communication and outreach efforts for these rules are a top priority to ecology.

This rule amendment process included many outreach efforts, such as multiple statewide workshops, informational presentations, and sessions at conferences, such as the Infrastructure Assistance Coordinating Council and the Washington Association of District Employees.

Ecology conducted several client and stakeholder workshops and formed several workgroups involving internal staff and community representatives from the water quality financial assistance program.

Ecology staff spent extra effort to personally request comments and discuss possible impacts of the rule proposal with small communities at technical advisory and funding meetings whenever possible.

To make the rule amendment process transparent, ecology staff solicited early comments to help guide its focus. Ecology received over one hundred initial comments resulting from early outreach efforts. Ecology staff posted all of the initial comments on its comprehensive water quality rule development web site at <http://www.ecy.wa.gov/programs/wq/wqhome.html>. This web site also provides access to rule amendment plans, publications, schedules, focus sheets, miscellaneous workshop materials, and staff contacts.

Ecology staff shared the rule amendment web site address at every possible venue throughout the rule amendment process along with a detailed rule amendment schedule.

Comment No. 7 (written comment):

Dave Rountry, Water Cleanup Lead, Department of Ecology Southwest Region (written response).

"Good to see the new option for expanding eligibility for Centennial grants beyond the traditional fencing and planting in riparian areas. My contacts at the CDs, the state conservation commission are glad to see that our advice for this proposed expansion is actually included in the rule changes.

To paraphrase one comment I got from the commission, we appreciate that you listened to the needs of our CDs. I hope the rule is adopted, so we can move to the next level of discussion about translating the option into new BMP implementation. Thanks a lot."

Ecology's Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 8 (written comment):

Russell Clark, Mayor, City of Rock Island.

"Please leave the Centennial clean water fund alone. The city of Rock Island needs this funding to build it [its] sewer plant. There isn't enough funding as things are."

Ecology's Response:

Please see the response to comment No. 6.

Comment 9 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

"American Rivers is a national, not-for-profit river conservation organization with a mission to protect and restore healthy, natural rivers for the benefit of people, fish and wildlife. The Northwest regional office headquartered in Seattle, Washington has been advocating for effective river conservation policies for fifteen years since the office was opened in 1992.

We appreciate the opportunity to comment on the proposed rule making regarding chapter 173-98 WAC, Uses and limitations of the water pollution control revolving fund and chapter 173-95A WAC, Uses and limitations of the centennial clean water fund.

At the outset we wish to commend ecology for proposing to improve these rules in several respects that, if codified in the final rule, should benefit rivers and streams in Washington state. An integrated funding approach, expanding loan and grant funds to cover best management practices (BMPs), and linking loan eligibility to compliance with the Growth Management Act are all laudable objectives that would be advanced by the proposed rules. Our comments on specific proposed rule changes are set forth below."

Ecology's Response:

Ecology appreciates this comment. It reflects the extensive outreach and collaborative approach used to involve clients and stakeholders in the development of these rules.

Comment No. 10 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-95A-020: Definitions (Centennial)

(64) "'Water pollution control activities' or 'activities'"

"Subsection (a) should be expanded to include activities taken to prevent or mitigate pollution of surface water. The current proposal would limit such activities to those addressing only underground water."

Ecology's Response:

The current rule proposal does not limit funding to only underground water. The definition of water pollution control activities or activities is taken directly from state statute, RCW 70.146.020(5). It should be interpreted in its entirety and not be based on subsections. For example, subsection (a) should not be interpreted without subsection (b).

Ecology's interpretation is consistent with the legislative statement of policy in RCW 70.146.010, which specifically refers to and includes "surface and underground waters." WAC 173-95A-020 and all of its subsections adequately include surface waters of the state.

Comment No. 11 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-95A-020: Definitions (Centennial)

"Subsection (c) should be revised to include activities taken to restore the water quality of rivers and streams. The current proposal only includes activities to restore lake water quality."

Ecology's Response:

The current rule proposal does not limit funding to only lakes. Please see the response to comment No. 10.

Comment No. 12 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-95A-020: Definitions (Centennial)

"A definition should be included for 'low impact development,' that should read as follows: 'A methodology that manages rainfall at the source using uniformly distributed decentralized micro-scale controls. LID's goal is to mimic a site's predevelopment hydrology by using design techniques that infiltrate, filter, store, evaporate, and detain runoff close to its source.'"

Ecology's Response:

Ecology appreciates the need to define low impact development (LID) for the purposes of its funding programs. The issues surrounding LID funding continue to emerge. Ecology is currently developing an enhanced funding program as a result of new legislative appropriations. This involves input from numerous ecology and other state and federal agencies, and clients and stakeholders.

The definition provided by American Rivers will be provided to the LID workgroup for consideration.

Ecology will likely use the information gathered by this LID workgroup to inform its decision on the definition of LID. Unfortunately, the definition will not be developed before the adoption date of this rule.

Comment No. 13 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-95A-100: Grant and loan eligible (Centennial)

"(3) Land acquisition should be made not only for wetlands preservation, but also for the preservation of land that is critical for the preservation of natural hydrology and prevention of nonpoint pollution. This would include but not be limited to streamside buffers, streams, areas with a shallow water table, and key areas of groundwater infiltration. Subsection (d) should be expanded accordingly."

Ecology's Response:

It appears that the comment intended to reference WAC 173-95A-110 Loan only eligible. The proposed rule also allows land acquisition "for prevention of water pollution." This section should be interpreted in its entirety and not be based on subsections. For example, subsection (a) should not be interpreted without subsection (b).

Comment No. 14 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-95A-100: Grant and loan eligible. (Centennial)

"'Low impact development' storm water management techniques as defined above should be added to the list of eligible projects."

Ecology's Response:

Ecology appreciates the need to define low impact development (LID) eligibilities for the purposes of its funding programs. The issues surrounding LID funding continue to emerge. Ecology is currently developing an enhanced funding program as a result of new legislative appropriations. This involves input from numerous ecology and other state experts, federal agencies, and clients and stakeholders.

Ecology will consider the information gathered by this LID workgroup to inform its decision on determining future eligibility of LID and other storm water best management practices.

Comment No. 15 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-95A-120: Projects ineligible for Centennial program funding

(26) "The categorical exclusion of projects addressing water quantity is too broad and should be revised. Projects that improve water quantity can significantly improve water quality as well by diluting pollutants and reducing water temperature - a major problem in the state's rivers and streams. Accordingly, projects that have both water quantity and significant water quality benefits should be eligible."

Ecology's Response:

Consistent with legislative intent, ecology considers the protection of water quality a primary objective when screening projects for funding (RCW 70.146.070). While it is correct that projects solely addressing water quantity issues would not be eligible for funding, ecology agrees that some water quality-focused project[s] may include minor elements of water quantity.

Ecology updated the language in this rule to reflect this clarification.

Comment No. 16 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-95A-610: The Growth Management Act (Centennial)

"American Rivers strongly supports linking grant and loan eligibility with compliance with the Growth Management Act. While we support a limited exception where there is an urgent public health need or risk of substantial environmental degradation, the available assistance should be limited to a loan; grants should not be available. This would increase the likelihood of compliance with the GMA. Subsections (1) and (5) should be revised accordingly.

The definition of compliance with GMA set forth in subsection (2) should be revised to expressly include required regulatory updates (e.g., critical areas ordinances).

We propose the addition of another requirement in subsection (5) for funding eligibility where a county, city or town is not in compliance with the GMA. Eligibility for funds should be conditioned on an enforceable commitment by the governmental entity to come into compliance with GMA by a specified date agreed to by ecology. This requirement should be added in a new subsection (d)."

Ecology's Response:

This section implements the legislative requirements established by RCW 70.146.070 (2) and (3). While these suggestions are certainly interesting, we believe the elements you suggest extend beyond ecology's authority under the statute to link funding with GMA compliance. Should the statutory standards change, ecology will amend this rule accordingly.

Comment No. 17 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-98-030 (Water Pollution Control Revolving Fund)

"(68) 'Water pollution control activities' or 'activities'"

"Subsection (a) should be expanded to include activities taken to prevent or mitigate pollution of surface water. The current proposal would limit such activities to those addressing only underground water."

Ecology's Response:

The current rule proposal does not limit funding to only underground water. The definition of water pollution control activities or activities is taken directly from state statute, RCW 90.50A.010(5). The rule should be interpreted in its entirety and not be based on subsections. For example, subsection (a) should not be interpreted without subsection (b).

Ecology's interpretation is consistent with the legislative statement of policy in RCW 90.50A.005, which specifically refers to and includes "surface and underground waters."

Comment No. 18 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-98-030 (Water Pollution Control Revolving Fund)

"Subsection (c) should be revised to include activities taken to restore the water quality of rivers and streams. The current proposal only includes activities to restore lake water quality."

Ecology's Response:

The current rule proposal does not limit funding to only lakes. See response No. 17.

Comment No. 19 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-98-110: Noneligible (Water Pollution Control Revolving Fund)

(31) "The categorical exclusion of projects addressing water quantity is too broad and should be revised. Projects that improve water quantity can significantly improve water quality as well by diluting pollutants and reducing water temperature - a major problem in the state's rivers and streams. Accordingly, projects that have both water quantity and significant water quality benefits should be eligible."

Ecology's Response:

Consistent with legislative intent, ecology considers the protection of water quality a primary objective when screening projects for funding (RCW 90.50A.010; 90.50A.030(2)). While it is correct that projects solely addressing water quantity issues would not be eligible for funding, ecology agrees that some water quality-focused project[s] may include minor elements of water quantity.

Ecology updated the language in this rule to reflect this clarification.

Comment No. 20 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-98-710: The Growth Management Act (Water Pollution Control Revolving Fund)

"American Rivers strongly supports linking grant and loan eligibility with compliance with the Growth Management Act. While we support a limited exception where there is an urgent public health need or risk of substantial environmental degradation, the available assistance should be limited to a loan; grants should not be available. This would increase the likelihood of compliance with the GMA. Subsections (1) and (5) should be revised accordingly.

The definition of compliance with GMA set forth in subsection (2) should be revised to expressly include required regulatory updates (e.g., critical areas ordinances).

We propose the addition of another requirement in subsection (5) for funding eligibility where a county, city or town is not in compliance with the GMA. Eligibility for funds should be conditioned on an enforceable commitment by the governmental entity to come into compliance with GMA by a specified date agreed to by ecology. This requirement should be added in a new subsection (d)."

Ecology's Response:

Please see the response to comment No. 16.

Comment No. 21 (written comment):

Robert J. Masonis, Senior Director, American Rivers, NW Region.

WAC 173-98-730: Cost-effectiveness analysis for water pollution control facilities (Water Pollution Control Revolving Fund)

"Subsection (2)(c) requires that 'environmental impact, energy impacts, growth impacts, and community priorities' be evaluated in a mandatory cost-effectiveness analysis, but describes such costs as 'nonmonetary.' While not all such costs can be quantified in monetary terms, some can. Accordingly, this provision should be revised to include both 'monetary and nonmonetary' costs.

Moreover, subsection (1) should be revised to make clear that the nonmonetary costs are a factor that will be considered in determining the most cost-effective alternative/solution.

Lastly, a new subsection (2)(d) should be added requiring the consideration of monetary and nonmonetary project benefits in the cost-effectiveness determination."

Ecology's Response:

Ecology has updated the information in the rule to address this comment.

IV. Summary of public involvement opportunities

Please provide a summary of public involvement opportunities for this rule adoption:

Ecology conducted the following outreach:

- √ Four initial statewide public comment meetings: October 11, 12, 19, and 20 (2005)
- √ One additional alternative contracting (design-build) public comment meeting: July 12, 2006
- √ Eight internal rule development multi-regional workgroup meetings: January 2006-July 2006
- √ Four financial advisory council (FAC) briefings: September 2005-June 2007
- √ Four FAC rule subcommittee workgroup events: February-July 2006
- √ Four program management team briefing[s]: September 2005-June 2007
- √ Two additional information-sharing presentations: March 2007 (Olympia and Spokane)

Hearing dates and locations:

- √ March 28 and 29, 2007: Olympia and Spokane
- √ Four people in attendance at each hearing
- √ See attached hearing memo [no information supplied by agency.]

FOCUS sheet, news releases:

- √ Mailed to over 2,165 people

Advertisements and/or newspaper announcements (March 13, 2007):

- √ Seattle Times
- √ Spokesman Review
- √ Yakima Herald
- √ Daily Journal of Commerce

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 43, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 71, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 71, Repealed 0.

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

Date Adopted: June 29, 2007.

Jay J. Manning
Director

AMENDATORY SECTION (Amending Order 98-10, filed 11/24/98, effective 12/25/98)

WAC 173-98-010 (~~What is the purpose of this chapter?~~) **Purpose.** ((The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the state water pollution control revolving fund (SRF), as authorized by chapter 90.50A RCW. This fund provides financial assistance to applicants throughout the state of Washington who need such assistance to meet high-priority water quality management needs.)) The purpose of this chapter is to set forth requirements for the department of ecology's administration of the Washington state water pollution control revolving fund, as authorized by chapter 90.50A RCW, water pollution control facilities financing. This fund is primarily comprised of federal capitalization grants, state matching moneys, and principal and interest repayments. It is used to provide loan assistance to public bodies for statewide, high-priority water quality projects that are consistent with the Clean Water Act, 33 U.S.C. 1251-1387.

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-020 (~~What are the definitions of key terms?~~) **Integrated funding approach.** ((Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Act" means the Federal Water Pollution Control Act (33 U.S.C. 4661 et seq.).

(2) "Applicant" means a public body that has applied for funding.

(3) "Best management practices" means physical, structural, and/or managerial practices approved by the department or by another agency with regulatory oversight that, when used singularly or in combination, prevent or reduce pollutant discharges.

(4) "~~Concentrated animal feeding operation~~" means an animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five year, twenty-four hour storm event; or if the operation is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or the operation will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or the department or the U. S. Environmental Protection Agency determines the operation is considered to be polluting the waters of Washington state.

(5) "~~Commercial, industrial, and institutional flows~~" means the portion of the total flows to a facilities project that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(6) "~~Construction~~" means the erection, installation, expansion, or improvement of water pollution control facilities or activities.

(7) "~~Cost-effective alternative~~" means that alternative with the lowest present worth or equivalent annual value that achieves the requirements of the project while recognizing the environmental and other nonmonetary considerations.

(8) "~~Defeasance~~" means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

(9) "~~Department~~" means the Washington state department of ecology.

(10) "~~Design~~" means the plans and specifications for water pollution control facilities or activities.

(11) "~~Director~~" means the director of the Washington state department of ecology or his or her authorized designee.

(12) "~~Easement~~," for the purposes of this rule, means a written agreement between a public body and an individual landowner, that allows the public body to have access to the property at any time to inspect, maintain, or repair activities or facilities installed with a loan or a grant, or to hold occasional public tours of the site for educational purposes.

(13) "~~The effective date of the loan agreement~~" means the date the loan agreement is signed by the department's water quality program manager.

(14) "~~Enforcement order~~" means an administrative order that is a document issued by the department under the authority of RCW 90.48.120 and that directs a public body to complete a specified course of action within an explicit period of time to achieve compliance with the provisions of chapter 90.48 RCW.

(15) "~~Engineering report~~" means a report that evaluates engineering and other alternatives that meet the requirements set forth in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(16) "~~EPA~~" means the United States Environmental Protection Agency.

(17) "~~Excess capacity~~" means water pollution control facilities capability beyond what is needed for the existing residential population to meet the water quality-based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(18) "Existing residential need" means work required on the water quality-based effluent limitations in the recipient's water pollution control facilities for the existing residential population in order to meet the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(19) "Facilities plan" means plans and studies necessary for treatment works to comply with enforceable requirements of the act and with state statutes. Facilities plans must include a systematic evaluation of alternatives that are feasible in light of the unique demographic, environmental or ecological, topographic, hydrologic and institutional characteristics of the area. Facilities plans must also demonstrate that the selected alternative is cost-effective.

(20) "Federal capitalization grant" means a federal grant awarded by EPA to the state as seed money to help establish the state water pollution control revolving fund.

(21) "Financial assistance" means each of the four types of assistance specified in WAC 173-98-030 (1)(b) through (f) and other assistance authorized by Title VI of the act and chapter 90.50A RCW.

(22) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.

(23) "Fund" means the state water pollution control revolving fund.

(24) "General obligation debt" means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(25) "Initiation of operation" means the actual date the water pollution control facilities initiates operation and the entity begins using the facilities for its intended purpose. This date may occur prior to final inspection and will be determined by the department after consultation with the recipient. This date may be the same or earlier than the date of project completion.

(26) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.

(27) "Infiltration and inflow correction" means the cost-effective alternative or alternatives identified in an approved facility plan for eliminating or reducing the infiltration and inflow from an existing sewer system.

(28) "Intended use plan (IUP)" means a plan identifying the intended uses by the department of the amount of funds available for financial assistance from the state water pollution control revolving fund (SRF) for that fiscal year as described in section 606(e) of the act. The projects on the intended use plan will be ranked by environmental and financial need.

(29) "Loan agreement" means a legal contract between a recipient and the state, enforceable under state law, and specifying the terms and schedules under which assistance is provided.

(30) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.

(31) "Local prioritization process" means a process to prioritize projects locally.

(32) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to:

(a) Atmospheric deposition, surface water runoff from agricultural lands, urban areas, forest lands, subsurface or underground sources; and

(b) Discharges from boats or other marine vessels.

(33) "Plans and specifications" means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(34) "Project" means the scope of work for which financial assistance is issued.

(35) "Project completion" means the date the project is determined by the department as being complete.

(36) "Public body" means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes recognized as such by the federal government at the time the SRF loan agreement is signed.

(37) "Public health emergency" means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

(38) "Recipient" means an applicant for financial assistance which has signed an SRF loan agreement.

(39) "Reserve account" means, for a loan that constitutes revenue-secured debt, the account of that name created in the loan fund to secure the payment of the principal and interest on the loan.

(40) "Revenue-secured debt" means an obligation of the recipient secured by a pledge of the revenue of a utility and one not of a general obligation of the recipient.

(41) "Scope of work" means a detailed description of a project, including measurable objectives useful for determining successful completion. The scope of work is negotiated between the department and the loan or grant recipient.

(42) "Senior lien obligations" means all revenue bonds and other obligations of the recipient outstanding on the date of execution of this agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

(43) "Severe public health hazard" means a situation declared by the state department of health and the department in which the potential for illness exists, even if the illness is not currently occurring or imminent. For the purposes of this chapter there must be contamination of drinking water or contamination must be present on the surface of the ground in such quantities and locations to create a potential for public contact. The problem must generally involve a serviceable area including, but not limited to, a subdivision, town, city, or county. Also, the problem must be one which cannot be corrected through more efficient operation and maintenance of the wastewater disposal system(s).

(44) "Sewer" means a pipe and related pump stations located on public property, or on public rights of way and easements, that conveys wastewater from individual buildings or groups of buildings to a treatment plant.

(45) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(46) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.

(47) "State water pollution control revolving fund (SRF)" means the water pollution control revolving fund established by RCW 90.50A.020.

(48) "Step process" means a systematic process that facility projects must follow to be eligible for loans or grants.

(49) "Total eligible project cost" means the sum of all costs associated with a water quality project that have been determined to be eligible for loan or grant funding.

(50) "Total project cost" means the sum of all eligible and ineligible costs associated with a water quality project.

(51) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including, but not limited to, change in:

- (a) Temperature;
- (b) Taste;
- (c) Color;
- (d) Turbidity; or
- (e) Odor.

It also means a discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render those waters harmful, detrimental, or injurious to the public health, safety, or welfare, or injurious to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(52) "Water pollution control activities" means actions taken by a public body to achieve the following purposes:

- (a) To control nonpoint sources of water pollution;
- (b) To develop and implement a comprehensive conservation and management plan for estuaries; and
- (c) To maintain, improve, or protect water quality through the use of water pollution control facilities, management programs, or other means.

(53) "Water pollution control facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater. Wastewater includes, but is not limited to, sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property integral to the treatment process, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include facilities, equipment, and collection systems which are necessary to protect federally designated sole source aquifers.

(54) "Water resource inventory areas," sometimes referred to as "WRIAs," means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in chapter 173-500 WAC as it existed on January 1, 1997. All parts of the

state of Washington are located in a single water resource inventory area.) (1) Where possible, the Washington state department of ecology combines the management of the Washington state water pollution control revolving fund with other funding programs, such as the centennial clean water program, and the federal Clean Water Act section 319 non-point source fund.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-030 ((How, and under what conditions, can money from the state water pollution control revolving fund be used?)) Definitions. ((1) Uses of the money. The state water pollution control revolving fund (SRF) may be used for the following purposes:

(a) To accept and retain funds from capitalization grants provided by the federal government, state matching funds appropriated in accordance with chapter 90.50A RCW, payments of principal and interest, and any other funds earned or deposited;

(b) To make loans to applicants in order to finance the planning, design, and/or the construction of water pollution control facilities, make loans to applicants for the implementation of nonpoint source pollution control management programs (which includes planning and implementing elements of the nonpoint source pollution assessment and management program), and make loans to applicants for the development and implementation of a comprehensive estuary conservation and management plan, subject to the requirements of the act;

(c) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(d) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities. (March 7, 1985, was the date that the amendments adding Title VI to the act were first considered by Congress. Any refinancing agreements must be for construction initiated after that date according to federal and state law);

(e) To guarantee or purchase insurance for local obligations where such an action would improve credit market access or reduce interest rates;

(f) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, if the proceeds of those bonds will be deposited in the fund; and

(g) To finance the reasonable costs incurred by the department in the administration of the account as authorized by the act and chapter 90.50A RCW.

(2) Policies for establishing the terms of financial assistance. Recipients' interest rates will be based on the average market interest rate. The average market interest rate will be based on the daily market rate published in the *Bond Buyer's Index* for tax exempt municipal bonds for the period from sixty to thirty days before the SRF annual funding application cycle begins, using the daily market interest rate for that period.

Loan terms and interest rates are as follows:

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than 5 but no more than 20 years:	Sixty percent of the average market rate.

The director of the department of ecology or the director's designee may approve lower interest rates for the annual funding application cycle if a financial analysis of the fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the fund.

(3) Financial hardship assistance for facilities construction:

(a) Financial hardship assistance may be available to loan recipients for the existing residential need portion of a water pollution control facilities construction project if the project will cause a residential sewer user charge in excess of one and one-half percent of the median household income.

(i) Median household income for this purpose is based on the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

(ii) If median household income data are not available for a community or if the community disputes the data used by the department, the department will allow a local government to conduct a scientific survey to determine the median household income.

(iii) In situations where a project is proposed for an area with demographics which may not be representative of the entire census designated place, the department may require a scientific survey to determine the median household income.

(iv) In rare cases where financial hardship cannot be established using residential user fees as a percent of median household income financial hardship determinations will be made on a case-by-case basis.

(b) The need for hardship assistance is calculated on water pollution control facilities construction costs associated with existing residential need at the time an application for funding is received by the department. The analysis does not include costs for growth. For example, if an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for growth, the hardship analysis would be based on the six million dollars for existing residential need.

(c) If the department determines that financial hardship exists, it may make changes to the offer of financial assistance in an attempt to lower the residential user charges below the financial hardship level for the existing residential need. These changes may include:

(i) Changing the structure of the loan agreements with terms to lengthen the repayment period to a maximum of twenty years, lowering the interest rate, or a combination of a lower interest rate and an extended term; and, if this is not sufficient,

(ii) Offering partial centennial grant funding as allowable under the provisions of chapter 173-95A WAC.

(d) If an applicant is requesting financial hardship assistance, it should submit a completed financial hardship analysis form with its application for financial assistance.) For the purposes of this chapter:

(1) Act means the federal Clean Water Act (33 U.S.C. 1251-1387).

(2) Activities see water pollution control activities.

(3) Annual debt service means the amount of debt the applicant is obligated to pay on the loan in one year.

(4) Applicant means a public body that has applied for funding.

(5) Best management practices (BMP) means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(6) Ceiling amount means the highest level of financial assistance the department can provide to a recipient for an individual project.

(7) Commercial, industrial, and institutional flows mean the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) Competitive funding means moneys available for projects through a statewide evaluation process.

(9) Completion date or expiration date means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) Concentrated animal feeding operation (CAFO) means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event;

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit;

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) Conservation easement means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) Conservation plan means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) Construction means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) Cost-effective alternative means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) Department means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to inspect, maintain, or repair loan-funded activities or facilities.

(20) **Effective date** means the date the loan agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of the facilities or activities project that can be funded.

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(28) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(29) **Facilities** see water pollution control facility.

(30) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(31) **Federal capitalization grant** means a federal grant awarded by the U.S. Environmental Protection Agency (EPA) to the state to help expand the state water pollution control revolving fund.

(32) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

(33) **Force account** means loan project work performed using labor, materials, or equipment of a public body.

(34) **Funding category** see "water pollution control activities funding category" and "water pollution control facilities funding category."

(35) **Funding cycle** means the events related to the competitive process used to allocate moneys from the Washington state water pollution control revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

(36) **General obligation debt** means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(37) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(38) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(39) **Infiltration and inflow correction** means the cost-effective alternative or alternatives and the associated corrective actions identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to existing sewer system.

(40) **Initiation of operation** means the actual date the recipient begins using, or could begin using, the facilities for its intended purpose. This date may occur prior to final inspection or project completion.

(41) **Intended use plan** (IUP) means a document identifying the types of projects proposed and the amount of all money available for financial assistance from the water pollution control revolving fund for a fiscal year as described in section 606(c) of the act.

(42) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(45) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from some boats or other marine vessels.

(46) **Perpetuity** means the point at which the water pollution control revolving fund is earning at least fifty percent of the market rate for tax-exempt municipal bonds on its loan portfolio.

(47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and

construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(48) **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

(49) **Project** means a water quality improvement effort funded with a grant or loan.

(50) **Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

(51) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or institutions of higher education when the proposed project is not part of the school's statutory responsibility.

(52) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

(53) **Recipient** means a public body that has an effective loan agreement with the department.

(54) **Reserve account** means an account created by the recipient to secure the payment of the principal and interest on the water pollution control revolving fund loan.

(55) **Revenue-secured debt** means an obligation of the recipient secured by a pledge of the revenue of a utility.

(56) **Revolving fund** means the water pollution control revolving fund.

(57) **Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

(58) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

(59) **Senior lien obligations** means all revenue bonds and other obligations of the recipient outstanding on the date of execution of a loan agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of a loan agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

(60) **Service area population** means the number of people served in the area of the project.

(61) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

(62) **Sewer** means the pipe and related pump stations located on public property, or on public rights of way and easements that convey wastewater from buildings.

(63) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(64) **State environmental review process** (SERP) means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code

of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

(65) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

(66) **Total project cost** means the sum of all expenses associated with a water quality project.

(67) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(68) **Water pollution control activities or activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(69) **Water pollution control activities funding category** means that portion of the water pollution control revolving fund dedicated to nonpoint source pollution projects.

(70) **Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

(71) **Water pollution control facilities funding category** means that portion of the water pollution control revolving fund dedicated to facilities projects.

(72) **Water pollution control revolving fund** (revolving fund) means the water pollution control revolving fund established by RCW 90.50A.020.

(73) **Water resource inventory area (WRIA)** means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-040 (~~Where can I obtain more detail about the application, review, and issuance processes for funds from the state?~~) **Water pollution control revolving fund** ~~(?)~~ **(revolving fund) uses.** ~~(((1) Applicants must apply for financial assistance in order to be considered for funding and for their projects to be included on the intended use plan. Projects must be on a current or past intended use plan in order to receive SRF loans.~~

(a) A schedule of the annual funding cycle will be published no later than the last business day of November each year, for the funding corresponding to the next state fiscal year.

(b) The period during which applications are accepted each year will last a minimum of sixty days, and application forms and guidelines for that year will be made available at the beginning of that period.

(c) In the first thirty days of the period during which applications are accepted each year, the department will conduct at least one application workshop in each of the department's four regions.

(d) When there is limited demand for funds from the current funding cycle, projects from any past intended use plan, starting with the most recent, may be funded in priority order, where:

(i) Cost overruns to a funded project are shown to be justifiable; or

(ii) Final cost reconciliation shows that higher costs are reasonable; or

(iii) The applicant received partial funding for the project and the change is shown on a current intended use plan.

(2) The application for funding will consist of two parts. Part one of the application will request information for identification, description, and other information about the project for tracking purposes, and part two of the application will request information about the water quality problem or problems being addressed by the project and the proposed solutions to the problems. In the application, applicants will be asked to fully describe the environmental and financial need for the project. Applications for SRF financial assistance for facilities projects must address problems such as public health emergencies, severe public health hazards, the need to provide secondary or advanced treatment, the need to improve and protect water quality, reduction of combined sewer overflows, and other environmental needs. Applications for SRF financial assistance for nonpoint projects must implement the remedies and prevention of water quality degradation associated with nonpoint source water pollution and must not be inconsistent with needs identified in the department's approved nonpoint source pollution management plan.

(3) The application form, part two, will include five main question areas, each with subsidiary questions designed to elicit the information needed to evaluate the project. The maximum points awarded for these question areas equal ninety percent of the total possible score with a maximum of ten percent coming from the local prioritization. The five main question areas and their associated maximum point percentages are:

(a) "What is the overall water quality problem and how will the problem be solved or addressed by the project?" This question is intended for general background purposes and to give evaluators an overview of the proposed project; no points are assigned.

(b) "What are the specific public health and water quality impairments caused by the problem and what are the pollution prevention aspects?" This question area is worth a maximum of thirty-four percent of the total score.

(c) "How will your proposed project address the water quality problem, and what are your measures of success?" This question area is worth a maximum of thirty-four percent of the total score.

(d) "What are some of the local initiatives you have taken that will help make your project a success?" This question area is worth a maximum of twelve percent of the total score.

(e) "Are there any state or federal mandates that this proposed project addresses?" This question area is worth a maximum of ten percent of the total score.

(f) "Local prioritization process." This question area is worth a maximum of ten percent of the total score. The local prioritization process is described in detail in WAC 173-95A-050.

(4) The department will evaluate the proposed projects based on the information contained in the applications:

(a) Projects will be ranked according to potential water quality benefit and protection of public health.

(b) Projects which have the highest environmental and public health need will be given priority for financial assistance under the SRF program.

(c) Because funds must be used in a timely manner, readiness to proceed is also used in establishing the priority of projects:

(d) Other factors, including funding provisions in chapter 90.50A RCW and provisos identified in the department's biennial capital budget, relationship to the department's published plans such as the *Water Quality Management Plan to Control Nonpoint Sources of Pollution* and total maximum daily load studies, and relationship to published plans created by other federal and state agencies will be included in the priority evaluation:

(e) The department will request other agencies to provide evaluation assistance as needed, including but not limited to, the Washington state conservation commission, the Puget Sound action team, and the Washington state department of health.

(f) The department will coordinate maximum funding amounts and other issues with other state and federal funding agencies when possible.

(5) The total score that each proposed project receives based on the application form, part two, will be added to the local prioritization score (see WAC 173-95A-050 for more information on the local priority setting process) to develop the final score for the proposed project.

(6) The department will prepare a draft intended use plan each year after evaluating all applications. The draft intended use plan will list projects in rank order starting with the project receiving the most points in its final score. This will also generally be the order that projects may be offered financial assistance. After issuing the draft intended use plan the department will allow a minimum of thirty days for public review and comment on the draft intended use plan. No later than fifteen days before the end of the public review and comment period the department will conduct at least one workshop to explain the draft intended use plan, answer questions about the draft intended use plan and the evaluation process, and provide details on the public comment process.

(7) The final intended use plan will be issued no later than sixty days after the end of the public review and comment period. The final intended use plan will reflect any changes made as a result of public comments or other information received during the public review and comment period, and will include a responsiveness summary. The final intended use plan will generally list projects in the order that projects may be offered financial assistance.) The revolving fund may be used for the following purposes:

(1) To provide loans to finance the planning, design, and/or construction of water pollution control facilities;

(2) To provide loans for nonpoint source pollution control management projects that implement the Washington's water quality management plan to control nonpoint sources of pollution, and for developing and implementing a conservation and management plan under section 320 of the act;

(3) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(4) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities;

(5) To guarantee or purchase insurance for local obligations to improve credit market access or reduce interest rates;

(6) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of those bonds will be deposited in the revolving fund; and

(7) To finance administration costs incurred by the department as authorized by the act and chapter 90.50A RCW.

PART 1 ELIGIBLE PROJECT TYPE

AMENDATORY SECTION (Amending Order 98-10, filed 11/24/98, effective 12/25/98)

WAC 173-98-100 ((How do recipients comply with the state environmental review process?)) Eligible. ((+)) All recipients which receive SRF loans must meet the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC. Additional provisions are currently needed by federal law under Title VI of the act to satisfy the state's responsibility to help ensure that recipients comply with the National Environmental Policy Act (NEPA) and other applicable environmental laws, regulations, and executive orders. The lead agency (WAC 197-11-050(2)) responsible for SEPA compliance for each project under the SRF program shall also comply with the following additional provisions. When a categorical exclusion, finding of no significant impact, or a record of decision has been issued under NEPA for the same project scope of work, no additional environmental documentation is required. Applicants will need to adopt the federal environmental documentation to meet their responsibilities as required by SEPA rules WAC 197-11-600, 197-11-610, and 197-11-630. If federal environmental documentation has not been submitted for approval to the appropriate federal agency, applicants and designated lead agencies must:

(a) Consult with the department before determining that the project is categorically exempt from SEPA and obtain concurrence that the project meets the criteria for a categorical exemption (WAC 197-11-305) and give public notice of the categorical exemption by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the facilities plan and other environmental information.

(b) Consult with the department prior to issuing a threshold determination (WAC 197-11-330), and submit a copy of the environmental checklist (WAC 197-11-315) and a recommended threshold determination to the department.

(c) Obtain written concurrence from the director with the recommended threshold determination as to whether a determination of nonsignificance (DNS) (WAC 197-11-340) or an environmental impact statement (EIS) is to be issued prior to issuing the actual document.

(d) Issue the threshold determination, determination of nonsignificance (DNS) or determination of significance (DS) (WAC 197-11-360) and submit copies to the department; two copies shall be sent to the department's environmental review section and one copy to the regional water quality program (WQ) of the department. The director must concur in writing with the findings of the checklist and DNS if a DNS is issued.

(e) Give public notice of the threshold determination by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the threshold determination, facilities plan, and other environmental information.

(f) Distribute copies of the threshold determination and supporting documents to other affected local, state, and federal agencies, Indian tribes, and the public.

(g) When a DS is issued, the lead agency will develop the final scope of elements to be addressed in the environmental impact statement (EIS) and obtain written concurrence from the director. The department shall be consulted throughout the EIS process.

(h) Distribute copies of the draft and final EIS to the department; two copies shall be sent to both the environmental review section and the department's water quality program.

(i) Give public notice of the draft and final EIS by publishing notices in a newspaper of area-wide circulation. Notices shall include the locations where the public may review the draft and final EIS or obtain copies.

(j) Distribute copies of the draft and final EIS to other affected local, state, and federal agencies, Indian tribes, and the public.

(k) The director must concur in writing with the finding of the final EIS.

(2) The lead agency shall issue a notice of action for the final EIS regarding the preferred alternative in accordance with RCW 43.21C.080, WAC 197-11-680, and 197-11-990.

(3) A cost-effectiveness analysis will be required for all SRF projects. Planning must include a comparison of the total cost, i.e., capital, operation and maintenance, and replacement costs of the project with other alternatives, including the no-action alternative. The comparison of the total costs, e.g., total present worth or annual equivalent costs of projects for the planning period, must be included. Cost-

effective analyses must also include nonmonetary cost of the project, i.e., the environmental impact, resource utilization, implementability, etc. This analysis must be included in the planning document and must be summarized in the EIS or DNS. Financial assistance under the SRF program will be offered to the cost-effective solution to the water pollution control problem.

(4) All mitigation measures committed to in the environmental checklist or state EIS, or in the finding of no significance impact/environmental assessment or record of decision/federal EIS (for federally approved projects) will become SRF loan agreement conditions. Applicants must complete all mitigation measures required. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

(5) The applicant must comply with the requirements of applicable environmental laws, regulations, and executive orders. Concurrence from the director will be based on best available information provided by the applicant. The department is not responsible for concurrence based on erroneous information.) Certain projects or project elements, including, but not limited to the following, may be eligible for loan assistance:

(1) Aquatic plant control when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution is addressed sufficiently to ensure that the pollution is eliminated;

(2) BMP implementation on private property:

(a) Best management practices that consist of new, innovative, or alternative technology not yet demonstrated in the department's region in which it is proposed;

(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and

(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner.

(3) BMP implementation on public property;

(4) Capacity for growth. Loans for up to twenty years capacity for water pollution control facilities. Capacity in excess of the twenty year design capacity are not eligible;

(5) Computer equipment and software specific to the funded project and preapproved by the department;

(6) Confined animal feeding operations (CAFO) water pollution control projects located in federally designated national estuaries;

(7) Conservation planning;

(8) Design-build or design-build-operate (alternative contracting/service agreements) for water pollution control facilities and other alternative public works contracting procedures;

(9) Diagnostic studies to assess current water quality;

(10) Education and outreach efforts for the public;

(11) Environmental checklists, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;

(12) Equipment and tools as identified in a loan agreement;

(13) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water for residential, and/or a combination of residential, commercial, institutional and industrial;

(a) Planning:

(i) Comprehensive sewer planning, including wastewater elements of capital facilities planning under the growth management act;

(ii) Storm water planning;

(iii) Facilities planning for water pollution control facilities;

(b) Design preparation of plans and specifications for water pollution control facilities;

(c) Construction of:

(i) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of domestic wastewater and storm water;

(ii) Combined sewer overflow abatement;

(iii) Facilities to meet existing needs plus twenty years for growth;

(iv) Side sewers or individual pump stations or other appurtenances on private residential property if solving a nonpoint source pollution problem, such as failing on-site septic systems;

(v) Side sewers existing on public property or private property (with an easement) to correct infiltration and inflow and replace existing water pollution control facilities; and

(vi) New sewer systems to eliminate failing or failed on-site septic systems;

(d) Value engineering for water pollution control facilities;

(e) Design or construction costs associated with design-build or design-build-operate contracts.

(14) Ground water protection activities such as well-head protection and critical aquifer recharge area protection;

(15) Hardship assistance for wastewater treatment facilities construction, storm water, and on-site septic system repair and replacement;

(16) Indirect costs as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);

(17) Lake implementation and associated planning activities on lakes with public access;

(18) Land acquisition;

(a) As an integral part of the treatment process (e.g., land application); or

(b) For wetland habitat preservation;

(19) Landscaping for erosion control directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the SERP;

(20) Legal expenses will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

(21) Light refreshments for meetings when preapproved by the department;

(22) Monitoring BMP effectiveness;

(23) Monitoring equipment used for water quality assessment;

(24) Monitoring water quality;

(25) Model ordinances development and dissemination of model ordinances to prevent or reduce pollution from non-point sources;

(26) On-site septic systems;

(a) On-site septic system repair and replacement for residential and small commercial systems;

(b) On-site wastewater system surveys;

(c) Local loan fund program development and implementation;

(27) Planning comprehensive basin, watershed, and area-wide water quality development;

(28) Refinancing of water pollution control facility debt;

(29) Riparian and wetlands habitat restoration and enhancement, including revegetation;

(30) Sales tax;

(31) Spare parts initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

(32) Stream restoration projects;

(33) Total maximum daily load study development and implementation;

(34) Training to develop specific skills that are necessary to directly satisfy the funding agreement scope of work. Training, conference registration or annual meeting fees must be preapproved by the department;

(35) Transferring ownership of a small wastewater system to a public body;

(36) Wastewater or storm water utility development;

(37) Wastewater or storm water utility rate or development impact fee studies;

(38) Water quality education and stewardship programs.

AMENDATORY SECTION (Amending Order 00-11, filed 12/8/00, effective 1/8/01)

WAC 173-98-110 ((What are the repayment options and schedules?)) Noneligible. ((1) General provisions:

When the scope of work identified in the SRF loan agreement has been fully completed and/or the initiation of operation date has been determined:

(a) The department and recipient will execute a final SRF loan agreement amendment which details the final loan amount. This amount will include the principal from disbursements made to recipients and accrued interest. Interest will accrue on each disbursement as it is paid to the recipient.

(b) The department will prepare according to the SRF loan agreement, a repayment schedule which fully amortize the final loan amount within twenty years of project completion. The first repayment of principal and interest will be due no later than one year after the initiation of operation date or at project completion date, whichever occurs first. Equal payments will be due every six months after this first payment. Loan balances may be repaid or additional principal payments may be made at any time without penalty.

(c) If any amount of the final loan amount or any other amounts owed to the department remains unpaid after it becomes due and payable, the department may assess a late charge. The late charge shall be additional interest at the rate

of one percent per month, or fraction thereof, starting on the date the debt becomes past due and until it is paid in full.

(d) If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies.

(2) Phased or segmented project. Where a project has been phased or segmented, the general provisions for repayment shall apply to the completion of individual phases or segments.

(3) More than five years to complete project. When a project approved by the department takes longer than five years to complete, loan repayment must begin within five years of the first disbursement for the project, unless the director determines that the fund is fiscally sound without this repayment schedule. Repayments for these loans must follow the general provisions as outlined in subsection (1)(b) of this section.

(4) Security for loan repayment. Loans shall be secured by a general obligation pledge or a revenue pledge of the recipient. The obligation of the recipient to make loan repayments from the sources identified in its SRF loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(a) General obligation. When repayment of a loan is secured by a general obligation pledge, the recipient shall pledge for so long as the loan is outstanding, to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors, on all of the taxable property within its boundaries in an amount sufficient, together with other money legally available and to be used for loan repayment, to pay when due the principal of and interest on the loan, and the full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(b) Revenue obligation. Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments. In such cases:

(i) Lien position. Repayment of a loan shall constitute a lien and charge (A) upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations and, (B) if applicable, upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(ii) Reserve requirement. For loans that are revenue-secured debt with terms greater than five years, the recipient must accumulate a reserve for the loan equivalent to at least the average annual debt service on the loan during the first five years of the repayment period of the loan. This amount shall be deposited in a reserve account in the loan fund in approximately equal annual payments commencing within one year after the initiation of operation or the project completion date, whichever comes first. "Reserve account" means, for a loan that constitutes revenue-secured debt, an account of that name created in the loan fund to secure the payment of the principal of and interest on the loan. The

amount on deposit in the reserve account may be applied by the recipient (A) to make, in part or in full, the final repayment to the department of the loan amount or, (B) if not so applied, for any other lawful purpose of the recipient once the loan amount, plus interest and any other amounts owing to the department hereunder, have been paid in full.

(5) Repayment from other than pledged sources. A recipient may repay any portion of its loan from any legally available funds other than those pledged in its SRF loan agreement to repay the loan.

(6) No defeasance or advance refunding. So long as the department holds a loan, the recipient shall not be entitled to, and shall not effect, its economic defeasance or advance refunding.) Certain projects or project elements, including but not limited to the following are not eligible for loan assistance:

(1) Abandonment or demolition of existing structures not interfering with proposed construction of a wastewater or storm water treatment facility;

(2) Acts of nature that alter the natural environment, thereby causing water quality problems;

(3) Aquatic plant control for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

(4) Bond costs for debt issuance;

(5) Bonus or acceleration payments to contractors to meet contractual completion dates for construction;

(6) Commercial, institutional or industrial wastewater pollution control activities or facilities or portions of those facilities that are solely intended to control, transport, treat, dispose, or otherwise manage wastewater;

(7) Commercial, institutional or industrial monitoring equipment for sampling and analysis of discharges from municipal water pollution control facilities;

(8) Commercial, institutional or industrial wastewater pretreatment;

(9) Compensation or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;

(10) Cost-plus-a-percentage-of-cost contracts (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(11) Engineering reports;

(12) Fines and penalties due to violations of or failure to comply with federal, state, or local laws;

(13) Flood control, projects or project elements intended solely for flood control;

(14) Funding application preparation for loans or grants;

(15) Interest on bonds, interim financing, and associated costs to finance projects;

(16) Landscaping for aesthetic reasons;

(17) Legal expenses associated with claims and litigation;

(18) Lobbying or expenses associated with lobbying;

(19) Mitigation unless it addresses water quality impacts directly related to the project, and determined on a case-by-case basis;

(20) Office furniture not included in the recipient's indirect rate;

(21) Operating expenses of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;

(22) Operation and maintenance costs;

(23) Overtime differential paid to employees of public body to complete administrative or force account work;

(24) Permit fees;

(25) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(26) Professional dues;

(27) Reclamation of abandoned mines;

(28) Refinancing of existing debt;

(29) Solid or hazardous waste cleanup;

(30) Vehicle purchase except for vehicles intended for the transportation of liquid, dewatered sludge, septage, or special purpose vehicles as approved by the department; and

(31) Water quantity or other water resource projects that solely address water quantity issues.

PART 2

HOW TO APPLY FOR FUNDING

NEW SECTION

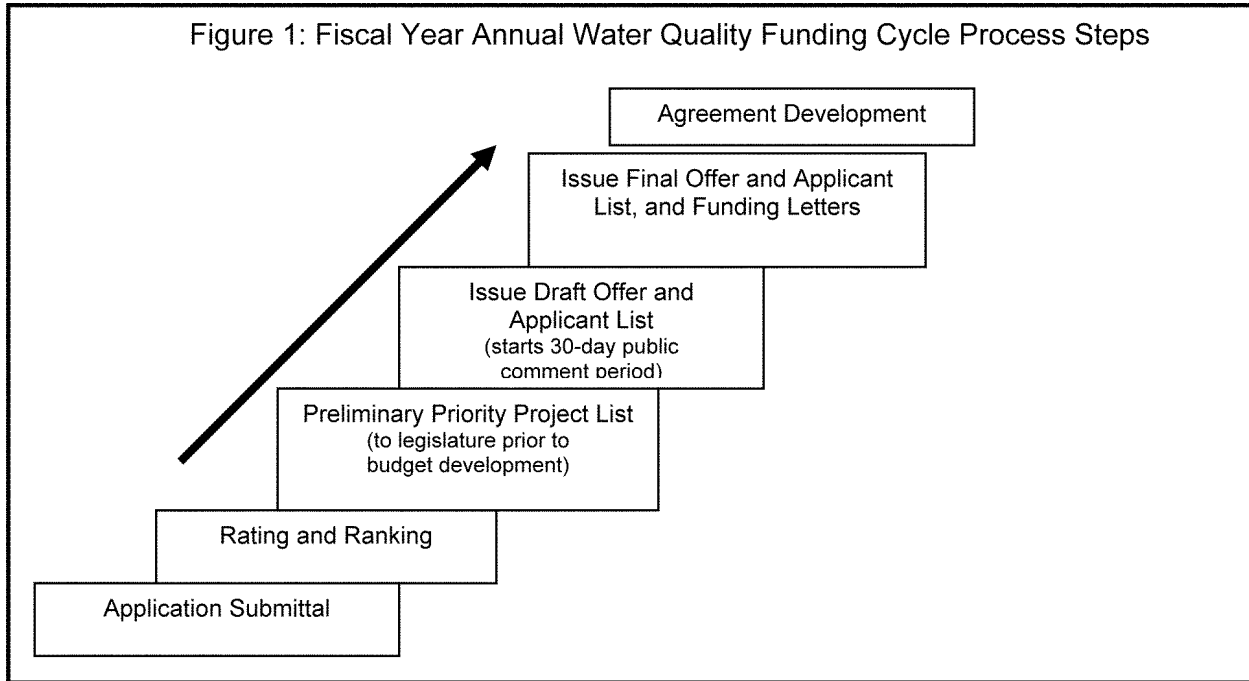
WAC 173-98-200 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the agency web site.

(2) The applicant may be asked to provide the following project information:

- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;
- (c) Project goals, objectives, and milestones;
- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in "Washington's water quality plan to control nonpoint sources of pollution," or other such plans;
- (h) Performance measures and postproject assessment monitoring;
- (i) Readiness to proceed, likelihood of success, and measures of success specific to the project;
- (j) Local initiatives, commitments, or priorities related to the project; or
- (k) Other information requested by the department.

NEW SECTION

WAC 173-98-210 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.



- (2) Ecology will provide the following services:
- (a) Make available the application and applicable guidelines before the associated funding cycle begins;
 - (b) Conduct at least one application workshop in each of ecology's four regions;
 - (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
 - (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
 - (e) Request other agencies to provide evaluation assistance as needed;
 - (f) Rate and rank the applications using a consistent scoring system;
 - (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
 - (h) Submit preliminary project priority list to the state legislature for budget consideration;
 - (i) Develop a combined draft offer and applicant list and a draft revolving fund IUP;
 - (j) Facilitate a public review and comment period for the combined draft offer and applicant list and revolving fund IUP;
 - (k) Sponsor at least one public meeting to explain the combined draft offer and applicant list and the revolving fund IUP;
 - (l) Develop a combined "final offer and applicant list" and a final revolving fund IUP. Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;
 - (m) Issue funding decision letters to all applicants; and
 - (n) Negotiate, develop, and finalize loan agreements.

NEW SECTION

WAC 173-98-220 Final offer and applicant list. Loan offers identified on the "final offer and applicant list" will be

effective for up to one year from the publication date of the "final offer and applicant list." Loan offers that do not result in a signed agreement are automatically terminated.

NEW SECTION

WAC 173-98-230 Revolving fund intended use plan (IUP). (1) As required by the EPA, the department issues an IUP for each funding cycle.

(2) The IUP is issued in conjunction with the "final offer and applicant list."

(3) It contains a detailed report of how the department expects to allocate moneys available in the current funding cycle.

**PART 3
FINANCIAL HARDSHIP ASSISTANCE**

NEW SECTION

WAC 173-98-300 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of wastewater treatment facilities projects:

- (a) Service area population;
- (b) Existing residential need at the time of application; and
- (c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants with a service area population of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form along with the funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** The applicant and the department calculate the water pollution control facilities construction costs that are associated with existing residential need at the time of application.

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using the construction cost estimates including:

- (i) Estimated construction cost;
- (ii) Existing annual operation and maintenance costs;
- (iii) Discounted, existing annual operation and maintenance costs as a result of constructing the project;
- (iv) Projected future annual operation and maintenance costs for the total facility;
- (v) The applicant's current and future annual debt service on the project;
- (vi) The revolving fund annual debt service for the funded project;
- (vii) Other grants;
- (viii) The applicant's level of debt for other wastewater facilities not associated with the project;
- (ix) The total number of households existing at the time of application that will be served by the project;
- (x) The nonresidential share of the total annual costs is deducted; and
- (xi) Median household income;

(b) The sewer user fee as a percentage of MHI is the basis for the department's loan hardship-funding continuum shown in figure 2;

(6) **Figure 2. Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum to determine the hardship-loan interest rates. Not more than fifty percent of the funding category can be awarded to any one applicant per funding cycle. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When an applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 2).

NEW SECTION

WAC 173-98-310 On-site septic system repair and replacement programs. (1) Applicants may apply for a revolving fund loan to establish or continue programs that provide funding for on-site septic repair and replacement for homeowners and small commercial enterprises.

(2) **Final loan blended interest rate.** The department may adjust the recipient's interest rates based on the interest rates that the recipient charged to homeowners and small commercial enterprises. To receive the adjusted interest rate, the recipient must issue loans shown in figure 3.

(3) Figure 3 shows the interest rate schedule for loans targeted to homeowners at three levels of county median household income. For information on how the market rate is determined, see WAC 173-98-400.

Figure 3.

Homeowner Income is:	20-Year Term	5-Year Term	Hardship Level
Above 80% county MHI	60% of MR	30% of MR	Nonhardship
50 - 80% county MHI	30% of MR	Up to 15% of MR	Moderate
Below 50% county MHI	Up to 15% of MR	0%	Severe

Figure 4.

Figure 4 shows the interest rate schedules for loans targeted to small commercial enterprises at three levels of annual gross revenue. For example, in order for a small com-

mercial enterprise to be considered for moderate to severe hardship, the business must provide documentation to substantiate that annual gross revenue is less than one hundred thousand dollars.

Small Commercial Enterprise Annual Gross Revenue is:	20-Year Term	5-Year Term	Hardship Level
Above \$100,000	60% of MR	30% of MR	Nonhardship
\$50,000 - \$100,000	30% of MR	Up to 15% of MR	Moderate
Below \$50,000	Up to 15% of MR	0%	Severe

(4) The recipient agrees to submit a final compilation of the local loans provided to homeowners and small commercial enterprises throughout the duration of the project. The list will include information provided by the RECIPIENT regarding the number and final dollar amounts of loans funded in the following respective homeowner income and small commercial enterprise revenue levels:

- (a) Homeowner income:
 - (i) Above 80% of county MHI
 - (ii) 50 to 80% of county MHI
 - (iii) Below 50% of county MHI
- (b) Small commercial enterprise annual gross revenue:
 - (i) Above \$100,000
 - (ii) \$50,000 to \$100,000
 - (iii) Below \$50,000

NEW SECTION

WAC 173-98-320 Storm water projects. (1) There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;
- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

(2) **Service area population, presence of permit, and median household income.** Applicants under a permit, with a service area population of twenty-five thousand or less, and whose MHI is sixty percent or less of the average statewide MHI can request hardship-funding consideration. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) If MHI data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the MHI.

(4) Figure 5 describes the interest rate schedule. For information on how the market rate is determined, see WAC 173-98-400.

Figure 5.

Service area MHI is:	20-Year Term	5-Year Term
Above 60% statewide MHI	Not eligible	Not eligible
60% or below statewide MHI	Up to 30% of MR	Up to 15% of MR

**PART 4
LOAN TERMS**

NEW SECTION

WAC 173-98-400 Loan interest rates. (1) Interest will accrue on each disbursement as it is paid to the recipient.

(2) The department bases loan interest rates on the average market interest rate. The average market interest rate is:

- (a) Based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds; and
- (b) Taken from the period sixty to thirty days before the annual funding application cycle begins.

(3) See WAC 173-98-300 or 173-98-3010 for hardship interest rates.

Figure 6: Loan Terms and Interest Rates

Repayment Period	Interest Rate
Up to 5 years:	30% of the average market rate.
More than 5 but no more than 20 years:	60% of the average market rate.

(4) The director may approve lower interest rates for the annual funding application cycle if a financial analysis of the revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the revolving fund.

NEW SECTION

WAC 173-98-410 Refinancing. (1) There are two kinds of refinance with different regulations: Standard refinance and interim refinance.

(2) **Standard refinance** refers to a completed project funded with moneys from a source other than the department. It is limited to water pollution control facilities where project construction began after March 7, 1985.

(a) Applicants requesting standard refinancing must meet all the requirements contained in the act;

(b) Standard refinance projects will only be funded if there is limited demand for moneys for new projects;

(c) All department prerequisites must have been met at the time the project was undertaken;

(d) If multiple standard refinance applications are received, priority will be given based on impacts to the rate payers in the service area of the project;

(e) Standard refinance projects are not eligible for hardship financial assistance; and

(f) Repayment begins six months after a funding agreement becomes effective.

(3) **Interim refinance** applies to a project that is in progress using moneys from a source other than the department. Interim refinance retires existing debt and also covers the remaining eligible project costs. Interim refinance projects must meet all applicable requirements of this chapter.

NEW SECTION

WAC 173-98-420 Defeasance. (1) No defeasance is allowed as long as the department holds the loan.

(2) Defeasance means setting money aside in a special account that is dedicated to pay all or some of the principal and interest on a debt when it comes due.

NEW SECTION

WAC 173-98-430 Repayment. When a project is complete and all disbursements are made the department will execute a final amendment that will include:

(1) A final loan repayment schedule that reflects the length of repayment terms and the principal from disbursements and accrued interest;

(2) The first repayment of principal and interest will be due one year after the initiation of operation date, or one year after the project completion date, whichever occurs first;

(3) Equal payments will be due every six months;

(4) If the due date for any payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies;

(5) Loan balances may be repaid or additional principal payments may be made at any time without penalty; and

(6) The department may assess a late fee for delinquent payments, according to WAC 173-98-470.

NEW SECTION

WAC 173-98-440 Loan security. Loans shall be secured by a general obligation pledge or a revenue pledge of the recipient. The obligation of the recipient to make loan repayments from the sources identified in its revolving fund loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(1) **General obligation.** Repayment of the loan may be secured by a general obligation pledge. The recipient shall pledge to include in its budget an amount sufficient to pay the principal and interest on the loan when due. For so long as the loan is outstanding, the recipient shall ensure adequate funds are available to enable timely loan repayment, which may require the recipient to levy additional annual taxes against the taxable property within its boundaries. The full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(2) **Revenue obligation.** Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments.

Repayment of a loan shall constitute a lien and charge upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations. If applicable, repayment of a loan shall constitute a lien and charge upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(3) **Tribal governmental enterprises.** Federally recognized Indian tribes may provide loan security through dedicated revenue from governmental enterprises. The recipient must demonstrate that the security used has a sufficient track record of income to secure the loan. Tribal governmental enterprises may include leases, gaming as provided under approved gaming compacts, forestry, or other tribal government-owned enterprises.

NEW SECTION

WAC 173-98-450 Loan reserve requirements. For a revenue obligation secured loan with terms greater than five years, the recipient must accumulate a reserve account equivalent to the annual debt service on the loan. This reserve must be established before or during the first five years of the loan repayment period. The reserve account may be used to make the last two payments on the revolving fund loan.

NEW SECTION

WAC 173-98-460 Loan default. In the event of loan default, the state of Washington may withhold any amounts due to the recipient from the state for other purposes. Such moneys will be applied to the debt.

NEW SECTION

WAC 173-98-470 Late payments. A late fee of one percent per month on the past due amount will be assessed starting on the date the debt becomes past due and until it is paid in full.

PART 5

WATER POLLUTION CONTROL REVOLVING FUND REQUIREMENTS FOR MANAGING LOANS

NEW SECTION

WAC 173-98-500 Funding categories. (1) The revolving fund is split into two funding categories:

(a) Water pollution control facilities category: Eighty percent of the revolving fund is used for facilities projects as established under section 212 of the act; and

(b) Water pollution control activities category: Twenty percent of the revolving fund will be available for the implementation of programs or projects established under the "Washington's water quality management plan to control nonpoint sources of pollution."

(2) If the demand is limited in either funding category, the department can shift moneys between the funding categories.

NEW SECTION

WAC 173-98-510 Funding recognition. (1) Where applicable, the recipient must acknowledge department and EPA funding in reports, technical documents, publications, brochures, and other materials.

(2) Where applicable, the recipient must display signs for site-specific projects acknowledging department and EPA funding. The sign must be large enough to be seen from nearby roadways and include a department or EPA logo.

NEW SECTION

WAC 173-98-520 Ceiling amounts. (1) Water pollution control facilities category:

(a) Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle; and

(b) No more than five million dollars is available for each smaller combined design-construct project (step four). See WAC 173-98-530 for information on smaller combined design-construct projects (step four).

(2) Water pollution control activities category: Not more than fifty percent of the revolving fund in this category will be available to any one applicant per funding cycle.

(3) Partially funded projects: If a project is offered partial funding due to the lack of available revolving fund monies, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(4) Water pollution control facilities construction bid overruns:

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding bid overruns will be given to hardship communities based on the severity of financial need.

(5) Water pollution control facilities construction change orders:

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts that were established in the fiscal year in which the project was offered funding apply; and

(c) First priority for funding change orders will be given to hardship communities based on the severity of financial need.

NEW SECTION

WAC 173-98-530 Step process for water pollution control facilities. (1) The step process is required for facilities projects. The process begins with site-specific planning, and continues through design to construction.

(2) For steps one through three, an applicant may only apply for funding for one step of the process at a time. At the time of application, completion of the previous steps must be

approved by the department. Funding of one step does not guarantee the funding of subsequent steps.

(3) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. A facilities plan must be approved by the department before an application for design can be considered for funding.

Facilities plans approved by the department more than two years prior to the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(4) **Combined steps for smaller design-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

(5) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

NEW SECTION

WAC 173-98-540 Step process for water pollution control activities. The step process is required for lake projects and recommended for all activities projects.

(1) **Planning** involves the identification of problems and evaluation of cost-effective alternatives.

(2) **Implementation** is the actual implementation of the project based on the planning document. Where the project includes construction, a design element may be included before the implementation step.

NEW SECTION

WAC 173-98-550 Declaration of construction after project completion. Recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project completion.

NEW SECTION

WAC 173-98-560 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

PART 6**DESIGN-BUILD AND DESIGN-BUILD-OPERATE PROJECTS**NEW SECTION

WAC 173-98-600 Design-build and design-build-operate project requirements. (1) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations.

(2) The design and construction portions of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for reduced interest rate if the public body can demonstrate financial hardship in accordance with WAC 173-98-300.

(3) The following conditions apply to design-build and design-build-operate projects:

(a) The ceiling amounts in WAC 173-98-520;

(b) If eligible project costs exceed the ceiling amounts in WAC 173-98-520, then public bodies can compete for additional funding in the subsequent funding cycle;

(c) Interest rates for nonhardship projects are set according to WAC 173-98-400;

(d) In the case of hardship, a reduced interest rate may be available for the design and construction portion of a design-build-operate project;

(e) The project scope of work must implement a department-approved facilities plan;

(f) In addition to the project application information listed in WAC 173-98-200, the project will be evaluated on the applicant's level of administrative and technical expertise;

(g) Applicants may apply for up to one hundred ten percent of the facilities planning estimate for design and construction. The loan agreement will be written for the final negotiated contract price;

(h) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to utilize the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(i) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications,

and change orders. The department will continue to make all eligibility determinations;

(j) Costs associated with change orders are not eligible for reimbursement;

(k) Before delegation authority is granted to the applicant and the loan agreement is signed, the following must be approved by the department:

(i) Primary design elements;

(ii) Final service agreements and/or contracts;

(l) Projects funded prior to the effective date of this rule will continue to be managed in accordance with the program guidelines for the year the project was funded;

(m) Projects must be completed according to the timeline in WAC 173-98-800 and 173-98-810; and

(n) Projects funded under the alternative contracting service agreement AC/SA pilot rule of 2002 are placed at the top of the "final offer and applicant list" and IUP each year in relative priority to other AC/SA projects. Loan moneys may be disbursed in equal annual payments or by other means that are not detrimental to the perpetuity of the revolving fund.

PART 7**COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS**NEW SECTION

WAC 173-98-700 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and regulations relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

NEW SECTION

WAC 173-98-710 The Growth Management Act. (1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means: A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who

signed the loan application. "Public health need" means a situation where:

- (a) There is a documented potential for:
 - (i) Contaminating a source of drinking water; or
 - (ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or
 - (iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or
 - (iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and
- (b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and
- (c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.
- (4) For the purposes of this chapter, a substantial environmental degradation related to a loan must be documented by a letter signed by the director and addressed to the public official who signed the loan application. "Substantial environmental degradation" means that:
 - (a) There is a situation causing real, documented, critical environmental contamination that:
 - (i) Contributes to violations of the state's water quality standards; or
 - (ii) Interferes with beneficial uses of the waters of the state;
 - (b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and
 - (c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.
- (5) A county, city, or town that has been offered a loan for a water pollution control facilities project may not receive loan funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department;

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

NEW SECTION

WAC 173-98-720 State environmental review process (SERP). (1) All recipients must comply with the SERP.

(2) SERP includes all the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC, and applicable federal requirements.

(3) All mitigation measures committed to in documents developed in the SERP process, such as the environmental checklist, environmental report, SEPA environmental impact statement (EIS), the finding of no significant impact/environmental assessment, or record of decision/federal EIS will become revolving fund loan agreement conditions. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

NEW SECTION

WAC 173-98-730 Cost-effectiveness analysis for water pollution control facilities. (1) Funding will only be considered if the project is shown to be the cost-effective alternative/solution to the water pollution control problem. The cost-effective alternative is determined using a cost-effectiveness analysis.

(2) A cost-effectiveness analysis must be included in the facilities plan and must include the following:

(a) A comparison of the total cost, total present worth or annual equivalent costs of alternatives considered for the planning period;

(b) The no action alternative; and

(c) A consideration of the monetary or nonmonetary costs/benefits of each alternative, such as the environmental impact, energy impacts, growth impacts, and community priorities.

(3) Facilities plans proposing design-build or design-build-operate projects must demonstrate that this approach is the cost-effective alternative for procurement.

PART 8 TIMELY USE OF REVOLVING FUND LOAN MONEYS

NEW SECTION

WAC 173-98-800 Starting a project. Costs incurred before a loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department or interim refinancing is approved. For more information on interim refinancing, see WAC 173-98-410.

(1) Prior authorization to incur eligible costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the IUP;

(ii) Costs are incurred between the publication date of the "final offer and applicant" list and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred prior to the publication date of the "final offer and applicant list" are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) **Project initiation.** Loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the "final offer and applicant list" on which the project was proposed.

(b) Starting a project means making any measurable step toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Local offers that do not result in a signed agreement are automatically terminated, see WAC 173-98-220 Final offer and applicant list.

(3) **Project initiation extension.** Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year; or

(c) Other reasons as identified by the department on a case-by-case basis.

NEW SECTION

WAC 173-98-810 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) **Project completion.**

(a) Work on a project must be completed within five years of the publication date of the "final offer and applicant list" on which the project was proposed. A shorter time period may be specified in the loan agreement; and

(b) Completing a project means completing all milestones and objectives associated with the goals of the loan agreement.

(2) **Project completion extension.**

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made prior to the completion or expiration date of the loan agreement.

PART 9 ADMINISTRATIVE PROVISIONS

NEW SECTION

WAC 173-98-900 Water pollution control revolving fund (revolving fund) perpetuity. (1) The act requires that the revolving fund be managed in perpetuity.

(2) The department will strive to achieve perpetuity, as defined by WAC 173-98-030, by 2016.

NEW SECTION

WAC 173-98-910 Accounting requirements for loan recipients. (1) Recipients must maintain accounting records in accordance with RCW 43.09.200 Local government accounting—Uniform system of accounting.

(2) Accounting irregularities may result in a payment hold until irregularities are resolved. The director may require immediate repayment of misused loan moneys.

NEW SECTION

WAC 173-98-920 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision in writing to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient has thirty days to submit a written request to the deputy director for a review of the decision;

(4) The deputy director will consider the appeal information, and may choose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received. The deputy director's decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

NEW SECTION

WAC 173-98-930 Audit requirements for loan recipients. The department, or at the department's discretion, another authorized auditor may audit the revolving fund loan agreement and records.

NEW SECTION

WAC 173-98-940 Insurance for water pollution control facilities projects. Recipients shall maintain comprehensive insurance coverage on the project for an amount equal to the moneys disbursed.

NEW SECTION

WAC 173-98-950 Indemnification. To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of a project funded with a revolving fund loan except for such damage, claim, or liability resulting from the negligence or omission of the department.

NEW SECTION

WAC 173-98-960 Sale of facilities to private enterprises. Recipients may sell facilities financed with the revolving fund to private enterprises. However, the revolving fund loan agreement must be terminated and the revolving fund loan must be repaid immediately upon the sale of that facility.

NEW SECTION

WAC 173-98-970 Self-certification. (1) The department may authorize a recipient to certify compliance with selected program requirements. The recipient must:

- (a) Request certification authority;
 - (b) Document that it has the capability and resources;
 - (c) Document that it is in the best interest of the state;
- and
- (d) Demonstrate that the request is consistent with state and federal laws and regulations.

(2) Concurrences required in the environmental review process cannot be delegated to recipients.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 173-98-050 What are the limitations on the use of funds and how are the funds categorized?

WAC 173-98-060 What is the step process for planning facilities and activities projects?

WAC 173-98-070 What other laws, regulations, or requirements must recipients comply with?

WAC 173-98-075 How does the Growth Management Act impact the use of funds?

WAC 173-98-080 Indemnification.

WAC 173-98-090 How are loans managed?

WAC 173-98-120 General provisions.

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-010 ~~((What is the purpose of this chapter?)) Purpose.~~ ((The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the water quality account, as authorized by chapter 70.146 RCW. This fund provides financial assistance, in the form of loans and grants to meet high priority water quality management needs, to public bodies throughout the state of Washington. Funded projects must address water quality problems related to public health and environmental degradation. In order to encourage the timely use of funds provided by the state legislature, priority will be given to projects shown to be ready to proceed.)) (1) The purpose of this chapter is to set forth requirements for the department of ecology's administration of the centennial clean water program, as authorized by chapter 70.146 RCW, Water pollution control facilities financing. This fund provides financial assistance to public bodies for statewide, high-priority water quality projects in the form of grants and loans through appropriation by the Washington state legislature.

(2) The centennial program may be used for the following purposes:

(a) To make grants and loans to finance the planning, design, and/or construction of water pollution control facilities; and

(b) To make grants and loans for nonpoint source pollution control management programs, including planning and implementing elements of the most current version of the "Washington's Water Quality Management Plan to Control Nonpoint Sources of Pollution." (ecology publication #05-10-027).

NEW SECTION

WAC 173-95A-015 Integrated funding approach. (1) Where possible, the Washington state department of ecology combines the management of the centennial program with other funding programs, such as the Washington state water pollution control revolving fund, and the Clean Water Act section 319 nonpoint source fund.

(2) The integrated funding process includes a combined funding cycle, program guidelines, funding offer and applicant list, and statewide funding workshops.

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-020 ((What are the definitions of key terms?)) Definitions. ((1) "Activities" — see "water pollution control activity."

(2) "Applicant" means a public body that has applied for funding.

(3) "Best management practices" means physical, structural, and/or managerial practices, approved by the department, that, when used singularly or in combination, prevent or reduce pollutant discharges.

(4) "Cash match" means funds to match the state share of a grant that are under the sole control of a public body.

(5) "Centennial" means the centennial clean water fund.

(6) "Ceiling amounts" means the largest amount of financial assistance the department can provide to an individual project. Ceiling amounts vary based on factors including the type of project and whether a loan or a grant is awarded.

(7) "Commercial, industrial, and institutional flows" means the portion of the total flows to a facilities project that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) "Cost-effective alternative" means the alternative with the lowest present worth or equivalent annual value that achieves the requirements of the facility and that recognizes environmental and other nonmonetary considerations.

(9) "Department" means the department of ecology.

(10) "Easement," for the purposes of this rule, means a written agreement between a public body and an individual landowner, that allows the public body to have access to the property at any time to inspect, maintain, or repair activities or facilities installed with a loan or a grant, or to hold occasional public tours of the site for educational purposes.

(11) "Eligible cost" means the portion of the cost of the facilities or activities project that can be financed under the provisions of this chapter.

(12) "Enforcement order" means an administrative order that is a document issued by the department under the authority of RCW 90.48.120 and that directs a public body to complete a specified course of action within an explicit period of time to achieve compliance with the provisions of chapter 90.48 RCW.

(13) "Engineering report" means a report that evaluates engineering and other alternatives that meet the requirements set forth in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(14) "Environmental emergency" means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community, and requires immediate corrective action.

(15) "Estimated construction cost" means the estimated sum of moneys, excluding sales tax, to be paid to construction contractors and suppliers for all labor, materials, equipment, and other related work necessary to construct the proposed project.

(16) "Existing needs" means water pollution control facilities capability for the existing population in order to meet the requirements of the water quality based effluent lim-

itations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(17) "Existing residential need" means water pollution control facilities capability for the existing residential population in order to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(18) "Excess capacity" means water pollution control facilities capability beyond what is needed for the existing residential population to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(19) "Extended grant payments" means cash disbursements for eligible project costs made under a multiyear centennial grant agreement according to conditions established in RCW 70.146.075 and funded through legislative appropriations. Extended grant payments do not follow the normal process of reimbursement for actual costs incurred.

(20) "Facilities plan" means an engineering report that includes all the elements required by the National Environmental Policy Act, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(21) "Facilities" — see "water pollution control facilities."

(22) "Force account" means loan or grant project work performed using labor, materials, or equipment of a public body.

(23) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.

(24) "Funding cut-off line" means the position on a final offer list ranked by priority below which financial assistance will not be offered from that fund, proviso, or funding category.

(25) "Funding list" — see "offer list."

(26) "Grant agreement" means a contractual arrangement between a public body and the department that includes an approved scope of work, total project cost, set grant percentage, eligible costs, budget, and a schedule for project completion (in addition to other requirements).

(27) "Immediate corrective action" means that the director of the department or the director's designee has determined that the project must proceed to correct the problem in a timely manner before funds are available during the next regular funding cycle. This usually would involve a "public health emergency" or an "environmental emergency."

(28) "Indirect cost" means costs that benefit more than one activity of the recipient and that may not be directly assigned to a particular project objective.

(29) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.

(30) "Infiltration and inflow correction" means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow from an existing sewer system.

(31) "In-kind contributions" means the value of noncash contributions provided by a public body or any other approved parties.

(32) "Interlocal costs" means the cost of goods or services provided to a project under the terms of an interlocal agreement by a public body eligible to apply for centennial

funds. These costs may be considered as part of a cash match if they are eligible for funding under the grant agreement.

(33) "Loan agreement" means a contractual arrangement between a public body and the department that involves a disbursement of funds that must be repaid. The agreement includes an approved scope of work, total project cost, loan terms (including interest rates) and a repayment schedule.

(34) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.

(35) "Local prioritization process" means a process to prioritize projects locally as specifically described in WAC 173-95A-050.

(36) "Match" means the portion of the eligible project costs not covered by a grant, including actual cash outlays, and noncash (in-kind) contributions.

(37) "Maximum eligible costs" means the ceiling on the portion of the costs of a project that are eligible.

(38) "Nonpoint source water pollution" means pollution that enters any waters from widespread water- or land-based activities. Nonpoint source water pollution includes, but is not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

(39) "Offer list" means a list of projects prioritized for receiving financial assistance from the centennial program.

(40) "Previously funded objective" means a project or project element intended to address the same need as a project or project element that has been previously funded by a loan or grant from a funding program administered by the department.

(41) "Project" means water pollution control facilities or activities for which a loan or grant is awarded by the department.

(42) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized by the federal government.

(43) "Public health emergency" means a situation in which illness or exposure known to cause illness is occurring or is imminent (as determined by the Washington state department of health).

(44) "Recipient" means a public body that applied for funding, has been offered funding, and has signed a funding agreement with the department.

(45) "Scope of work" means a detailed description of a project, including measurable objectives useful for determining successful completion. The scope of work is negotiated between the department and the loan or grant recipient.

(46) "Severe public health hazard" means a situation in which the potential for illness exists, but illness is not occurring or imminent (as determined by the Washington state department of health).

(47) "Sewer" means a pipe and related pump stations located on public property, or on public rights-of-way and easements, that conveys wastewater from individual buildings or groups of buildings to a treatment plant.

(48) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(49) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.

(50) "Step process" means a systematic process that facilities projects must follow to be eligible for loans or grants.

(51) "Total eligible project cost" means the sum of all costs associated with a water quality project that have been determined to be eligible for loan or grant funding.

(52) "Total project cost" means the sum of all eligible and ineligible costs associated with a water quality project.

(53) "Water pollution control activities" or "activities" means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(54) "Water pollution control facilities" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(55) "Water pollution" means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(56) "Water resource inventory area" or "WRIA" means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in chapter 173-500 WAC as it existed on January 1, 1997.) For the purposes of this chapter:

(1) **Activities** see water pollution control activities.

(2) **Applicant** means a public body that has applied for funding.

(3) **Best management practices (BMP)** means physical, structural, and/or managerial practices approved by the department that prevent or reduce pollutant discharges.

(4) **Cash match** means moneys used to match the state share of a grant.

(5) **Ceiling amount** means the highest level of financial assistance the department can provide to a recipient for an individual project.

(6) **Centennial** means the centennial clean water program.

(7) **Commercial, industrial, and institutional flows** mean the portion of the total flows to a facility that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(8) **Competitive funding** means moneys available for projects through a statewide evaluation process.

(9) **Completion date or expiration date** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals of the project are met.

(10) **Concentrated animal feeding operation (CAFO)** means:

(a) An animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five-year, twenty-four-hour storm event; or

(b) An operation that is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or

(c) An operation that will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or

(d) An operation designated by the Environmental Protection Agency as polluting the waters of Washington state.

(11) **Conservation easement** means a recorded legal agreement between a landowner and a public body to allow or restrict certain activities and uses that may take place on his or her property.

(12) **Conservation plan** means a document that outlines how a project site will be managed using best management practices to avoid potential negative environmental impacts.

(13) **Construction** means to erect, install, expand, or improve water pollution control facilities or activities. Construction includes construction phase engineering and preparation of the operation and maintenance manual.

(14) **Cost-effective alternative** means the option selected in an approved facilities plan that meets the requirements of the project, recognizes environmental and other nonmonetary impacts, and offers the lowest cost over the life of the project (i.e., lowest present worth or equivalent annual value).

(15) **Department** means the Washington state department of ecology.

(16) **Design** means the preparation of the plans and specifications used for construction of water pollution control facilities or activities.

(17) **Director** means the director of the Washington state department of ecology or his or her authorized designee.

(18) **Draft offer and applicant list** means a catalog of all projects considered and proposed for funding based on an evaluation and the appropriations in the Washington state capital budget.

(19) **Easement** means a recorded legal agreement between a public body and a landowner that allows the public body to have access to the landowner's property at any time to

inspect, maintain, or repair loan-or-grant-funded activities or facilities.

(20) **Effective date** means the date the loan or grant agreement is signed by the department's water quality program manager.

(21) **Eligible cost** means the portion of the facilities or activities project that can be funded.

(22) **Enforcement order** means an administrative requirement issued by the department under the authority of RCW 90.48.120 that directs a public body to complete a specified course of action within an explicit period to achieve compliance with the provisions of chapter 90.48 RCW.

(23) **Engineering report** means a document that includes an evaluation of engineering and other alternatives that meet the requirements in chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(24) **Environmental degradation** means the reduced capacity of the environment to meet social and ecological objectives and needs.

(25) **Environmental emergency** means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community and requires immediate corrective action.

(26) **Estimated construction cost** means the expected amount for labor, materials, equipment, and other related work necessary to construct the proposed project.

(27) **Existing need** means water pollution control facility's capacity reserved for all users, at the time of application, in order to meet the requirements of the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(28) **Existing residential need** means water pollution control facility's capacity reserved for the residential population, at the time of application, in order to meet the water quality based effluent limitations in the associated National Pollution Discharge Elimination System or state waste discharge permit.

(29) **Extended grant payments** means cash disbursements for eligible project costs made with equal annual payments as established in RCW 70.146.075.

(30) **Facilities** see water pollution control facility.

(31) **Facilities plan** means an engineering report that includes all the elements required by the state environmental review process (SERP), National Environmental Policy Act (NEPA) as appropriate, other federal statutes, and planning requirements under chapter 173-240 WAC. Submission of plans and reports for construction of wastewater facilities.

(32) **Final offer and applicant list** means a catalog of all projects considered and proposed for funding and those offered funding.

(33) **Force account** means loan or grant project work performed using labor, materials, or equipment of a public body.

(34) **Funding cycle** means the events related to the competitive process used to allocate moneys from the clean water state revolving fund, centennial clean water program, and the Clean Water Act section 319 nonpoint source fund for a state fiscal year.

(35) **Grant agreement** means a contractual arrangement between a public body and the department.

(36) **Indirect cost** means costs that benefit more than one activity of the recipient and not directly assigned to a particular project objective.

(37) **In-kind contributions** means the value of noncash contributions provided for a project.

(38) **Interlocal agreement** means a written arrangement between a grant recipient and another public body to provide eligible grant match contributions to a project. Interlocal agreements are subject to chapter 39.34 RCW, Interlocal Cooperation Act.

(39) **Interlocal costs** means the value of goods or services provided to a project by a public body under the terms of an interlocal agreement. Interlocal contributions satisfy cash matching requirements.

(40) **Infiltration and inflow** means water, other than wastewater, that enters a sewer system.

(41) **Infiltration and inflow correction** means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow to an existing sewer system.

(42) **Landowner agreement** means a written arrangement between a public body and a landowner that allows the public body to have access to the property to inspect project-related components.

(43) **Loan agreement** means a contractual arrangement between a public body and the department that involves a disbursement of moneys that must be repaid.

(44) **Loan default** means failure to make a loan repayment to the department within sixty days after the payment was due.

(45) **Match** means the recipient share of eligible project costs.

(46) **Nonpoint source water pollution** means pollution that enters any waters from widespread water-based or land-use activities. Nonpoint source water pollution includes, but is not limited to atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

(47) **Plans and specifications** means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(48) **Preliminary project priority list** means a catalog of all projects considered for funding based on the governor's budget and submitted to the Washington state legislature for its consideration during budget development.

(49) **Project** means a water quality improvement effort funded with a grant or loan.

(50) **Project completion or expiration** means the date indicated in the funding agreement in which all milestones and objectives associated with the goals are met.

(51) **Public body** means a state of Washington county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, those Indian tribes recognized by the federal government, or insti-

tutions of higher education when the proposed project is not part of the school's statutory responsibility.

(52) **Public health emergency** means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.

(53) **Recipient** means a public body that has an effective loan or grant agreement with the department.

(54) **Riparian buffer or zone** means a swath of vegetation along a channel bank that provides protection from the erosive forces of water along the channel margins and external nonpoint sources of pollution.

(55) **Scope of work** means a detailed description of project tasks, milestones, and measurable objectives.

(56) **Service area population** means the number of people served in the area of the project.

(57) **Severe public health hazard** means a situation declared by the Washington state department of health in which the potential for illness exists, but illness is not occurring or imminent.

(58) **Sewer** means the pipe and related pump stations located on public property or on public rights of way and easements that convey wastewater from buildings.

(59) **Side sewer** means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(60) **State environmental review process (SERP)** means the National Environmental Policy Act (NEPA)-like environmental review process adopted to comply with the requirements of the Environmental Protection Agency's Code of Regulations (40 CFR § 35.3140). SERP combines the State Environmental Policy Act (SEPA) review with additional elements to comply with federal requirements.

(61) **Total eligible project cost** means the sum of all expenses associated with a water quality project that are eligible for funding.

(62) **Total project cost** means the sum of all expenses associated with a water quality project.

(63) **Water pollution** means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(64) **Water pollution control activities or activities** means actions taken by a public body for the following purposes:

(a) To prevent or mitigate pollution of underground water;

(b) To control nonpoint sources of water pollution;

(c) To restore the water quality of freshwater lakes; and

(d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(65) **Water pollution control facility or facilities** means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water,

residential, commercial, industrial, and agricultural wastes. Facilities include all necessary equipment, utilities, structures, real property, and interests in and improvements on real property.

(66) Water resource inventory area (WRIA) means one of the watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in the Water Resources Management Act of 1971 (chapter 173-500 WAC).

PART 1 ELIGIBLE PROJECT TYPES

AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)

WAC 173-95A-100 ((How are grants and loans managed?)) Grant and loan eligible. ((1) Timely use of funds: Projects funded with loans or grants from the centennial fund must be spent in a timely fashion so that funds are put to work for the water quality of the state as soon as possible. To accomplish this, certain time restrictions are placed on the use of funds as follows:

(a) ~~Work on a project must be started within sixteen months of the publication date of the final offer list on which the project was proposed.~~

(i) ~~Any expenditure of funds which is eligible for reimbursement under the terms of the loan or grant agreement constitutes starting the project.~~

(ii) ~~No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension and when the extension is included in the signed funding agreement with the department.~~

(iii) ~~Valid reasons for a time extension allowing a start date more than sixteen months after the publication date of the final offer list are limited to:~~

(A) ~~Schedules included in water quality permits, consent decrees, or enforcement orders; or~~

(B) ~~The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.~~

(iv) ~~If the funding recipient has one of these valid reasons to wait longer than sixteen months to start the project, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed loan or grant agreement.~~

(b) ~~Work on a project must be completed within five years of the publication date of the final offer list on which the project was proposed or within a shorter time period if the shorter period is identified in the funding agreement for the project. When all work identified in the funding agreement scope of work is finished, the project is deemed to be completed. After the five-year time limit is reached, no further expenditures may be reimbursed unless an extension is made.~~

(i) ~~No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension; and~~

(A) ~~The extension is requested no less than three months before the funding agreement is due to expire; and~~

(B) ~~The department's water quality program manager agrees that the extension is for a valid reason.~~

(ii) ~~Valid reasons for a time extension are limited to:~~

(A) ~~Schedules included in water quality permits, consent decrees, or enforcement orders; or~~

(B) ~~The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.~~

(iii) ~~If the funding recipient has one of these valid reasons to be allowed a time extension, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed amendment to the existing loan or grant agreement.~~

(c) ~~In kind goods and services may be used as match for activities grants subject to ceiling amount restrictions covered in WAC 173-95A-030 and subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.~~

(d) ~~In kind goods and services may be used as match for facilities grants only in the case of projects undertaken under the small town environmental program, or "STEP."~~

(2) ~~Prior authorization to incur costs. In cases where a project has been identified on a final offer list, the applicant may make a written request to the water quality program manager, asking to begin incurring costs related to a loan or grant for which there is not yet a signed loan or grant agreement. If the department concurs with this request, the water quality program manager will send the applicant a letter authorizing the costs. The applicant incurs the costs at their own risk. When an agreement is signed, previously incurred costs that are not eligible under the terms of the agreement are the sole responsibility of the applicant.~~

(3) ~~Appeals of loan and grant agreement decisions: The only decisions which may be appealed are written decisions by the department made during the effective loan or grant agreement period. Appeals must be filed in writing to the department within forty-five days from the date of the disputed decision. Following the final decision of a dispute, the department and the recipient shall proceed with the project in accordance with the decision rendered. Administrative or legal costs and other expenses incurred as part of an appeal will not be eligible for reimbursement.~~

(4) ~~The department, or at the department's discretion another authorized auditor, may audit the loan or grant agreement and records.~~

(5) ~~The administration of all loans and grants will be subject to all terms and conditions in a funding agreement signed by the department and by the recipient.~~

(6) ~~Ongoing management of most aspects of loan and grant projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*, copies of which will be provided to all recipients.) Certain projects or project elements, including but not limited to the following may be eligible for centennial loan or grant assistance:~~

(1) Aquatic plant control when the water quality degradation is due to the presence of aquatic plants, and the source(s) of pollution can be addressed sufficiently to ensure that the pollution is eliminated;

(2) **BMP implementation** on private property:(a) Best management practices that consist of new, innovative or alternative technology not yet demonstrated in the department's region in which it is proposed;(b) Best management practices in the riparian buffer or zone, such as revegetation or fence construction and where a conservation easement or landowner agreement is granted by the landowner; and(c) Other water quality best management practices that are evaluated and approved by the department on a case-by-case basis, and where a conservation easement or landowner agreement is granted by the landowner;(3) **BMP implementation** on public property:(4) **Computer equipment and software** specific to the funded project and preapproved by the department;(5) **Diagnostic studies** to assess current water quality;(6) **Education and outreach** efforts for the public;(7) **Environmental checklists**, assessments, and impact statements necessary to satisfy requirements for the SEPA, the NEPA, and the SERP;(8) **Equipment and tools** as identified in a grant or loan agreement;(9) **Ground water protection activities** such as well-head protection and critical aquifer recharge area protection;(10) **Hardship assistance** for wastewater treatment facilities construction, storm water management, and on-site septic system repair and replacement, and construction elements of a design-build-operate project;(11) **Implementation** of eligible projects identified in water quality plans;(12) **Indirect costs** as defined in the most recently updated edition of *Administrative Requirements for Ecology Grants and Loans* (publication #91-18);(13) **Lake implementation and planning activities** on lakes with public access;(14) **Landscaping for erosion control** directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;(15) **Light refreshments** for meetings when specified in the loan or grant agreement;(16) **Monitoring BMP effectiveness;**(17) **Monitoring equipment** used for water quality assessment;(18) **Monitoring water quality;**(19) **On-site septic systems;**(a) **Development and administration of a local loan fund for on-site septic system repair and replacement** for residential and small commercial systems; and(b) **On-site wastewater** system surveys;(20) **Model ordinances** development and dissemination of model ordinances to prevent or reduce pollution from non-point sources;(21) **Planning** comprehensive basin, watershed, and area-wide water quality development;(22) **Riparian and wetlands habitat restoration** and enhancement, including revegetation;(23) **Sales tax;**(24) **Stream restoration** that meets recognized water quality standards;(25) **Storm water** certain nonpermit-related planning activities, such as education and outreach, establishing a storm water utility, identifying and mapping of pollution sources, and department-approved erosion control;(26) **Total maximum daily load study** development and implementation;(27) **Training** to develop specific skills that are necessary to directly satisfy the scope of work. Training, conference registration, or annual meeting fees must be preapproved by the department;(28) **Wastewater or storm water utility development;**(29) **Wastewater or storm water utility rate** or development impact fee studies;(30) **Water quality education** and stewardship programs; and(31) **Wellhead protection.**AMENDATORY SECTION (Amending Order 00-10, filed 12/8/00, effective 1/8/01)**WAC 173-95A-110 ((General provisions.)) Loan only eligible.** ((1) Other state and federal grant funding: Other grant funds provided by the state legislature, federal government, or from other sources will be managed in a manner consistent with the centennial rule.(2) For all projects, the recipient must acknowledge department financial assistance in all reports, technical documents, publications, brochures, and other materials produced using funding from the loan or grant. All site-specific projects must have a sign of sufficient size to be seen from nearby roadways, acknowledging department financial assistance, and left in place throughout the life of the project. Department logos must be on all signs and documents. Logos will be provided as needed.)) **Certain projects or project elements, including but not limited to the following may be eligible for centennial loan assistance:**(1) **CAFOs**, for BMP implementation;(2) **Facilities** for wastewater and storm water:(a) **Planning:**(i) **Comprehensive sewer planning**, including wastewater elements of capital facilities planning under the Growth Management Act;(ii) **Facilities planning** for water pollution control facilities; and(iii) **Storm water** planning for permitted facilities;(b) **Design** preparation of plans and specifications for water pollution control facilities;(c) **Construction of:**(i) Combined sewer overflow abatement;(ii) Side sewers or individual pump stations or other appurtenances on private residential property;(iii) Sewers and side sewers on public property for infiltration and inflow correction projects, and to replace existing water pollution control facilities;(iv) Facilities for the control, storage, treatment, conveyance, disposal, or recycling of storm water; and

(v) Water pollution control facility construction with reserve capacities to meet up to one hundred ten percent of existing residential needs;

(d) Value engineering for water pollution control facilities;

(e) Design or construction costs associated with design-build or design-build-operate contracts;

(3) Land acquisition:

(a) As an integral part of the treatment process (e.g., land application);

(b) For prevention of water pollution;

(c) For siting of water pollution control facilities, sewer rights of way, easements, and associated costs; or

(d) for wetland habitat preservation;

(4) Legal expenses will be determined on a case-by-case basis, such as development of local ordinances, use of a bond counsel, review of technical documents;

(5) On-site septic systems:

(a) Local loan fund program development and administration;

(b) New sewer systems to eliminate failing or failed on-site septic systems;

(6) Spare parts initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements; and

(7) Transferring ownership of a small wastewater system to a public body.

NEW SECTION

WAC 173-95A-120 Projects ineligible for centennial program funding. While it is impossible to list every project or project element that is not eligible, some examples of ineligible projects include:

- (1) **Abandonment** or demolition of existing structures;
- (2) **Acts of nature** that alter the natural environment, thereby causing water quality problems;
- (3) **Commercial, institutional or industrial** wastewater pretreatment;
- (4) **Compensation** or damages for any claim or injury of any kind arising out of the project, including any personal injury, damage to any kind of real or personal property, or any kind of contractual damages, whether direct, indirect, or consequential;
- (5) **Cost-plus-a-percentage-of-cost contracts** (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;
- (6) **Facilities** intended solely to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater;
- (7) **Fines and penalties** due to violations of or failure to comply with federal, state, or local laws;
- (8) **Flood control**, projects or project elements intended solely for flood control;
- (9) **Funding application preparation** for loans or grants;
- (10) **Interest** on bonds, interim financing, and associated costs to finance projects;
- (11) **Landscaping** for aesthetic reasons;

(12) **Legal expenses** associated with claims and litigation;

(13) **Lobbying** or expenses associated with lobbying;

(14) **Monitoring equipment** for sampling and analysis of commercial, institutional, or industrial discharges;

(15) **Office furniture** not included in the recipient's indirect rate;

(16) **Operating expenses** of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;

(17) **Operation and maintenance** costs;

(18) **Overtime** differential paid to employees of a public body to complete administrative or force account work;

(19) **Permit fees;**

(20) **Professional dues;**

(21) **Reclamation** of abandoned mines;

(22) **Refinance** of existing debt;

(23) **Rework costs** or previously funded objectives;

(24) **Solid or hazardous waste;**

(25) **Vehicle purchase** except for vehicles intended for the transportation of liquid or dewatered sludge or septage; and

(26) **Water quantity** or other water resource projects that solely address water quantity issues.

**PART 2
LOAN INTEREST RATES**

NEW SECTION

WAC 173-95A-200 Centennial clean water program loan interest rates. The department bases loan recipient interest rates on the average market interest rate. The average market interest rate is based on the daily market rate published in the bond buyer's index for tax-exempt municipal bonds for the period from sixty to thirty days before the annual funding application cycle begins. See WAC 173-95A-400 for hardship interest rates.

Loan terms and interest rates are as follows:

Repayment Period	Interest Rate
Up to five years:	Thirty percent of the average market rate.
More than five but no more than twenty years:	Sixty percent of the average market rate.

**PART 3
HOW TO APPLY FOR FUNDING**

NEW SECTION

WAC 173-95A-300 Application for funding. (1) To apply for funding the applicant must submit a completed application to the department. The department will provide the application on the agency web site.

(2) The applicant may be asked to provide the following project information:

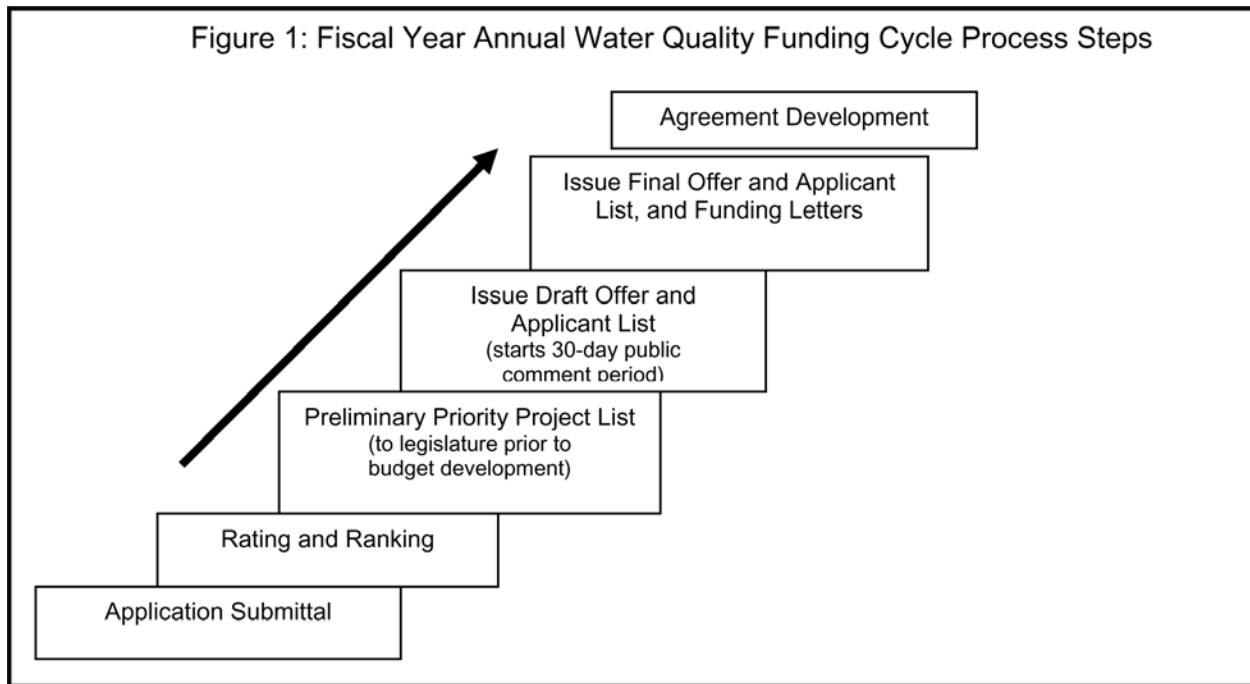
- (a) Basic information such as names of contacts, addresses, and other tracking information;
- (b) Project summary;

- (c) Project goals, objectives, and milestones;
- (d) Overall water quality benefits;
- (e) Public health benefits;
- (f) Sources of pollution addressed;
- (g) How the project will address state and federal mandates, elements in "Washington's water quality plan to control nonpoint sources of pollution," or other such plans;

- (h) Performance measures and postproject assessment monitoring;
- (i) Readiness to proceed, likelihood of success, and measures of success specific to the project;
- (j) Local initiatives, commitments, or priorities related to the project; or
- (k) Other information requested by the department.

NEW SECTION

WAC 173-95A-310 Ecology's responsibilities. (1) A general funding cycle schedule is provided in figure 1.



- (2) Ecology will provide the following services:
 - (a) Make available the application and applicable guidelines before the associated funding cycle begins;
 - (b) Conduct at least one application workshop in each of ecology's four regions;
 - (c) Conduct preapplication workshops to discuss regional level priorities if applicable;
 - (d) After the application deadline, complete an initial review of project proposals for funding eligibility;
 - (e) Request other agencies to provide evaluation assistance as needed;
 - (f) Rate and rank the applications using a consistent scoring system;
 - (g) Prepare a combined preliminary project priority list, after evaluation and scoring of all applications;
 - (h) Submit preliminary project priority list to the state legislature for budget consideration;
 - (i) Develop a combined draft offer and applicant list;
 - (j) Facilitate a public review and comment period for the combined draft offer and applicant list;
 - (k) Sponsor at least one public meeting to explain the combined draft offer and applicant list;
 - (l) Develop a combined "final offer and applicant list." Public comments collected during draft public review period will be incorporated and result in a responsiveness summary;

- (m) Issue funding decision letters to all applicants; and
- (n) Negotiate, develop, and finalize loan or grant agreements.

NEW SECTION

WAC 173-95A-320 Final offer and applicant list. Loan and grant offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan and grant offers that do not result in a signed agreement are automatically terminated.

**PART 4
FINANCIAL HARDSHIP ASSISTANCE**

NEW SECTION

WAC 173-95A-400 Wastewater treatment facilities construction. (1) There are three primary factors considered in determining hardship funding for the construction portion of a wastewater treatment facilities projects:

- (a) Service area population;
- (b) Existing residential need at the time of application;

and

(c) Level of financial burden placed on the ratepayers.

(2) **Service area population.** Applicants serving an area of twenty-five thousand or less can request hardship-funding consideration by submitting a financial hardship analysis form, provided by the department, along with the grant and loan funding application. If the service area population is different from the population of the applicant, the applicant must show that the hardship assistance is solely used to benefit the population of the service area.

(3) **Existing residential need.** Water pollution control facilities construction costs that are associated with existing residential need plus ten percent at the time of application may be eligible for funding. Additional reserve capacity for growth is not eligible for grant funding.

For example:

If an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for reserve capacity for growth, the applicant may be eligible for six million six hundred thousand dollars in grant funding.

Residential need:	\$6,000,000
Reserve capacity for growth (10% of \$6M):	<u>\$600,000</u>
Grant Eligible Amount	<u>\$6,600,000</u>

(4) **Level of financial burden.**

(a) Financial burden for the sewer ratepayer is determined by calculating the residential sewer user fee as a percent of the median household income (MHI). The residential sewer user fee is calculated using:

- (i) Estimated construction cost;
- (ii) Projected future operation and maintenance costs for the total facility;
- (iii) The applicant's current and future debt service on the project;
- (iv) Other grants;
- (v) Existing annual operation, maintenance, and equipment replacement costs;
- (vi) The total number of households existing at the time of application that will be served by the project; and
- (vii) The nonresidential share of the total annual costs;

(b) The sewer user fee as a percentage of the MHI is the basis for the department's grant and loan hardship-funding continuum (shown below in figure 2 and figure 3);

(c) The most recent available census data determines the median household income. This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the *Consumer Price Index*; and

(d) If median household income data are not available for a community or if the community disputes the data used by the department, the department may allow an applicant to conduct a scientific survey to determine the median household income.

(5) **Hardship grant ceiling amounts.** The department uses the grant hardship-funding continuum, shown in figure 2 below, to determine the percent of grant awarded. There is a funding ceiling of five million dollars per project.

For example:

When a grant applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may receive a grant of seventy-five percent of eligible project costs, not to exceed five million dollars (see figure 2 below).

(6) If a project in the hardship category receives partial funding due to department funding constraints, the department may offer the remaining funding, up to five million dollars, in the next funding cycle, and on a case-by-case basis. The department may require further hardship analysis before offering the remaining moneys.

(7) **Loan terms and interest rates.** The department uses the loan hardship-funding continuum, shown in figure 2 below, to determine the hardship-loan interest rates. There is a funding ceiling of five million dollars. In addition to a reduced interest rate, the applicant may receive longer loan repayment terms, not to exceed twenty years.

For example:

Assuming that the average market rate for tax-exempt municipal bonds is five percent, the following would apply.

When a loan applicant with a service area population of twenty-five thousand or less can demonstrate that its sewer user rates for the proposed project are between three and five percent of the median household income, the applicant may be eligible for a twenty-year repayment term and a one percent interest rate. This interest rate represents twenty percent of the average market rate for tax-exempt municipal bonds (see figure 3 below).

(8) **Design-build-operate (construction portion).**

(a) Design-build or design-build-operate projects must be consistent with applicable statutes, such as chapter 39.10 RCW, Alternative public works contracting procedures, chapter 70.150 RCW, Water Quality Joint Development Act, and/or chapter 35.58 RCW, Metropolitan municipal corporations;

(b) The construction portion of a design-build-operate project under chapter 70.150 RCW, Water Quality Joint Development Act, may be eligible for a grant if the public body can demonstrate financial hardship in accordance with WAC 173-95A-400. Hardship-grant ceiling amounts found in WAC 173-95A-520 apply;

(c) Design-build-operate projects must comply with chapter 35.58 RCW, Metropolitan municipal corporations;

(d) The project scope of work must implement a department-approved facilities plan;

(e) In addition to the project application information found in WAC 173-95A-300, the project will be evaluated on the applicant's level of administrative and technical expertise;

(f) At the time of application, the following must be provided:

(i) A legal opinion from an attorney of the public body indicating that the public body has sufficient legal authority to utilize the process;

(ii) A department-approved facilities plan;

(iii) A report detailing the projected savings based on a cost and time-to-complete as compared to the traditional design-bid-construct process;

(g) The department may require that the public body obtain delegation authority consistent with chapter 90.48 RCW, Water pollution control, and assume the responsibility for sequential review and approval of plans, specifications, and change orders. The department will continue to make all eligibility determinations;

(h) Costs associated with change orders are not eligible for reimbursement;

(10) **Figure 2: Grant Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Grant Hardship-Funding Continuum	0% Grant	50% Grant (up to five million dollars)	75% Grant (up to five million dollars)	100% Grant (up to five million dollars)

(11) **Figure 3: Loan Hardship-Funding Continuum**

Sewer User Fee divided by MHI	Below 2.0%	2.0% and above, but Below 3.0%	3.0% and above, but below 5.0%	5.0% and above
Hardship Designation	<i>Nonhardship</i> (Low sewer user rates in relation to MHI) (Not funded with grant dollars)	<i>Moderate Hardship</i>	<i>Elevated Hardship</i>	<i>Severe Hardship</i> (Very high sewer user rates in relation to median household income (MHI))
Loan Hardship-Funding Continuum	Loan at 60% of market rate	Loan at 40% of market rate	Loan at 20% of market rate	Loan at 0% interest

NEW SECTION

WAC 173-95A-410 On-site septic system repair and replacement programs. Applicants may apply for grant funding in conjunction with a state water pollution control revolving fund loan to establish or continue programs that provide hardship funding for on-site septic system repair and replacement for homeowners and small commercial enterprises. The ceiling amounts used for activities grants, cited in WAC 173-95A-520, also apply.

NEW SECTION

WAC 173-95A-420 Storm water projects. (1) Storm water-related activities, such as education and outreach, monitoring, and some planning efforts, are not grant eligible when those activities are required under a permit, unless the applicant can demonstrate financial hardship.

(2) There are three primary factors in determining financial hardship for storm water projects:

- (a) Service area population;
- (b) Presence of a permit; and
- (c) Community's median household income (MHI).

(3) **Service area population, presence of permit, and median household income.** Applicants under a permit,

(i) Projects must be completed according to the timeline in WAC 173-95A-700 and 173-95A-710; and

(j) Before the loan agreement is signed, the following must be approved by the department:

- (i) Primary design elements;
- (ii) Final service agreements.

(9) **Extended grant payments.** In some cases, the legislature may appropriate extended grant payments per RCW 70.146.075.

whose service area population is less than twenty-five thousand, and whose median household income is sixty percent or less of the average statewide MHI, can request hardship-funding consideration.

(4) In rare cases where financial hardship cannot be determined using population and percent of median household income, the department will make financial hardship determinations on a case-by-case basis.

(a) The most recent available census data determines the statewide average median household income; and

(b) This data is updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the *Consumer Price Index*.

(5) **Matching requirements, percent of grant, and grant ceiling amounts.** Storm water-hardship grants are fifty percent grants with a fifty percent cash-matching requirement.

The maximum amount available for a storm water-hardship grant is \$500,000.

For example:

When a grant applicant whose service area population is twenty-five thousand or less can demonstrate that its MHI is sixty percent or less of the average statewide MHI, the applicant may be eligible for a

fifty percent grant, not to exceed five hundred thousand dollars.

**PART 5
REQUIREMENTS FOR MANAGING GRANTS AND
LOANS**

NEW SECTION

WAC 173-95A-500 Funding allocation. There are two project categories in which the competitive funding is allocated: Activities and facilities.

(1) The scores derived from the application rating and ranking process will determine the allocation of the competitive funding;

(2) No more than two-thirds of the fund can go to either category;

(3) If the demand for funding is low in either category, then moneys may be shifted amongst categories; and

(4) The department will adjust the funding allocation based on the following:

(a) To provide match for other funding sources, such as the Clean Water Act section 319 nonpoint source fund or other funding programs; or

(b) To comply with funding restrictions in legislative appropriations.

For example:

If fifty percent of the competitive centennial program funding is comprised of state building construction account moneys, then fifty percent of the centennial program funding must be allocated to projects approved for that funding source.

NEW SECTION

WAC 173-95A-510 Funding recognition. (1) The recipient must acknowledge department funding in reports, technical documents, publications, brochures, and other materials.

(2) Site-specific projects must display a sign acknowledging department funding. The sign must be large enough to be seen from nearby roadways, and include a department logo.

NEW SECTION

WAC 173-95A-520 Ceiling amounts. (1) **Activities projects.** Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(a) Five hundred thousand dollars if the match for the grant is in the form of cash and/or interlocal costs; or

(b) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services; and

(c) Five hundred thousand dollars for activities project loans.

(2) **Facilities projects.** Loans are subject to ceiling amounts of five million dollars.

(3) **Hardship projects.** Grants for facilities construction projects are subject to ceiling amounts of five million dollars.

(4) **Partially funded projects.** If a project is offered partial funding due to the lack of available centennial mon-

neys, and the recipient is demonstrating progress on the project, the recipient may apply for the remaining eligible project costs in the subsequent funding cycle.

(5) **Water pollution control facilities construction bid overruns.**

(a) If the low responsive responsible construction bid(s) exceeds the engineer's estimate of construction costs, the department may approve funding increases for up to ten percent of the engineer's original estimate;

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information, see WAC 173-95A-400.

(6) **Water pollution control facilities construction change orders:**

(a) The department may approve funding for change orders for up to five percent of the eligible portion of the low responsive responsible construction bid(s);

(b) The ceiling amounts in the year the project was offered funding and as established in WAC 173-95A-520 apply; and

(c) First priority for availability of moneys will be given to hardship communities based on the severity of financial need. For more information on hardship, see WAC 173-95A-400.

NEW SECTION

WAC 173-95A-530 Match. (1) Depending on the grant amount, match can consist of cash or interlocal and in-kind contributions that total twenty-five percent of the total eligible project cost.

(2) No match is required for loans under the centennial program.

NEW SECTION

WAC 173-95A-540 Step process for facilities. (1) The step process is required for facilities construction projects. The process begins with site-specific planning, and continues through design to construction or implementation. At the time of application, all previous steps must be approved by the department. Draft documents must be sent to the department's engineers at least sixty days prior to end of application cycle for approval by end of application cycle. Funding for one step does not guarantee the future funding of subsequent steps.

(2) The step process includes the following:

(a) **Planning (step one):** Step one involves the preparation of a site-specific facilities plan that identifies the cost-effective alternatives for addressing a water pollution control problem. There is no prerequisite for planning. If there is an existing engineering report, it must be upgraded to a facilities plan;

(b) **Design (step two):** Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design

can be considered for funding. Facilities plans approved by the department more than two years prior to the close of the application period must contain evidence of recent review by the department to ensure the document reflects current conditions; and

(c) **Construction (step three):** Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(3) **Combined steps for smaller design-bid-construct projects (step four):** In some cases, design and construction may be combined into one loan. Step four applicants must demonstrate that step two (design) can be completed and approved by the department within one year of the effective date of the funding agreement. The total project costs for step four projects must be five million dollars or less.

(4) **Step deviations.** During the application phase of the funding cycle, the department may allow an applicant to deviate from the traditional step requirements if:

(a) The Washington state department of health has declared a public health emergency; and

(b) The proposed project would remedy this situation.

No loan agreement will be signed until all previous steps have been completed and approved by the department.

NEW SECTION

WAC 173-95A-550 Commercial, industrial, and institutional flows. (1) The portion of a project designed to serve the needs of commercial, industrial, and institutional customers may be funded using loans only.

(2) Capacity to serve local public primary and secondary schools may be grant eligible if the applicant can demonstrate financial hardship according to WAC 173-95A-400.

NEW SECTION

WAC 173-95A-560 Step process for water pollution control activities. The step process is required for lake projects and recommended for all activities projects.

(1) **Planning** involves the identification of problems and evaluation of cost-effective alternatives.

(2) **Implementation** is the actual implementation of the project based on the planning document. Where the project includes construction, a design element may be included before the implementation step.

NEW SECTION

WAC 173-95A-570 Performance measures and post-project assessment. (1) The department may require a recipient to develop and implement a postproject assessment plan.

(2) A recipient may be required to participate in a post-project survey and interview regarding performance measures.

PART 6

COMPLIANCE WITH OTHER LAWS, RULES, AND REQUIREMENTS

NEW SECTION

WAC 173-95A-600 General requirements. (1) Recipients must fully comply with all applicable federal, state, and local laws and regulations relating to topics such as procurement, discrimination, labor, job safety, drug-free environments, and minority and women owned businesses.

(2) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(3) Ongoing management of all aspects of loan projects is subject to the associated funding program guidelines.

(4) The applicant shall secure all necessary permits required by authorities having jurisdiction over the project. Copies must be available to the department upon request.

NEW SECTION

WAC 173-95A-610 The Growth Management Act.

(1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except, in limited circumstances, where a local government must address a public health need or substantial environmental degradation.

(2) For the purposes of this section, "compliance with the Growth Management Act" means that:

A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by chapter 36.70A RCW.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be doc-

umented by a letter signed by the director and addressed to the public official who signed the loan or grant application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funding while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

PART 7 TIMELY USE OF CENTENNIAL PROGRAM MONEYS

NEW SECTION

WAC 173-95A-700 Starting a project. Costs incurred before a grant or loan agreement is effective are not eligible for reimbursement, unless prior authorization is granted by the department.

(1) Prior authorization to incur costs.

(a) An applicant may request prior authorization to incur eligible project costs if the following applies:

(i) The project is identified on the "final offer and applicant list";

(ii) Costs are incurred between the publication date of the "final offer and applicant list" and when the funding agreement is signed by the water quality program manager or other schedules set in the prior authorization letter; and

(iii) The written request is made to the water quality program manager;

(b) The water quality program manager will send the applicant a letter approving or denying the prior authorization; and

(c) Any project costs incurred prior to the publication date of the "final offer and applicant list" are not eligible for reimbursement. All costs incurred before the agreement is signed by the water quality program manager are at the applicant's own risk.

(2) Project initiation. Grant or loan moneys must be spent in a timely fashion. The recipient must consistently meet the performance measures agreed to in the grant or loan agreement. These performance measures include, but are not limited to, the following:

(a) Work on a project must be started within sixteen months of the publication date of the "final offer and applicant list" on which the project was proposed.

(b) Starting a project means making any measurable steps toward achieving the milestones, objectives, and overall goals of the project.

(c) Loan and grant offers identified on the "final offer and applicant list" will be effective for up to one year from the publication date of the "final offer and applicant list." Loan and grant offers that do not result in a signed agreement are automatically terminated, see WAC 173-95A-320 Final offer and applicant list.

(3) Project initiation extension. Certain circumstances may allow a time extension of no more than twelve months for starting a project. For example:

(a) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(b) There is a need to do work during an environmental window in a specific season of the year.

NEW SECTION

WAC 173-95A-710 Finishing a project. Costs incurred after the project completion or expiration dates are not eligible for reimbursement.

(1) Project completion.

(a) Work on a project must be completed within five years of the publication date of the "final offer and applicant list" on which the project was proposed. A shorter time period may be specified in the grant or loan agreement; and

(b) Completing a project means fulfilling all milestones and objectives associated with the goals of the grant or loan agreement.

(2) Project completion extension.

(a) After the five-year limit is reached, a time extension of no more than twelve months may be made under certain circumstances, including but not limited to:

(i) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(ii) There is a need to do work during an environmental window in a specific season of the year; and

(b) To ensure timely processing, the time extension request must be made prior to the completion or expiration date of the loan or grant agreement.

**PART 8
GENERAL ADMINISTRATIVE PROVISIONS**

NEW SECTION

WAC 173-95A-800 Accounting requirements for grant and loan recipients. (1) Recipients must maintain accounting records in accordance with RCW 43.09.200, Local government accounting—Uniform system of accounting. For example, charges must be properly supported, related to eligible costs, and documented by appropriate records. These records must be maintained separately.

(2) Accounting irregularities may result in an immediate payment hold. The director may require immediate repayment of misused loan or grant moneys.

NEW SECTION

WAC 173-95A-810 Appealing a department decision. If a dispute arises concerning eligibility decisions made by the department within the context of a loan agreement, the decision may be appealed. A lawsuit cannot be brought to superior court unless the aggrieved party follows these procedures, which are intended to encourage the informal resolution of disputes consistent with RCW 34.05.060.

(1) First, the recipient may seek review of the financial assistance program's initial decision within thirty days of the decision by a written appeal to the water quality program manager. The program manager will consider the appeal information and may choose to discuss the matter by telephone or in person;

(2) The program manager will issue a written decision within thirty days from the time the appeal is received;

(3) If the recipient is not satisfied with the program manager's decision, the recipient may request review of the decision within thirty days to the deputy director;

(4) The deputy director will consider the appeal information, and may chose to discuss the matter by telephone or in person. The deputy director will issue a written decision within thirty days from the time the appeal is received, and that decision will be the final decision of the department;

(5) If the recipient is not satisfied with the deputy director's final decision, the recipient may appeal to the Thurston County superior court, pursuant to RCW 34.05.570(4), which pertains to the review of "other agency action"; and

(6) Unless all parties to such appeal agree that a different time frame is appropriate, the parties shall attempt to bring the matter for a superior court determination within four months of the date in which the administrative record is filed with the court. This time frame is to ensure minimal disruptions to the program.

NEW SECTION

WAC 173-95A-820 Audit requirements for grant and loan recipients. The department, or at the department's discretion another authorized auditor, will audit the grant or loan agreement and records.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 173-95A-030 How and under what conditions, can money from the centennial fund be used?
- WAC 173-95A-040 Where can I obtain details about the application and review process for centennial funds?
- WAC 173-95A-050 How can a local area have a role in determining funding priorities?
- WAC 173-95A-060 What are the limitations on the use of funds?
- WAC 173-95A-070 How does the Growth Management Act impact the use of funds?
- WAC 173-95A-080 What is the "step process" for planning facilities and activities projects?
- WAC 173-95A-090 What other laws, regulations or requirements must recipients comply with?

**WSR 07-15-003
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**
(Aging and Disability Services Administration)
[Filed July 6, 2007, 10:02 a.m., effective August 6, 2007]

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

Purpose: This rule change describes how rates are set for foster homes and other settings in the DDD voluntary placement program (VPP). The foster care rate assessment (FCRA) is used in the DDD voluntary placement program. The FCRA has been used for the last five years to set specialized rates for foster homes that accept children with developmental disabilities in the VPP for placement.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-826-0140; and amending WAC 388-826-0085 and 388-826-0130.

Statutory Authority for Adoption: RCW 74.13.750.

Adopted under notice filed as WSR 07-11-140 on May 22, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 2, Repealed 1.

Date Adopted: June 29, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/2/06)

WAC 388-826-0085 What other DDD services are available for a child through the voluntary placement program? (1) When a parent signs a voluntary placement agreement and the child is placed (~~in the VPP~~) outside the parental home, the child will no longer be eligible for services from the state-funded family support (~~(opportunity)~~) program (~~(, or the Medicaid personal care program)~~).

(2) Children living with their parents may receive personal care services provided under chapter 388-71 WAC.

(3) If the child is covered under the DDD core waiver as described in chapter 388-845 WAC, the child will receive the services identified on the plan of care.

NEW SECTION

WAC 388-826-0129 What are the residential settings that DDD uses to provide voluntary placement program services? DDD voluntary placement program services may be provided in a:

- (1) Licensed foster home;
- (2) Licensed group care facility;
- (3) Licensed staffed residential home; or
- (4) Licensed child placing agency.

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

WAC 388-826-0130 How ~~((is the foster care rate determined in VPP))~~ does DDD determine the rate that is paid to support a child in a licensed foster home? DDD determines the rate that is paid to support a child in a licensed foster home by adding:

(1) The basic foster care room and board rate (~~((is))~~) published annually by children's administration (~~((each year. See))~~) per WAC 388-25-0120.

(2) ~~((The foster care assessment is completed annually by DDD to determine the amount of any specialized rate that will be paid to the foster parent in addition to the basic rate.~~

(3) ~~The department administers the assessment with the foster parent. Based on information given by the foster parent and information gathered by the department, the standardized assessment will determine a score and assign a level.~~

(4) ~~Algorithms determine the score corresponding to the care needs for each child. Each level is assigned a rate. The rate will be paid to the foster parent caring for the child.)~~ The

specialized rate identified after administering the foster care rate assessment (FCRA) tool.

NEW SECTION

WAC 388-826-0135 When does DDD administer the foster care rate assessment tool? DDD administers the foster care rate assessment tool within thirty days from the date of the child's admission to a licensed foster home.

NEW SECTION

WAC 388-826-0136 How often does DDD administer the foster care rate assessment tool? (1) DDD administers the foster care rate assessment tool on an annual basis, between the months of November and February so rates can be updated by April 1 of each year.

(2) DDD does not have to re-administer the foster care rate assessment if it was administered within ninety days of February 1.

(3) The FCRA may be re-administered if a significant change is reported that affects the child's need for support (e.g., changes in medical condition, behavior, caregiver status, etc.).

NEW SECTION

WAC 388-826-0138 What questions are asked in the foster care rate assessment tool and how are the licensed foster home provider's answers scored? The foster care rate assessment tool consists of thirteen questions that are scored by DDD based on discussion between the DSHS representative and the licensed foster home provider.

(1) Daily Living: Include the average number of hours per day spent caring for this child beyond what is expected for his/her age on daily living tasks including dressing, grooming, toileting, feeding and providing specialized body care.

Answers	Score
0 to 1	30
2 to 5	91
6 to 9	213
10 to 20	396
Over 20	609

(2) Physical Needs: What is the average number of hours per day beyond what is expected for his/her age providing assistance not included in the "daily living" category above? (e.g., wheelchairs, prosthetics, and other assistive devices, dental/orthodontic, communication (speech, hearing, sight), airway management (monitors, ventilators), pressure sores and/or intravenous nutrition.)

Answers	Score
0 to 1	30
2 to 5	91
6 to 20	274
Over 20	609

(3) Behavioral Needs: What is the average number of hours per day the foster parent(s) will need to spend supporting and supervising the child due to behaviors disorders, emotional disorders, and mental disorders?

Answers	Score
0 to 1	30
2 to 5	91
6 to 13	335
14 to 24	578
Over 24	731

(4) Participation in Child's Therapeutic Plan: Include the average number of hours per week implementing a plan prescribed by a professional related to the child's physical, behavioral, emotional or mental therapy.

(a) Physical therapeutic plan (e.g., meeting with providers, attending therapy or directly giving physical, occupational or post-surgical therapy.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 9	30
10 to 46	65

(b) Participation in emotional/behavioral support plan (e.g., meeting with providers, attending therapy or directly supporting therapeutic plan.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 19	48
20 to 60	104
Over 60 hours/week	390

(5) Arranging, Scheduling and Supervising Activities: Indicate the average number of hours per week scheduling appointments and accompanying the child.

(a) Medical/Dental (e.g., transporting and waiting for medical services including doctor visits, dental visits, rehabilitation, and therapy visits.)

Answers	Score
0 to 1	4
2 to 5	13
6 to 14	39
Over 14 hours/week	82

(b) Community activities (e.g., transporting and waiting during events including recreation, leisure, sports or extra-curricular activities.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 7	30

Answers	Score
8 to 20	48
Over 20 hours/week	130

(6) House Care: Indicate the average number of times per week to repair, clean or replace household items, including medical equipment, over and above normal wear and tear, due to:

(a) Chronic conditions (e.g., lack of personal control resulting in bed-wetting or incontinence, lack of muscle control or unawareness of the consequences of physical actions.)

Answers	Score
0 to 1	6
2 to 7	24
8 to 19	58
20 to 38	91
Over 38 times per week	238

(b) Destructive behavior (e.g., lack of emotional control resulting in damage or destruction of property.)

Answers	Score
0 to 1	6
2 to 3	15
4 to 9	28
10 to 22	58
Over 22 times per week	162

(7) Development and Socialization: Indicate the average number of hours per week to provide guidance and assistance.

(a) Direct developmental assistance (e.g., helping with homework and readiness to learn activities.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 11	30
12 to 30	87
Over 30 hours/week	249

(b) Professional interaction (e.g., meeting with teachers, visiting the school either planned or in crisis, speaking on the phone with school personnel, participating in individual education plan development and review.)

Answers	Score
0 to 1	4
2 to 3	13
4 to 5	22
6 to 12	30
Over 12 hours/week	82

(c) Socialization and functional life skills (e.g., helping the child build skills, make choices and take responsibility, learn about the use of money, relate to peers, adults and family members and explore the community.)

Answers	Score
0 to 1	4
2 to 7	22
8 to 19	56
20 to 60	173
Over 60 hours/week	403

(8) Shared Parenting: Indicate the average number of hours per week to work with the birth parents and/or siblings, including assisting in the care of the child during visits, demonstrating care techniques, planning and decision making.

Answers	Score
0 to 1	4
2 to 3	13
4 to 12	30
Over 12	82

NEW SECTION

WAC 388-826-0145 How does DDD determine the foster care level from the raw score? The following are the foster care levels based on the range of aggregate scores:

Level	Low Score	High Score
1	0	320
2	321	616
3	617	1501
4	1502	2085
5	2086	2751
6	2752	9999999

A standardized rate for specialized services is assigned to each level one through six. The standardized rate is published by DDD. The rate is paid monthly to the foster parent in addition to the basic rate.

NEW SECTION

WAC 388-826-0175 How does DDD determine the rate that is paid to support a child in a licensed group care facility? A rate is negotiated by contract between DDD and the licensed group care facility.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-826-0140 What areas are covered in the foster care assessment?

WSR 07-15-031

PERMANENT RULES

SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed July 12, 2007, 12:25 p.m., effective August 12, 2007]

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

Purpose: SRCAA Regulation I, Article IX - Largely clarify existing regulations and streamline activities associated with nonfriable asbestos-containing roofing materials. Article X, Section 10.09 - Asbestos fees placed in fee schedule and may be adjusted following a public notice, comment period, and public hearing. Section 10.06 - A provision added for periodic fee review.

Citation of Existing Rules Affected by this Order: Amending SRCAA Regulation I, Articles IX and X, Sections 10.06 and 10.09.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Other Authority: Chapter 70.94 RCW and U.S.C. 7401 et seq., 42 U.S.C. 7412.

Adopted under notice filed as WSR 07-11-036 on May 8, 2007 and WSR 07-11-054 on May 10, 2007.

A final cost-benefit analysis is available by contacting Brenda Smits, 1101 West College, Suite 403, Spokane, WA 99201, phone (509) 477-4727, fax (509) 477-6828, e-mail bsmits@spokanecleanair.org. This is a local agency rule and RCW 34.05.328 does not apply pursuant to RCW 70.94.141 (1).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: July 12, 2007.

Brenda Smits

Air Quality Specialist II

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 07-15-032
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed July 12, 2007, 1:27 p.m., effective August 12, 2007]

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

Purpose: To comply with federal rules with regard to copayments, policies, and program eligibility.

Citation of Existing Rules Affected by this Order: Amending WAC 388-517-0310 and 388-517-0320.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Other Authority: 42 U.S.C. Section 1396a.

Adopted under notice filed as WSR 07-11-135 on May 22, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-517-0310(2), substituted "persons" for the word "individuals"; WAC 388-517-0320(6), added explanation of what is meant by the term "dual-eligible client"; and WAC 388-517-0320 (1) and (6), added reference to the governing rule, WAC 388-502-0110.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 6, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-125, filed 7/1/05, effective 8/1/05)

WAC 388-517-0310 Eligibility for federal medicare savings and state-funded medicare buy-in programs. (1) Persons eligible for any medicare savings programs (MSP) must:

(a) Be ~~((eligible for))~~ entitled to or receiving medicare Part A. Qualified disabled working individuals (QDWI) clients must be under age sixty-five;

(b) Meet program income standards, see WAC 388-478-0085; and

(c) Have resources at or below twice the resource standards for SSI and SSI related programs, see WAC ~~((388-478-0085(6)))~~ 388-478-0080(4).

(2) MSP follow categorically needy program rules for SSI related ~~((rules))~~ persons in chapter 388-475 WAC.

(3) MSP clients are entitled to a fair hearing when the department takes an adverse action such as denying or terminating MSP benefits.

(4) The department subtracts the allocations and deductions described under WAC 388-513-1380 from a long-term care client's countable income and resources when determining MSP eligibility:

(a) Allocations to a spouse and/or dependent family member; and

(b) Client participation in cost of care.

(5) Medicaid eligibility may affect MSP eligibility, as follows:

(a) Qualified medicare beneficiaries (QMB) and specified low income beneficiaries (SLMB) clients can receive medicaid and still be eligible to receive QMB or SLMB benefits.

(b) Qualified individuals (QI-1) and qualified disabled working individuals (QDWI) clients who begin to receive medicaid are no longer eligible for QI-1 or QDWI benefits.

(6) Every year, when the federal poverty level changes:

(a) The department adjusts income standards for MSP and state funded medicare buy-in programs, see WAC 388-478-0085.

(b) The department begins to count the annual Social Security cost-of-living (COLA) increase on April 1st each year when determining eligibility for MSP and state funded medicaid buy-in programs.

(7) There is no income limit for the state-funded medicare buy-in program. The state-funded medicare buy-in program is for clients who receive medicaid but do not qualify for the federal MSP.

AMENDATORY SECTION (Amending WSR 05-14-125, filed 7/1/05, effective 8/1/05)

WAC 388-517-0320 Medicare savings and state-funded medicare buy-in programs cover some client costs. (1) For qualified medicare beneficiary (QMB) clients, the department pays:

(a) ~~((Pays))~~ Medicare Part A premiums (if any);

(b) ~~((Pays))~~ Medicare Part B premiums;

(c) ~~((Pays all))~~ Coinsurance, deductibles ~~((as described in subsection (6) of this section);~~

~~((d) May pay Medicare Advantage Part C premiums, if cost effective, for those clients already enrolled in Medicare Advantage Part C at the time of application for Medicare Advantage Part C premium payment. (The department does not select a Medicare Advantage Part C plan for QMB clients);~~

~~((e) Pays all coinsurance deductibles and co-payments for QMB-eligible clients enrolled in Medicare Advantage Part C as described in subsection (6) of this section; and~~

~~((f) Pays QMB premiums the first of the month following the month that QMB eligibility is determined)), and copayments for medicare Part A, Part B, and medicare advantage Part C with the following conditions:~~

~~((i) Only the Part A and Part B deductible, coinsurance, and copayments up to the medicare or medicaid allowed amount, whichever is less (WAC 388-502-0110), if the service is covered by medicare and medicaid.~~

(ii) Only the deductible, coinsurance, and copayments up to the medicare allowed amount if the service is covered only by medicare.

(d) Copayments for QMB-eligible clients enrolled in medicare advantage Part C up to the medicare or medicaid allowed amount whichever is less (WAC 388-502-0110).

(e) QMB Part A and/or Part B premiums the first of the month following the month the QMB eligibility is determined.

(2) For specified low-income medicare beneficiary (SLMB) clients, the department pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months. No other payments are made for SLMBs.

(3) For qualified individual (QI-1) clients, the department pays medicare Part B premiums effective up to three months prior to the certification period if eligible for those months unless:

(a) The client receives medicaid categorically needy (CN) or medically needy (MN) benefits; and/or

(b) The department's annual federal funding allotment is spent. The department resumes QI-1 benefit payments the beginning of the next calendar year.

(4) For qualified disabled working individual (QDWI) clients, the department pays medicare Part A premiums effective up to three months prior to the certification period if eligible for those months. The department stops paying medicare Part A premiums if the client begins to receive CN or MN medicaid.

(5) For state-funded medicare buy-in program clients, the department pays ((Medicare)):

(a) Medicare Part B premiums; and

(b) Only the Part A and B co-insurance, deductibles, and co-payments ((described in subsection (6) of this section)) up to the medicare or medicaid allowed amount, whichever is less (WAC 388-502-0110), if the service is covered by medicare and medicaid.

(6) For the dual-eligible client, (a client receiving both medicare and CN or MN medical coverage) the department ((limits payments for certain services, provided to Medicare savings and state funded Medicare buy-in clients,)) pays as follows:

(a) If the ((Medicaid payment rate is higher than the amount paid by Medicare, the department pays only the cost-sharing liability of the Medicare co-insurance charge)) service is covered by medicare and medicaid, medicaid pays only the deductible, and coinsurance up to the medicare or medicaid allowed amount, whichever is less (WAC 388-502-0110); and

(b) ((For Medicaid clients who are entitled to Medicare Part A and/or Medicare Part B (referred to as "dual eligible" clients:

(i) The department pays the Medicare or Medicaid payment rate, whichever is less, for services covered by both Medicare and Medicaid; and

(ii) The department pays the Medicare deductibles and co-insurance services only covered by Medicare)) Copayments for medicare advantage Part C up to the medicare or medicaid allowed copayment amount, whichever is less (WAC 388-502-0110);

(c) If no medicaid rate exists, the department will deny payment unless the client is also QMB then refer to section (1) above.

WSR 07-15-033

PERMANENT RULES

WHATCOM COMMUNITY COLLEGE

[Filed July 12, 2007, 3:16 p.m., effective August 12, 2007]

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

Purpose: To amend sections of chapter 132U-03 WAC, Organization; chapter 132U-104 WAC, Board of trustees—Bylaws—Meetings; and chapter 132U-280 WAC, Family Educational Rights and Privacy Act (FERPA).

Citation of Existing Rules Affected by this Order: Amending [WAC 132U-03-020, 132U-03-030, 132U-104-030, 132U-280-010, 132U-280-015, 132U-280-020, 132U-280-025, 132U-280-030, and 132U-280-035].

Statutory Authority for Adoption: RCW 28B.50.130, 28B.50.140.

Adopted under notice filed as WSR 07-10-045 on April 26, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: July 11, 2007.

Patricia Onion

Vice-President for

Educational Services

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 07-15-038

PERMANENT RULES

HIGHER EDUCATION COORDINATING BOARD

[Filed July 12, 2007, 4:34 p.m., effective August 12, 2007]

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

Purpose: To strengthen participation standards of the for-profit colleges in the state need grant program to better protect students and to recognize tuition charged to students

engaged in community college applied baccalaureate degree programs.

Citation of Existing Rules Affected by this Order: Amending WAC 250-20-013 and 250-20-041.

Statutory Authority for Adoption: Chapter 28B.92 RCW.

Adopted under notice filed as WSR 07-08-110 on April 4, 2007.

Changes Other than Editing from Proposed to Adopted Version: A change was made to acknowledge and preserve the confidential nature of financial information disclosed by private businesses. A change was made to secure the board's authority to review individual circumstances for schools provisionally certified for participation in federal student aid programs.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 0.

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

Date Adopted: June 28, 2007.

John Klacik
Director of Student
Financial Assistance

AMENDATORY SECTION (Amending WSR 06-17-046, filed 8/8/06, effective 9/8/06)

WAC 250-20-013 Institutional eligibility. (1) For an otherwise eligible student to receive a state need grant, he or she must be enrolled in an eligible program at a postsecondary institution approved by the higher education coordinating board for participation in the state need grant program (~~((except as specified in WAC 250-20-021 less than half-time pilot project))~~). To be eligible to participate, a postsecondary institution must:

(a) ~~((Be a public university, college, community college, or vocational-technical institute operated by the state of Washington, or any political subdivision thereof, or any other university, college, school or institute in the state of Washington offering instruction beyond the high school level with full institutional accreditation by an accrediting association recognized by rule of the board.))~~ Be a postsecondary institution as defined in WAC 250-20-021(3).

(b) Participate in the federal Title IV student financial aid programs, including, at a minimum, the Federal Pell Grant program.

(2) In addition, a ~~((for-profit institution must:~~

~~(a) Be certified for participation in the federal Title IV student financial aid programs. A for-profit institution that is provisionally certified for participation in the federal Title IV student financial aid programs due to its failure to meet the factors of administrative capability or financial responsibility as stated in federal regulations, or whose participation has been limited or suspended, is not eligible to participate in the state need grant program until its full eligibility has been reinstated.~~

~~(b) Demonstrate to the satisfaction of the board that it is capable of properly administering the state need grant program. In making a determination of administrative capability, the board will consider such factors as the adequacy of staffing levels, staff training and experience in administering student financial aid programs, standards of administrative capability specified for purposes of federal Title IV program eligibility, its student withdrawal rate, its federal student loan cohort default rate, and such other factors as are reasonable. In determining the administrative capability of participating institutions, the board will also consider the institution's compliance with state need grant program regulations and guidelines.~~

~~(c) Demonstrate to the satisfaction of the board that it has the financial resources to provide the services described in its official publications and statements, provide the administrative resources necessary to comply with program requirements, and that it meets the financial responsibility standards for participation in the federal Title IV programs.~~

~~(d) Renew its eligibility each year under these standards.~~

~~(3) Nothing in this section shall prevent the board, in the exercise of its sound discretion, from denying eligibility or terminating the participation of an institution which the board determines is unable to properly administer the program or to provide advertised services to its students))~~ proprietary institution must demonstrate to the satisfaction of the board:

(a) That it is certified for participation in the federal Title IV student financial aid programs. Institutions which have been limited or suspended from Title IV programs are not eligible to participate in the state need grant program. A proprietary institution that is provisionally certified due to its failure to meet standards of administrative capability or financial responsibility may have its eligibility limited or denied. Institutions will be evaluated on a case-by-case basis and may be allowed to participate in a probationary status with conditions including a letter of credit, or other limitations.

(b) That it is capable of properly administering the state need grant program. In making this determination, the board will consider such factors as the institution's:

(i) Adequacy of staffing levels.

(ii) Staff training and experience in administering student financial aid programs and turnover in key personnel.

(iii) Compliance with the standards of administrative capability specified for purposes of federal Title IV program eligibility.

(iv) Pending legal regulatory issues.

(v) Written student complaints.

(vi) Compliance with state aid program regulations and guidelines.

(vii) Ability to maintain electronic systems to support state aid program tracking, payment requests and reporting obligations.

(c) That it is maintaining acceptable performance levels. In making this determination the board will consider such factors as the institution's:

(i) Student completion rate.

(ii) Student placement rate.

(iii) Student loan cohort default rate.

In evaluating completion and placement standards, the board will rely on the standards of the institution's accrediting agency or the standard established between the board and the institution at the time the participation agreement is signed. Multiple year averages will be considered in evaluating these standards. Each participating institution will submit its annual accreditation report to the board.

(d) That it is financially stable and has adequate financial resources to provide the services described in its official publications and statements. Institutions must meet the administrative and financial standards for participation in the federal Title IV programs. In making this determination, the board will consider such factors as:

(i) The school's annual financial statements. The board will not retain copies of confidential financial statements that cannot be exempted from the Public Disclosure Act, chapter 42.56 RCW.

(ii) The Department of Education's composite financial score.

(iii) Federal program review findings.

(iv) State reauthorization or relicensing reports.

(v) Accrediting agency show cause or other findings.

(vi) Enrollments by program and intent to terminate an existing program.

(vii) Enrollment trends.

(e) If evaluation of an institution's administrative capability, performance level, or financial strength results in concerns about the institution's participation in the state aid programs, the board may:

(i) Request additional information as well as give the school the opportunity to provide additional clarifying information.

(ii) Place an institution in a probationary status and specify the corrective actions which need to occur.

(iii) Require a letter of credit or bond.

(iv) Limit, suspend, or terminate an institution's participation in accordance with WAC 250-20-081.

(3) "Probation" indicates the board has determined that the school has one or more significant deficiencies for which corrective action is required within a specified time period.

(4) The school must renew its eligibility each year under these standards or as requested by the board. A school that has lost eligibility to participate must complete a new application for reconsideration.

(5) Nothing in this section shall prevent the board, in the exercise of its sound discretion, from denying eligibility or terminating the participation of an institution which the board determines is unable to properly administer the program or provide advertised services to its students.

(6) If an institution disagrees with actions taken by the board, the institution can appeal the action per the procedure outlined in WAC 250-20-081.

AMENDATORY SECTION (Amending WSR 04-08-060, filed 4/5/04, effective 5/6/04)

WAC 250-20-041 Award procedure. (1) The institution will offer grants to eligible students from funds reserved by the board. It is the institution's responsibility to ensure that the reserve is not over expended within each academic year.

(2) The state need grant award for an individual student shall be the base grant, appropriate for the sector attended and a dependent care allowance, if applicable, adjusted for the student's family income and rate of enrollment. Each eligible student receiving a grant must receive the maximum grant award for which he or she is eligible, unless such award should exceed the student's overall need or the institution's approved gift equity packaging policy.

(3) The grant amount for students shall be established as follows:

(a) The award shall be based on the representative average tuition, service, and activity fees charged within each public sector of higher education. The average is to be determined annually by the higher education coordinating board. The award for students enrolled in the applied baccalaureate pilot program authorized in RCW 28B.50.810 shall be based on the representative tuition and fees used for the comprehensive universities.

(b) Except for the 2003-04 and 2004-05 academic years, the base grant award shall not exceed the actual tuition and fees charged to the eligible student. During the 2003-04 and 2004-05 years the grant award may exceed the tuition charged to the eligible student by fifty dollars.

(c) The base grant award for students attending independent four-year institutions shall be equal to that authorized for students attending the public four-year research institutions. The base grant for students attending private vocational institutions shall be equal to that authorized for students attending the public community and technical colleges.

(4) The total state need grant award shall be reduced for students with family incomes greater than fifty percent of the state's median and for less than full-time enrollment.

(a) Students whose incomes are equal to fifty-one percent to seventy-five percent of the state's median family income shall receive seventy-five percent of the maximum award. Students whose incomes are equal to seventy-six percent to one hundred percent of the state's median family income shall receive fifty percent of the maximum award. Students whose incomes are equal to one hundred one percent to one hundred twenty-five percent of the state's median family income shall receive twenty-five percent of the maximum award.

(b) Eligible students shall receive a prorated portion of their state need grant for any academic period in which they are enrolled at least half-time, as long as funds are available. Students enrolled at a three-quarter time rate, at the time of disbursement, will receive seventy-five percent of their grant. Students enrolled half-time at the time of disbursement will receive fifty percent of their grant.

(5) Depending on the availability of funds, students may receive the need grant for summer session attendance.

(6) The institution will be expected, insofar as possible, to match the state need grant with other funds sufficient to meet the student's need. Matching moneys may consist of student financial aid funds and/or student self-help.

(7) All financial resources available to a state need grant recipient, when combined, may not exceed the amount computed as necessary for the student to attend a postsecondary institution. The student will not be considered overawarded if he or she receives additional funds after the institution awards aid, and the total resources exceed his or her financial need by \$200 or less by the end of the academic year.

(8) The institution shall ensure that the recipient's need grant award, in combination with grant aid from all sources, not exceed seventy-five percent of the student's cost-of-attendance. In counting self-help sources of aid, the aid administrator shall include all loans, employment, work-study, scholarships, grants not based on need, family contribution, and unmet need.

(9) The institution will notify the student of receipt of the state need grant.

(10) Any student who has received at least one disbursement and chooses to transfer to another participating institution within the same academic year may apply to the board for funds to continue receipt of the grant at the receiving institution.

WSR 07-15-041

PERMANENT RULES

HORSE RACING COMMISSION

[Filed July 13, 2007, 9:02 a.m., effective August 13, 2007]

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

Purpose: To amend WAC 260-36-010 Licensed required, to allow persons employed by an out-of-state racing association and holding a valid license from a recognized racing jurisdiction to work for a Class A or B racing association in this state as a parimutuel clerk for a period not to exceed eight days in a calendar year.

Citation of Existing Rules Affected by this Order: Amending WAC 260-36-010.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-11-028 on May 7, 2007.

Changes Other than Editing from Proposed to Adopted Version: Changed the maximum calendar days from four to eight days in a calendar year a person may work as a parimutuel clerk for a Class A or B racing association.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 12, 2007.

R. J. Lopez
Deputy Secretary

AMENDATORY SECTION (Amending WSR 07-01-052, filed 12/14/06, effective 1/14/07)

WAC 260-36-010 License required. (1) Any person acting in an official capacity or any person participating directly in horse racing must have a valid license, except as provided in subsection (2) of this section.

(2) The following persons are not required to have a license:

(a) Commissioners and employees of the commission ((do not require a license.));

(b) Persons employed by a racing association who only perform duties of concessions, housekeeping, parking, food and beverage, landscaping or similar functions, and do not act in an official capacity or participate directly in horse racing ((are not required to be licensed)); and

(c) Persons employed by an out-of-state racing association and holding a valid license from a recognized racing jurisdiction, who work for a Class A or B racing association as parimutuel clerks for a period not to exceed eight days total in any calendar year.

(3) Decisions regarding who is required to be licensed, if not addressed in this chapter, will be made by the executive secretary. It is a violation of these rules for any person to act in an official capacity or participate directly in horse racing unless licensed by the commission.

WSR 07-15-042

PERMANENT RULES

HORSE RACING COMMISSION

[Filed July 13, 2007, 9:03 a.m., effective August 13, 2007]

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

Purpose: To amend chapter 260-14 WAC, ~~((Special))~~ Rules related to commissioners and commission employees.

Citation of Existing Rules Affected by this Order: Amending WAC 260-14-010, 260-14-020, 260-14-030, 260-14-040, 260-14-050, 260-14-060, and 260-14-070.

Statutory Authority for Adoption: RCW 67.16.020 and 67.16.040.

Adopted under notice filed as WSR 07-11-102 on May 16, 2007.

Changes Other than Editing from Proposed to Adopted Version: Amended WAC 260-14-040 to prohibit commissioners, employees, and spouses of commissioners and employees from wagering as follows: (1) On the outcome of any race held at a facility under the jurisdiction of the commission, (2) with an advance deposit wagering service pro-

vider licensed by the commission, or (3) on the outcome of any race at a meet under the jurisdiction of the commission.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

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

Date Adopted: July 12, 2007.

R. J. Lopez
Deputy Secretary

Chapter 260-14 WAC

~~((SPECIAL))~~ RULES RELATING TO COMMISSIONERS AND COMMISSION EMPLOYEES

AMENDATORY SECTION (Amending WSR 04-05-090, filed 2/18/04, effective 3/20/04)

WAC 260-14-010 Definitions. ~~((For the purposes of chapter 260-14 WAC, unless otherwise indicated by the context in which the term is used, the following terms shall have the meaning set forth herein:))~~ The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Commissioner(~~(;)~~)," ~~((shall mean any))~~ Δ member of the Washington state horse racing commission(~~(, and any member of the immediate family of such commissioner)~~).

(2) "Employee(~~(;)~~)," ~~((shall mean))~~ Δ any full or part time employee of the commission ~~((not normally engaged in direct regulatory functions)).~~ ~~((Included in such group are the executive secretary, Olympia office personnel, and registration clerks.~~

(3) "Regulatory employee," ~~shall include all of the officials named in WAC 260-24-010 and any other employee engaged in direct regulatory functions.~~

(4) "Thing of economic value," ~~shall have the same meaning as that term has in chapter 42.52 RCW.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-020 Prohibited acts. ~~No commissioner(~~(; employee or regulatory))~~ or employee (~~shall~~)~~ may accept any thing of economic value, as defined in chapter 42.52 RCW, from any applicant, licensee, or association except as ~~((set forth in these rules))~~ allowed by law.

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-030 Ownership interest in associations. ~~((~~(+)~~))~~ ~~No commissioner or employee (~~(or commissioner during his term of office, shall acquire))~~)~~ may have any ownership interest in any association which seeks race meet dates. ~~((Any ownership interest in any such association owned prior to such membership on the commission or employment by the commission shall be disposed of within thirty days of the time such employee or commissioner accepts employment or takes office unless the commissioner or employee elects to place such ownership in a trust for the duration of his term of office or employment. In such case, said employee, or commissioner shall place such ownership interest in a trust approved by the commission, such trust to provide that any dividends or other profit distribution shall redound to the benefit of a charitable purpose approved by the commission, and that no ownership interest shall be returned to such commissioner or employee at the expiration of such trust unless an amount equal to any increment in value which may have occurred during such trust shall be paid by the commissioner or employee to a charity approved by the commission. In determining whether an increment in value has occurred the trust instrument may provide that a normal rate of interest on the ownership interest, had it been reduced to cash, need not be included in ascertaining such increment.~~

~~(2) No regulatory employee shall have an ownership interest in any association conducting a race meeting at which he is employed by the commission.~~

~~(3) Copies of any trust agreement by which a commissioner or employee retains an interest or potential interest in an association shall be filed with the commission and maintained in a separate file in the Olympia offices of said commission. Such file shall be open and available for public inspection during regular office hours of the commission.)~~

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-14-040 Wagering. ~~((1) No commission employee shall make any wager at a facility under the jurisdiction of the commission.~~

~~(2) No commission employee shall make any wager on the outcome of any horse race at a meeting under the jurisdiction of the commission. Commission employee means both regulatory employee and employee as defined in WAC 260-14-010.~~

~~(3) No commissioner shall make any wager on the outcome of any horse race at a meeting under the jurisdiction of the commission.)~~ A commissioner, employee, or the spouse of a commissioner or employee may not make any wager as follows:

(1) On the outcome of any race at a facility under the jurisdiction of the commission;

(2) With an authorized advanced deposit wagering service provider licensed by the commission; or

(3) On the outcome of any horse race at a race meet under the jurisdiction of the commission.

AMENDATORY SECTION (Amending WSR 04-19-046, filed 9/13/04, effective 10/14/04)

WAC 260-14-050 Ownership interests in race horses. ~~((+))~~ No ~~((regulatory employee))~~ commissioner or employee ~~((shall))~~ may have any ownership interest in any race horse running at any race meet under the jurisdiction of the commission.

~~((2) No commissioner shall have any ownership interest in any race horse running at any race meet under the jurisdiction of the commission.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-060 Performance of compensated services on behalf of associations prohibited. ~~((+))~~ No commissioner or employee of the commission ~~((shall))~~ may receive any compensation whatsoever from an association for any services performed for or on behalf of an association ~~((-~~

~~(2) No regulatory employee shall receive any compensation from an association for services)) or performed during a race meet for which he or she is employed by the commission.~~

~~((3) Nothing in this rule shall be deemed to prohibit the performance of such services by a regulatory employee either before or after a race meet if authorization in writing is granted by the commission prior to the time any services for which compensation may be reasonably expected are performed. Such authorization may be obtained only in accordance with subparagraph (4) hereof.~~

~~(4) Upon receiving a request to perform services for which compensation shall be due for or on behalf of an association by a regulatory employee or an association or both, the executive secretary shall investigate and determine whether the performance of such services is bona fide. If he determines that the performance of such services is bona fide and that the compensation to be paid therefor is reasonably related to the performance of such services, he may authorize in writing such services to be performed pending final action by the commission. Should the commission later determine that the executive secretary was in error in granting such authorization, it shall promptly notify the regulatory employee and the association and such services shall thereupon immediately cease and no compensation may be paid such regulatory employee for services performed after such notification.~~

~~(5) Copies of written authorizations issued pursuant to this section shall be maintained in a separate file in the offices of the commission in Olympia, Washington, and shall be open and available for public inspection during regular office hours of said commission.)~~

AMENDATORY SECTION (Amending Order 73.3, filed 6/28/73)

WAC 260-14-070 Violations. (1) Any ~~((willful))~~ violation of any of the ~~((foregoing))~~ rules in this chapter by any commissioner ~~((shall))~~ will be ~~((deemed to be))~~ considered official misconduct ~~((in office))~~ and ~~((shall))~~ will be reported

by the executive secretary to the governor ~~((for appropriate action)).~~

(2) Any ~~((willful))~~ violation by any employee ~~((or regulatory employee shall be deemed to be))~~ will be considered misconduct and ~~((shall))~~ will be grounds for ~~((immediate discharge))~~ discipline, including termination. ~~((In the event that such violation occurs between race meets by an employee normally employed for the duration of a race meet, such employee shall be deemed to be ineligible for employment by the commission at the pertinent race meet for a period of at least one year.))~~

WSR 07-15-043

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed July 13, 2007, 10:23 a.m., effective August 13, 2007]

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

Purpose: Amend chapter 51-04 WAC, Policies and procedures for consideration of statewide and local amendments to the state building code. Amendments clarify procedures for state and local amendment review, the process for reconsideration of amendment proposals, and expand the council's authority in issuing interpretive opinions on the state building code at the request of a local code official.

Citation of Existing Rules Affected by this Order: Amending WAC 51-04-010, 51-04-020, 51-04-025, 51-04-030, 51-04-040, and 51-04-060.

Statutory Authority for Adoption: RCW 19.27.035 and 19.27.074.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 07-09-102 on April 18, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

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

Date Adopted: June 8, 2007.

John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 90-02-108, filed 1/3/90, effective 2/3/90)

WAC 51-04-010 Declaration of purpose. The Washington state building code council, hereinafter called the council, is required by chapter 266, Laws of 1988, to adopt

and maintain the state building code, hereinafter referred to as the building code, as provided in chapters 19.27, 19.27A, and 70.92 RCW, and the state legislature.

The primary objective of the council is to encourage consistency in the building code throughout the state of Washington and to maintain the building code consistent with the state's interest as provided in RCW 19.27.020.

The building code shall be as defined in WAC 51-04-015~~((6))~~ (8).

The council is also required by RCW 19.27.074 to approve or deny all city and county amendments to the building code that apply to single family or multifamily buildings as defined in RCW 19.27.015.

The purpose of this chapter is to establish policies and procedures for submittal and council review and consideration of proposed statewide and city and county amendments respectively, to the building code.

AMENDATORY SECTION (Amending WSR 05-23-104, filed 11/17/05, effective 1/1/06)

WAC 51-04-020 Policies for the consideration of proposed statewide amendments. Statewide and emergency statewide amendments to the state building code ~~((should))~~ shall be based on one of the following criteria:

- (1) The amendment is needed to address a critical life/safety need.
- (2) The amendment is needed to address a specific state policy or statute.
- (3) The amendment is needed for consistency with state or federal regulations.
- (4) The amendment is needed to address a unique character of the state.
- (5) The amendment corrects errors and omissions.

Statewide and emergency statewide amendments to the state building code shall conform to the purposes, objectives, and standards prescribed in RCW 19.27.020.

The council will accept and consider petitions for emergency statewide amendments to the building code at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW.

The council will accept and consider all other petitions for statewide amendments in conjunction with the state building code update cycle, in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020 as follows:

The state building code council shall publicize the state building code amendment process in January of each year. Proposed state amendments must be received by March 1 to be considered for adoption by December 1. The state building code council shall review all proposed statewide amendments and file for future rule making those proposals approved as submitted or as amended by the council. State amendments as approved by the council shall be submitted to the appropriate model code organization, at the direction of the council, except those adopted for consistency with state statutes or regulation and held for further review during the adoption period of those model codes by the council. The effective date of any statewide amendments shall be the same as the effective date of the new edition of the model codes, except

for emergency amendments adopted in accordance with chapter 34.05 RCW and deemed appropriate by the council.

The adoption period of new model codes commences upon availability of the publication of the new edition of the model codes and concludes with formal adoption of the building code as amended by the council and final review by the state legislature. For the purposes of this section, the publication of supplements shall not be considered a new edition. The council will consider state amendments to:

The model codes provided that the proposed amendments shall be limited to address changes in the model codes since the previous edition; or, address existing statewide amendments to the model codes; or, address portions of the state building code other than the model codes.

The state building code council shall consider the action of the model code organizations in their consideration of these proposals.

Within sixty days of the receipt of the new edition of the model codes the council shall enter rule making to update the state building code.

AMENDATORY SECTION (Amending WSR 94-05-058, filed 2/10/94, effective 3/13/94)

WAC 51-04-025 Procedure for submittal ~~((or))~~ of proposed statewide amendments. All proposed statewide amendments shall be submitted in writing to the council, on the form provided by the council.

Petitions for statewide amendments to the building code shall be submitted to the council during the submission period and the adoption period in accordance with WAC 51-04-020.

Petitions for emergency statewide amendments to the building code may be submitted at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020.

The council may refer a proposed statewide amendment to one of the council standing committees for review and comment prior to council action in accordance with chapter 34.05 RCW.

The council shall deal with all proposed statewide amendments within the time frames required by chapter 19.27 RCW, RCW 34.05.330, and all other deadlines established by statute.

AMENDATORY SECTION (Amending WSR 05-23-104, filed 11/17/05, effective 1/1/06)

WAC 51-04-030 Policies for consideration of proposed local government residential amendments. All amendments to the building code, as adopted by cities and counties for implementation and enforcement in their respective jurisdictions, that apply to single and multifamily buildings as defined by RCW 19.27.015, shall be submitted to the council for approval.

The council shall consider and approve or deny all proposed local government residential amendments to the building code within ninety calendar days of receipt of a proposal, unless alternative scheduling is agreed to by the council and the proposing entity.

All local government residential amendments to the building code that require council approval shall be submitted in writing to the council, after the city or county legislative body has adopted the amendment and prior to implementation and enforcement of the amendment by the local jurisdiction. All local amendments submitted for review shall be accompanied by findings of fact adopted by the governing body of the local jurisdiction justifying the adoption of the local amendment in accordance with the five criteria noted below in this section.

It is the policy of the council to encourage joint proposals for local government residential amendments from more than one jurisdiction. Local government residential amendments submitted to the council for approval (~~should~~) shall be based on:

- (1) Climatic conditions that are unique to the jurisdiction.
- (2) Geologic or seismic conditions that are unique to the jurisdiction.
- (3) Environmental impacts such as noise, dust, etc., that are unique to the jurisdiction.
- (4) Life, health, or safety conditions that are unique to the local jurisdiction.
- (5) Other special conditions that are unique to the jurisdiction.

EXCEPTION((S)): ~~((Appendices or portions thereof that have the effect of amending the uniform codes, that do not conflict with the building code for single and multifamily residential buildings as defined by RCW 19.27.015, may be adopted by local jurisdictions without council review or approval.))~~

Local government residential amendments to administrative provisions (departmental operational procedures) contained within the state building code need not be submitted to the council for review and approval provided that such amendments do not alter the construction requirements of those chapters.

Those portions of the supplement or accumulative supplements that affect single and multifamily residential buildings as defined by RCW 19.27.015 that are not adopted by the council shall be submitted to the council for consideration as local government residential amendments to the building code.

Local government residential amendments shall conform to the limitations provided in RCW 19.27.040.

AMENDATORY SECTION (Amending WSR 05-23-104, filed 11/17/05, effective 1/1/06)

WAC 51-04-040 Reconsideration. ~~((Any party proposing a statewide or local government amendment to the building code may, upon denial of the amendment by the council, file a petition for reconsideration.~~

~~Within ten days of a building code council vote to deny a statewide or local government amendment, any party may file a petition for reconsideration, stating the specific justification for rule adoption or local amendment. The petition shall be filed with the State Building Code Council, P.O. Box 42525, Olympia, Washington 98504-2525.~~

~~The council is deemed to have denied the petition for reconsideration if, within sixty days from the date the petition is filed, the council does not either:~~

- ~~(1) Dispose of the petition; or~~
- ~~(2) Serve the parties with a written notice specifying the date by which it will act on the petition.~~

~~Unless the petition is deemed denied, the petition shall be disposed of by the council with recommendations from the same committee or committees that considered the proposed rule or local amendment. The disposition shall be in the form of a written notice denying the petition, granting the petition and re-filing the rule-making order or approving the local amendment, or granting the petition and setting the matter for further hearings.))~~ (1) When the council denies a statewide or local amendment to the building code, the party proposing the amendment may file a petition for reconsideration. The petition must be received by the State Building Code Council, P.O. Box 42525, Olympia, Washington 98504-2525, within ten calendar days of the date of the denial. The petition must give specific reasons for why the council should reconsider the amendment for approval or denial.

(2) Within sixty calendar days of receipt of a timely petition for reconsideration, the council shall in writing:

(a) Grant the petition for reconsideration and approve the amendment;

(b) Deny the petition for reconsideration, giving reasons for the denial; or

(c) Request additional information and extend the time period for not more than thirty calendar days to either grant or deny the petition for reconsideration.

(3) The council's denial of a proposed statewide or local government amendment, or the council denial of a petition for reconsideration under this section, is subject to judicial review under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 04-01-107, filed 12/17/03, effective 7/1/04)

WAC 51-04-060 Opinions. RCW 19.27.031 grants the council authority to render opinions relating to the building code at the request of a local ~~((building))~~ code official.

For the purposes of this section, the term "~~((building))~~ code official" means the local or state official, or their designee, responsible for implementation and enforcement of the specific code provision on which the opinion is requested.

At the request of a code official, the council ((building code related)) will issue opinions ((shall be limited to the state regulations for barrier-free facilities,)) relating to the codes adopted under chapters 19.27, 19.27A, and 70.92 RCW, including the state energy code, the state ventilation and indoor air quality code, and council amendments to the model codes. At the request of a local code official, the council may issue opinions on the applicability of WAC 51-04-030 to a local government ordinance regulating construction.

Council related opinions may be developed and approved by a standing committee of the council.

Opinions approved by a standing committee may be reviewed and modified by the council.

WSR 07-15-053
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 13, 2007, 3:15 p.m., effective August 13, 2007]

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

Purpose: The proposed changes will comply with ESSB 5983 passed by the legislature which calls for a "less intensive evaluation cycle every three years once a program received full approval." The teacher professional certificate program annual reporting will be the process used for the less intensive evaluation of programs.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-525.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-12-007 on May 24, 2007.

A final cost-benefit analysis is available by contacting Nasue Nishida, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail nasue.nishida@k12.wa.us.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 11, 2007.

Nasue Nishida
 Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-525 Approval standard—Accountability. The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(2). Each college, university or educational service district shall:

(1) Submit for initial approval to the professional educator standards board a performance-based professional certificate program for teachers which shall include the five program components specified in WAC 181-78A-535(4).

(2) Provide documentation that the respective professional education advisory board has participated in the development of and has approved the proposal.

(3) Identify the professional certificate administrator who shall be responsible for the administration of the professional certificate program.

(4) Delegate to the professional certificate administrator responsibility for reviewing or overseeing the following: Application for the professional certificate program; advising candidates once accepted; developing and implementing the individualized professional growth plan, the instruction and assistance components, and the assessment seminar; maintaining current records on the status of all candidates accepted into the professional certificate program; and serving as the liaison with the superintendent of public instruction certification office to facilitate the issuance of the professional certificates when candidates have met the required standards.

(5) Establish the admission criteria that candidates for the professional certificate shall meet to be accepted into the professional certificate program.

(6) Describe the procedures that the approved program will use to determine that a candidate has successfully demonstrated the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

(7) Prepare an annual summary of the status of all candidates in the program and submit the summary to the respective professional education advisory board.

(8) Submit any additional information required to the respective professional education advisory board that it requests.

(9) Submit an annual ((evaluations of the professional certificate program until the program receives full approval and participate in a) report to the professional educator standards board as part of a less intensive evaluation cycle ((every three years thereafter)) which will include the following:

(a) A summary of course work requirements for the pre-assessment and culminating seminars, linkages of the program to individual teacher professional growth plans, linkages to school district and school improvement plans, and, to the extent possible, linkages to school district professional development programs where such programs are in place in school districts.

(b) A summary of program design, assessment procedures and program revisions in the previous year.

(c) The number of candidates completing the program during the period between September 1 and August 31.

(d) The number of candidates enrolled in the program.

(e) Other information related to the professional certificate program requested by the professional educator standards board.

(10) Facilitate an on-site review of the program when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards.

Provided, That the on-site reviews shall be scheduled on a five-year cycle unless the professional educator standards board approves a variation in the schedule.

Provided further, That colleges and universities seeking National Council for the Accreditation of Teacher Education (NCATE) accreditation may request from the professional educator standards board approval for concurrent site visits which shall utilize the same documentation whenever possible.

WSR 07-15-059
PERMANENT RULES
GAMBLING COMMISSION

[Order 472—Filed July 16, 2007, 3:09 p.m., effective August 16, 2007]

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

Purpose: Currently, this rule requires a bingo prize receipt to be completed for each prize awarded at bingo games with the exception that merchandise prizes with a cost or fair market value of \$15 or less may be receipted on a single log sheet as allowed in subsection (4) of the rule. The petitioner requested that cash and merchandise prizes of \$20 or less be receipted on a prize receipt log. Additionally, the petitioner requested that bingo licensees no longer be required to record the address of winners of cash or merchandise bingo prizes of \$20 or less. These changes were adopted by the commission at their July 13, 2007, meeting.

Citation of Existing Rules Affected by this Order:
Amending WAC 230-20-102.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-079 on May 15, 2007, with a published date of June 6, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 16, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 369, filed 12/1/98, effective 1/1/99)

WAC 230-20-102 Bingo prizes—Record of winners.

All payments of prizes for bingo games shall be accounted for and documented in a manner that affords independent verification of the amount paid and the fact of distribution to winners: Provided, That Class A and B bingo licensees, organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair are exempt from all portions of this rule if the requirements of WAC 230-08-015 are followed. Payment of all prizes shall be documented using the following procedures:

(1) A prize receipt shall be completed for each prize awarded at bingo games: Provided, That cash and merchandise prizes with a cost or fair market value of ~~((fifteen))~~ twenty dollars or less may be receipted on a single log sheet as allowed in subsection (4) of this section. The following

minimum information shall be recorded for each prize awarded:

- (a) The date;
 - (b) The game number;
 - (c) The complete name and address of the winner. The following provision does not apply to linked bingo prizes: Provided, That an address of the winner is not required if prizes less than twenty dollars or greater than \$300 are paid by check or a combination of cash or check and:
 - (i) Checks are drawn on the licensee's gambling bank account;
 - (ii) Checks are made payable only to the winner: Provided, That checks for prizes won by players under age eighteen may be made payable to the guardian or immediate family member accompanying the player;
 - (iii) The game number and prize receipt number are notated on the check;
 - (iv) Checks used are of a type that provides a duplicate copy. The copies become a part of the daily bingo records and must be maintained as such;
 - (v) All original checks are returned by the bank to the licensee. Original checks shall be available for inspection upon demand by the commission; and
 - (vi) Checks drawn on the licensee's gambling account are not cashed or otherwise redeemed by the licensee or on the licensee's premises.
 - (d) The dollar amount of the prize or the licensee's cost of noncash prizes;
 - (e) A full description of all noncash prizes;
 - (f) The check number, if any portion of the prize is paid by check; and
 - (g) The initials of the bingo worker making the payout and the cashier making the payment.
- (2) Prize receipts shall be consecutively issued in an ascending order. Prize receipts bearing a number below the highest number issued during a session shall be voided and retained with the daily records.
- (3) The original of each prize receipt shall be given to the winner and a duplicate copy shall be retained by the licensee as a part of its records for a period of not less than three years.
- (4) ~~Cash and merchandise~~ prizes with a cost or fair market value of ~~((fifteen))~~ twenty dollars or less may be receipted on a ~~((merchandise))~~ prize receipt log. A separate ~~((merchandise))~~ prize receipt log shall be maintained for each session used, and retained as a part of the bingo daily records. At a minimum, the following information must be recorded on the log:
- (a) The date and session;
 - (b) The game number;
 - (c) The complete name of the winner printed;
 - (d) The cost of the prize or fair market value of the prize if donated;
 - (e) A full description of the prize;
 - (f) The initials of the person distributing the prize; and
 - (g) The criteria for awarding the prizes.
- (5) Prize receipts shall be printed by a commercial printer and meet the following standards:
- (a) Manufactured of two-part, self-duplicating paper that provides for an original and a duplicate copy;

(b) Imprinted with the name of the licensee and a consecutive ascending number that does not repeat in at least 100,000 occurrences: Provided, That Class E and smaller licensees may utilize receipts that are not imprinted with the licensee's name and which the consecutive number does not repeat in at least 1,000 occurrences; and

(c) Provide space for the licensee to record the information required by subsection (1) (~~(above)~~) of this section.

(6) All prize receipts purchased or otherwise obtained must be accounted for by the licensee. Prize receipts purchased or otherwise obtained by the licensee shall be documented on a vendor's invoice. This invoice, or a photocopy thereof, shall be maintained on the premises and available for inspection by commission staff. The following information shall be documented on the purchase invoice:

- (a) Name of the vendor;
- (b) Name of the purchasing organization;
- (c) Date of purchase;
- (d) Number of receipts purchased; and
- (e) The beginning and ending receipt number.

(7) Licensees may establish an accrued prize fund for any game or set of games that have a progressive prize or offer a jackpot prize if special conditions are met during the game. Contributions to the accrued prize fund shall be treated as prizes awarded during the current session if the following conditions are met:

(a) Each game or set of games that offers a prize included in the accrued prize fund must be identified by the licensee prior to making contributions for such games;

(b) The licensee shall maintain a record, in an approved format, of all such games with at least the following information:

- (i) The name of the game or set of games;
 - (ii) The sessions at which the game or set of games is played;
 - (iii) The game number(s) at each of the sessions the game or set of games is played;
 - (iv) The amount that will be added to the accrued prize fund each time the game or set of games is played;
 - (v) A description of how the contribution amount was determined;
 - (vi) The maximum accrued prize fund balance that will be reached for all games; and
 - (vii) The date of the most recent changes to this record;
- (c) Prize receipts will be issued only when the prize is actually awarded;

(d) Once an election is made to accrue prizes for a particular game or set of games, the predetermined contribution amount must be added to the accrued prize fund each time the game or set of games is played, until the accrued prize fund reaches the maximum balance;

(e) Once the maximum is reached, no contributions will be made until the accrued prize fund balance has been decreased for a prize paid;

(f) Full details of accrued prizes outstanding at the end of each calendar quarter will be furnished on the licensee's activity report;

(g) A reconciliation of the prize fund shall be made on each "Daily summary - Cash control" record;

(h) The amount of prize accrued shall be deposited in the gambling receipts account per WAC 230-12-020;

(i) The balance of the gambling receipts banking account shall not be reduced at any time below the amount of prizes accrued and currently being offered: Provided, That accrued prizes may be transferred to a special bank account, for this purpose, if the balance is maintained at a level equal to or greater than the amount of prizes accrued and currently being offered;

(j) At no time shall the total accrued prize balance exceed two times the total amount of prizes available on the games identified in (a) of this subsection; and

(k) The accrued prize fund shall not be utilized for any purpose other than accumulating bingo prizes and the balance shall not be reduced except under the following circumstances:

- (i) When prizes are actually awarded;
- (ii) If management elects to discontinue games for which prizes were accrued. In this event, the operator shall amend all activity reports and tax returns that are affected by the action and which have been filed.

(8) Contributions made to an approved linked bingo prize shall be deposited into a separate account from the licensee's main gambling receipts account and shall be treated as prizes awarded during the session accrued.

(9) Linked bingo main and bonus prizes awarded during a session may not be treated as a prize awarded during the current session.

WSR 07-15-060

PERMANENT RULES

GAMBLING COMMISSION

[Order 474—Filed July 16, 2007, 3:21 p.m., effective August 16, 2007]

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

Purpose: The petitioner requested that the maximum prize limit for pull-tab carry-over jackpots be increased from \$2,000 to \$5,000, and the maximum number of tabs per series be increased from 6,000 tabs to 10,000 tabs. The petitioner's request was approved at the July 13, 2007, commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-30-045.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-080 on May 15, 2007, with a published date of June 6, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 16, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 410, filed 2/22/02, effective 7/1/02)

WAC 230-30-045 Carry-over jackpot pull-tab series—Definitions—Requirements. Operators may utilize pull-tab series that are specifically designed to include carry-over jackpots. The following definitions and requirements shall apply to these series:

Definitions.

(1) The following definitions apply to pull-tab series with carry-over jackpots:

(a) "Carry-over jackpot" means a prize pool that is composed of accumulated contribution amounts from pull-tab series which, if not won, are carried over to other pull-tab series;

(b) "Contribution amount" means the amount from each series which is added to the carry-over jackpot; and

(c) "Guaranteed prizes" means all prizes available to be won, excluding the contribution amount or carry-over jackpot;

Prize payout requirements.

(2) The following requirements apply to prizes and prize payout calculations for carry-over jackpots:

(a) Guaranteed prizes must be 60% or more of gross receipts available from the pull-tab series;

(b) The contribution amount for each series may not be more than five hundred dollars;

(c) The contribution amount and the method of play shall be determined by the manufacturer and disclosed on the flare;

Maximum jackpot amount.

(d) At no time shall an accumulated carry-over jackpot exceed ~~((two))~~ five thousand dollars. If the carry-over jackpot is awarded, the sum of the advance-level prize and the carry-over jackpot prize shall not exceed ~~((two))~~ five thousand dollars.

Jackpot must be carried over until won.

(e) Accumulated carry-over jackpots shall be carried over to subsequent series until won;

Jackpot must be paid out.

(f) The carry-over jackpot must be awarded. Failure to have sufficient funds available, or any attempt by an operator to utilize carry-over jackpots for personal or organizational purposes, shall be *prima facie* evidence of defrauding the players in violation of RCW 9.46.190;

Maximum prize amounts for series when jackpots are not awarded.

(g) If the jackpot is not awarded and is carried over to a new series, the sum of the advance-level prize and the consolation prize shall not exceed five hundred dollars;

Distribution of jackpots when a licensee ceases to operate.

(3) If a licensee ceases to operate gambling activities due to a sale, closure, or failure to maintain a valid gambling license, the carry-over jackpot shall be:

(a) Transferred to the new licensee, which has a valid gambling license. The new licensee shall operate the carry-over jackpot game until the prize is awarded;

(b) Awarded to a player by playing out the game prior to closure;

(c) Distributed to the Washington state council on problem gambling; or

(d) Distributed to a charitable or nonprofit organization licensed by the Washington state gambling commission;

Bonus pull-tab series.

(4) The following additional requirements apply to bonus pull-tab series with carry-over jackpots:

(a) The odds of winning the carry-over jackpot shall not exceed one winner out of ten chances, or the probability of winning the carry-over jackpot shall be .10 or higher, at the jackpot level;

(b) There may only be one advance level on the flare;

(c) There shall be at least one guaranteed chance to win the carry-over jackpot;

(d) All chances that are included on the flare shall be covered in a manner that prevents determination of the concealed numbers or symbols prior to being opened by the player. If perforated windows are used, the numbers or symbols must be covered by latex, foil, or other approved means; and

(e) Standards for bonus pull-tab flares, as set forth in WAC 230-30-106, shall apply;

Maximum number of tickets.

(5) The maximum ticket count for pull-tab series with carry-over jackpots shall be six thousand tickets;

Secondary win codes.

(6) The secondary win codes on pull-tab series with carry-over jackpots must not repeat within a three-year period;

Replacing series.

(7) Once it has been determined that no chances to win the carry-over jackpot remain in a series and the jackpot has not been won, the series shall be removed from play and replaced with a new series within seven operating days;

Transferring a jackpot to another game.

(8) If a carry-over jackpot is not won prior to removing a series from play, it shall be carried over to a new series within one operating day from when the series was removed from play. The accrued contribution amounts from all previous

series shall be added to the contribution amount from the new series, up to two thousand dollars;

Recording names of winners.

(9) For carry-over jackpots in the amount of six hundred dollars and over, the winner's full name, address, and Social Security number shall be recorded on a separate form for income tax purposes;

Retention requirements.

(10) Each pull-tab series contributing to a specific carry-over jackpot must be retained as one series. The retention period for these series shall be as required by WAC 230-30-072(3): Provided, That the retention period shall start on the last day of the month in which the carry-over jackpot was awarded rather than when the series was removed from play; and

Documenting the flow of jackpots.

(11) Operators are required to maintain a separate record documenting the flow of carry-over jackpots from one game to another in a format prescribed by the commission;

Recordkeeping on cash basis only - exception.

(12) For the purposes of monthly records set forth in WAC 230-08-010, all operators shall record carry-over jackpots on a cash basis. This means that carry-over jackpot contribution amounts shall not be recorded on monthly records until the prize is awarded: Provided, That punch board/pull-tab licensees who also hold a Class F or above bingo license may accrue carry-over jackpot contribution amounts on their monthly records if the following conditions are met:

- (a) Prior approval is received from the director;
- (b) The contribution amounts, up to the point where the jackpot reaches the maximum, shall be recorded as prizes paid on the monthly records;
- (c) When the jackpot is awarded, only amounts not previously accrued, if any, shall be recorded as a prize paid;
- (d) No more than five carry-over jackpot series shall be in play at once; and
- (e) If the contribution amount is not deposited with the net receipts (required by WAC 230-12-020), a proper audit trail and adequate security over the funds must be maintained; and

Director approval required.

(13) The director shall approve the following aspects of all pull-tab games with carry-over jackpots prior to sale in Washington state:

- (a) The design, payout, method of play, and flare for each pull-tab series;
- (b) The manufacturing process for the pull-tab series and flares; and
- (c) The secondary win code system for the pull-tab series.

WSR 07-15-061 PERMANENT RULES GAMBLING COMMISSION

[Order 475—Filed July 16, 2007, 3:24 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The petitioner requested that the maximum prize limit for pull-tab series be increased from \$500 to \$2,500, and the maximum number of individual tabs be increased from 10,000 tabs to 25,000 tabs. The petitioner's request was approved at the July 13, 2007, commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-30-080.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-081 on May 15, 2007, with a published date of June 6, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 16, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Orders 367 and 367-A, filed 10/9/98 and 12/1/98, effective 1/1/99)

WAC 230-30-080 Punch board and pull-tab series restrictions—Prizes, size of game, and location of winners. No operator, distributor, or manufacturer, or representative thereof shall possess, display, put out for play, sell, or otherwise transfer to any person in this state, or for use in this state, any punch board or pull-tab series which:

(1) Does not offer prizes that are equal to or greater than sixty percent of the total gross receipts available from the punch board or pull-tab series. The following applies to the sixty percent calculation:

(a) For the purposes of determining the percentage of prizes offered on any punch board, or in any pull-tab series, total merchandise prizes shall be computed at the amount actually paid by the licensed operator plus fifty percent of that actual cost. ~~((For any merchandise prize with an actual cost over five hundred dollars, the total cost plus markup in this subsection shall not exceed seven hundred fifty dollars;))~~
The actual merchandise cost plus the markup must not exceed two thousand five hundred dollars; and

(b) Prize and percentage requirements for progressive pull-tab series shall be calculated as set forth in WAC 230-30-025;

(2) Offers a single prize that exceeds:

~~((a)) Two thousand five hundred dollars in cash: Provided, That progressive jackpot pull-tab prizes, as authorized in WAC 230-30-025, and pull-tab series with carry-over jackpots, as authorized in WAC 230-30-045 shall be exempt from this requirement and shall be subject to the limits defined in those rules. (c) Provided further, That the cash limit may be increased from five hundred dollars to seven hundred fifty dollars only on pull-tab series with a cost per tab of one dollar after approval by the director; or~~

~~(b) A merchandise prize for which the operator has expended more than five hundred dollars: Provided, That operators may expend more than five hundred dollars, not to exceed seven hundred fifty dollars, subject to the limitations set forth in subsection (1)(a) of this section);~~

(3) Has multiple winners on an individual pull-tab or punch that combined values exceed the single cash or merchandise prize limit in subsection (2) of this section;

(4) Offers prizes for purchasing the last ticket or last punch that exceeds:

(a) One hundred dollars cash; or

(b) Merchandise for which the licensee has expended more than one hundred dollars; or

(c) The highest prize offered, whichever is less;

(5) Contains more than ~~((ten))~~ twenty-five thousand individual pull-tabs: Provided, That progressive jackpot pull-tab series, as authorized by WAC 230-30-025, may contain up to fifty thousand individual pull-tabs;

(6) Utilizes a flare which does not meet the requirements of WAC 230-30-106;

(7) The winning punches or tabs have not been randomly distributed and mixed among all other punches or tabs in the board or series;

(8) The location, or approximate location, of any winning punches or tabs can be determined in advance of punching the punch board or opening the tabs in any manner or by any device, by markings on the board, tabs, or container, or by use of a light;

(9) There exists a key to any winning numbers or symbols; or

(10) Does not conform in any other respect to the requirements of WAC rules as to the manufacture, assembly, or packaging of punch boards or pull-tabs.

which outlines the changes. This new chapter incorporates rules that relate, in general, to the commission.

Overview of chapter 230-01 WAC, About the commission changes

INDIVIDUAL RULE CHANGES:

Pre-January 1, 2008, WAC 230-02-010 Washington state gambling commission—Purpose and organization and 230-12-900 Deputy director. These pre-January 1, 2008, rules were originally written in 1973 to describe the newly formed commission, they gave a lot of detail about term limits and information that is contained in the Gambling Act at RCW 9.46.040 and 9.46.050. Because the RCW is so specific, we feel that these WAC rules can be removed.

Post-January 1, 2008, WAC 230-01-001 Time and place of public meetings. Chapter 34.05 RCW, the Administrative Procedure Act (APA), states requirements for public agencies to give proper notice of their public meetings. In our pre-January 1, 2008, WAC 230-02-020 Time and place of meetings, states, "giving at least two weeks advance notice, we normally hold regular public meetings monthly."

We propose dropping this "two week advance notice" language because we normally file all our meeting dates in December for the upcoming year, so we are exceeding what is called for by the APA.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-10-037 on April 17 [24], 2007, and published May 2 [16], 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 0, Repealed 0.

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

Date Adopted: July 17 [16], 2007.

Susan Arland
Rules Coordinator

WSR 07-15-062

PERMANENT RULES

GAMBLING COMMISSION

[Order 613—Filed July 16, 2007, 3:54 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. Any substantive changes made to rules related to general rules relating to the commission are identified below

Chapter 230-01 WAC

ABOUT THE COMMISSION

NEW SECTION

WAC 230-01-001 Time and place of public meetings.

(1) We normally file a schedule of meetings in January of each year with the code reviser's office.

(2) We hold monthly two-day meetings beginning on the second Thursday and Friday of the month at a time and place we set.

(3) We may call additional public meetings as necessary to accomplish our business.

NEW SECTION

WAC 230-01-005 Address and hours of administrative offices. (1) Our administrative office is located in Lacey, Washington.

Mailing Address	Location Address
Washington State Gambling Commission P.O. Box 42400 Olympia, WA 98504-2400	Washington State Gambling Commission 4565 7th Avenue S.E. Lacey, WA 98503

(2) Normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

(3) Services available are:

- (a) Administration;
- (b) Information;
- (c) Licensing;
- (d) Investigation;
- (e) Activity report processing; and
- (f) Public records.

(4) Address applications for licenses, required license materials, or requests for notices, information, or other inquiries to our mailing address.

NEW SECTION

WAC 230-01-010 Field offices and operations. Direct regulatory and operational questions to our field offices, located at:

City	Telephone Number
Eastern Region North 901 Monroe Room 240 Spokane, WA 99201	509-325-7900
1703 Creekside Loop Suite 120 Yakima, WA 98902	509-575-2820
Northwest Region 3501 Colby Avenue Suite 102 Everett, WA 98201	425-304-6300
451 Southwest 10th Street Plaza 451 Building Suite 218 Renton, WA 98057	425-277-7014
Southwest Region Tacoma Mall Office Building 4301 South Pine Street Suite 307 Tacoma, WA 98409	253-671-6280

NEW SECTION

WAC 230-01-015 Effective dates for rule-making orders. (1) Rules adopted December through May become effective July 1.

(2) Rules adopted June through November become effective January 1.

(3) The commission may specify earlier or later effective dates. The earliest a rule may become effective is thirty-one days after filing with the code reviser's office as explained in RCW 34.05.380(3).

(4) Rules adopted under emergency rule making must specify an effective date as explained in RCW 34.05.350.

NEW SECTION

WAC 230-01-020 Commission activities exempt from State Environmental Protection Act. The commission has reviewed its authorized activities and has found them to be exempt pursuant to WAC 197-10-040(2), 197-10-150 through 197-10-190 and the State Environmental Policy Act, chapter 43.21C RCW.

NEW SECTION

WAC 230-01-025 Definitions used in Title 230. Words and terms used in these rules have the same meaning as they have in chapter 9.46 RCW, unless otherwise provided in these rules.

WSR 07-15-063

**PERMANENT RULES
GAMBLING COMMISSION**

[Order 473—Filed July 16, 2007, 4:07 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: Currently, no more than two separate games can be played with a single hand of cards. The petitioner requested that the limit on the number of games that can be played with a hand of cards be increased from two to three. The petitioner's request was approved at the July 13, 2007, commission meeting.

Citation of Existing Rules Affected by this Order: Amending WAC 230-40-010.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-11-083 on May 15, 2007, with a published date of June 6, 2007.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 16, 2007.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 424, filed 9/18/03, effective 1/1/04)

WAC 230-40-010 Social card games—Rules of play—Types of card games authorized. Social card games shall be played using rules and procedures as set forth in this section. Only card games that have been specifically authorized are allowed to be played in public or social card rooms.

Rules of play for all card games.

(1) Social card games shall be played in the following manner:

(a) The game must be played with one or more standard decks of playing cards or with approved electronic card facsimiles which meet the requirements of WAC 230-40-070 (1)(c): Provided, That cards may be removed to comply with rules of a specific game, such as pinochle;

(b) Players shall compete against all other players on an equal basis for nonhouse-banked games or against the licensee for house-banked games;

(c) Each player shall receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager;

(d) Players shall not place wagers on any other player's or the house's hand and no side bets between players are allowed: Provided, That the following shall not be in violation of this section:

(i) An insurance bet placed in the game of blackjack;

(ii) A tip wager made on behalf of a dealer; or

(iii) "Envy" provisions which allow a player to receive a prize if another player wins a jackpot or odds wager; and

(e) A player's win or loss shall be determined during the course of play of a single card game; and

(f) No more than ~~((two))~~ three separate games shall be played with a single hand of cards. For purposes of this section, bonus features and progressive jackpots are considered a game: Provided, That bonus features that allow a player to receive an additional prize if another player achieves a specific hand, such as "envy" or "share the wealth" features, shall not be considered a separate game if the player does not have to place a separate wager to participate.

Nonhouse-banked card games authorized.

(2) Nonhouse-banked card games shall only be played in the manner set forth in *The New Complete Hoyle, Revised*, *Hoyle's Modern Encyclopedia of Card Games*, or a similar authoritative book on card games approved by the director: Provided, That each licensee may make immaterial modifications to each authorized game set out in Hoyle. The following nonhouse-banked card games are authorized:

(a) Poker;

(b) Hearts;

(c) Pinochle;

(d) Cribbage;

(e) Rummy;

(f) Panguingue (Pan);

(g) Pitch;

(h) Bid Whist;

(i) Other games or modifications to approved games may be approved by the director, or the director's designee, on a case-by-case basis. Requests for approval of a game must be submitted in writing, and include the rules of play and all wagering schemes.

House-banked card games authorized.

(3) House-banked card games shall be approved by the director, or the director's designee, on a case-by-case basis. Request for approval of a house-banked card game must be submitted in writing, including the rules of play and all wagering schemes. A list of all approved games, modifications to games, and rules of play shall be available at all commission offices. The director may approve games in which the determination of whether a player wins or loses depends upon one or more of the following:

(a) The player's hand is a specific:

(i) Pattern or ranking of cards (pair, straight, flush, royal flush, etc.);

(ii) Combination of cards (two queens of hearts, ace and jack of spades, three sevens, etc.); or

(iii) Value of the cards (seventeen, twenty-one, etc.); and/or

(b) The player has a higher ranking or value hand than the house/dealer/banker.

Removing an approved game from play.

(4) Once a game is approved for play, the director shall not remove it from the authorized list of games without providing licensees written notice. Licensees shall be afforded an opportunity to object to the director's decision. If an objection is filed, an administrative law judge shall review the director's decision utilizing the brief adjudicative procedures set forth in WAC 230-50-010.

Procedures for when a proposed game is denied.

(5) The licensee shall be notified in writing when the director denies a request for a new game or modification of a game. The notification shall include reasons for the denial and provide the petitioner all information necessary for a formal petition to the commission for rule making, amendments, or repeal, as set forth in WAC 230-50-800.

WSR 07-15-064

PERMANENT RULES

GAMBLING COMMISSION

[Order 612—Filed July 16, 2007, 3:53 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the

project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. Any substantive changes made to rules related to amusement game rules are identified below which outlines the changes. This new chapter incorporates rules that relate to amusement games.

Overview of Chapter 230-13 WAC, Amusement game rules Changes

INDIVIDUAL RULE CHANGES

Post-January 1, 2008, WAC 230-13-001 Defining "operator." We added a definition of "operator" to the post-January 1, 2008, amusement game rules to clearly define to whom we are referring to when we use the word "operator" in the amusement game rules. Using "operator" is a way of avoiding repeating "licensees or unlicensed organizations" in each rule we have written. Unlicensed organizations are allowed by RCW 9.46.0321 to have limited gambling activities without obtaining a license as long as their gross gambling receipts are below \$5000. Amusement games are one of their permitted activities.

Post-January 1, 2008, WAC 230-13-010 Time and place of public meetings. In the post-January 1, 2008, WAC 230-13-010, the director grants approval for new amusement games. The pre-January 1, 2008, WAC Authorized amusement games—Types, standards and classifications, states, "Operators may introduce new games...without prior approval of the commission." We have reevaluated this rule with Director Day and are making a policy recommendation that the current rule means "commission" as in "commission staff"; and not as "Commissioners." Therefore, Director Day will stand in for the commissioners in approving new amusement games.

We also eliminated the "twelve-month test period" for new amusement games in the post-January 1, 2008, WAC. Staff is certain that this was a temporary measure added during the time when crane games were being introduced into the state and are now concerned that the "test period" would allow a number of unauthorized games to be placed for public use without our having a chance to inspect and approve them.

Post-January 1, 2008, WAC 230-13-040 Group 6—Strength test amusement game standards. The language in the pre-January 1, 2008, WAC 230-20-508 Authorized amusement games—Types, standards and classifications, uses the verb "may" to indicate how the game should operate, as in "This may include hand, arm, or whole body strength and may also require the player to use a tool or instrument to strike an object or target, which may cause the object to be propelled..."

We changed that language in the post-January 1, 2008, WAC to "must" because we feel that the more stringent language was intended in the rule, but the writer used the more permissive sounding language by mistake. We do not believe we will be limiting the way this group of games is played by making the language more restrictive. There are few of these games and all of them require the actions described, though the pre-January 1, 2008, WAC states that they "may" be oper-

ated in this way; "Must" fits the way the requirements are enforced in the field.

Post-January 1, 2008, WAC 230-13-060 Group 10—Shooting amusement game standards. This post-January 1, 2008, rule combines two rules pre-January 1, 2008, WAC 230-20-508, which became effective January 6, 1994, and pre-January 1, 2008, WAC 230-20-660, which was filed June 25, 1976. Neither has been revised since then, and it is likely that the game they were written to enforce is no longer being offered or played.

We removed the use of a "combined score" to determine winners mentioned in pre-January 1, 2008, WAC 230-20-508 Authorized amusement games—Types, standards and classifications, subsection (7)(j)(iii)(D) because we know of no instances where a combined score is or could be used in a shooting game.

Post-January 1, 2008, WAC 230-13-090 Adult supervision of unattended amusement games. This pre-January 1, 2008, WAC 230-20-680 Commercial amusement games—Operation restrictions, like several others, references a list of locations included in another rule, pre-January 1, 2008, WAC 230-04-138 Commercial amusement games—Authorized locations, which duplicates a good deal of the language contained in RCW 9.46.0331. We wish to remove this sort of cross-referencing to other WACs and instead have operators refer to the RCW covering amusement games.

We added a definition of "unattended amusement game" to this post-January 1, 2008, rule. We also removed the percentage operators must pay to charitable or nonprofit organizations that was listed in the pre-January 1, 2008, WAC because the requirement already exists in post-January 1, 2008, WAC 230-13-160 Basing rent on a percentage of gross receipts.

Lastly, we took out requirements about areas where school age minors must not play amusement games because they are already listed in RCW 9.46.0331 Amusement games authorized—Minimum rules.

Post-January 1, 2008, WAC 230-13-105 Attended amusement game requirements. We removed the pre-January 1, 2008, WAC 230-20-510 Attended amusement games—Operational restrictions, reference to following the RCW and WAC because this requirement is duplicative of post-January 1, 2008, WAC 230-13-085 Control and maintenance of amusement games.

Post-January 1, 2008, WAC 230-13-145 Marking the difference between objects thrown in multiple amusement games on the same premises. We removed the requirement in the first sentence of the pre-January 1, 2008, WAC 230-20-620 Amusement games—Objects to be thrown to be uniform—Similar games not to use different objects unless designated: "No person licensed to conduct amusement games shall conduct any such game within the state of Washington wherein the winning of a prize depends upon the player's ability to throw or project an object unless all such objects available to any player in said game are uniform in size and weight" because it is already explained in the post-January 1, 2008, standards for groups of amusement games that require something to be thrown.

Post-January 1, 2008, WAC 230-13-150 Amusement game locations. We removed the redundant requirement in

pre-January 1, 2008, WAC 230-04-138 Commercial amusement games—Authorized locations about the rental amount paid to charitable or nonprofit organizations, because post-January 1, 2008, WAC 230-13-160 Basing rent on a percentage of gross receipts, explains the requirement for rents.

We also propose removing the repetitive list of locations where operators may place amusement games in pre-January 1, 2008, WAC 230-04-138 Commercial amusement games—Authorized locations about the rental amount paid to charitable or nonprofit organizations, because they are already spelled out in RCW 9.46.0331.

Post-January 1, 2008, WAC 230-13-175 Recordkeeping for unlicensed charitable and nonprofit amusement games. We removed the requirement in pre-January 1, 2008, WAC 230-08-060 Commercial amusement game records, that records in commercial amusement games include proving that prizes were awarded to winners. This requirement doesn't seem necessary since the records of the prizes bought and the prizes awarded are already required.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-10-036 on April 17 [24], 2007, and published on May 2 [16], 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 35, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 35, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 35, Amended 0, Repealed 0.

Date Adopted: July 17 [16], 2007.

Susan Arland
Rules Coordinator

Chapter 230-13 WAC

AMUSEMENT GAME RULES

NEW SECTION

WAC 230-13-001 Defining "operator." In this chapter, "operator" means the licensee or unlicensed charitable or nonprofit organization operating the amusement game.

NEW SECTION

WAC 230-13-005 Amusement games authorized. (1) We authorize the eleven groups of amusement games set forth in this chapter. Operators must only operate amusement games that meet the standards of at least one of the authorized groups.

(2) Commercial businesses or nonprofit or charitable organizations may apply for licenses for amusement games.

(3) Charitable or nonprofit organizations also may conduct amusement games without a license when authorized to do so under RCW 9.46.0321 and 9.46.0331.

(4) Operators must operate amusement games as either:

(a) An attended amusement game.

(i) An "attended amusement game" means an amusement game that requires the presence or assistance of a person (attendant) in the regular operation of the game; and

(ii) These games must award a merchandise prize to players if players achieve the objective with one cost of play; or

(b) A coin or token activated amusement game.

(i) A "coin or token activated amusement game" means an amusement game that uses a mechanical, electronic, or electro-mechanical machine to allow the player to activate the game by inserting coins or tokens; and

(ii) These games may dispense merchandise prizes, or coupons, tickets, or tokens redeemable for merchandise prizes.

(5) Amusement games must not award additional plays as prizes.

NEW SECTION

WAC 230-13-010 Approval of new amusement games. (1) Operators may introduce new games that meet the standards of an authorized group without approval of the director as long as they provide the director or his or her designee with a description, the rules of play, and the group number of the game with an explanation of why that group was chosen at least sixty days before introducing the game.

(2) If the director notifies the operator that the proposed game does not meet the standards or otherwise violates the gambling laws or rules, the operator:

(a) May not introduce the game; and

(b) If already introduced, must remove it from play until the operator brings it into compliance with the authorized group.

NEW SECTION

WAC 230-13-015 Group 1—Ball toss or kick amusement game standards. In Group 1 games, players throw or kick balls to win prizes.

(1) In ball toss or kick amusement games:

(a) All balls for each game must be uniform in size and weight; and

(b) All targets for each game must be the same size and weight or the operator must color code the target and advise the players of the difference in targets if the difference is not visible to players; and

(c) Target weight must not exceed seven and one-half pounds; and

(d) A target must not have a loose or floating weight.

(2) If the goal of the game requires estimating the speed of the ball thrown or kicked, operators must offer the player at least three balls to practice estimating the speed and one ball for the actual throw or kick.

(3) If operators use a ping pong or similar light weight ball in games requiring players to toss the ball into a dish, saucer, cup, or similar container, they must place water in the bottom of each container.

NEW SECTION

WAC 230-13-020 Group 2—Dart amusement game standards. In Group 2 games, players throw darts into a target area to win prizes. If players achieve the predetermined score or pattern, pierce or break a target, or just stick the dart in the target, the player wins a prize.

(1) In dart amusement games:

(a) All darts must be uniform in size and unaltered with the point sharp, or functional if suction-cup darts, and all feathers or tail sections intact; and

(b) The target area for all dart games must be of a material capable of being penetrated and retaining a metal tip dart, or holding a suction-cup dart; and

(c) The target area must be in the rear of the stand and must be at least three feet but not more than fifteen feet from a foul line.

(2) In "add 'em up games," where players must achieve a predetermined score, all darts stuck on the lines of the target must result in another throw by the player. Players have the right to add up the score of the darts thrown.

NEW SECTION

WAC 230-13-025 Group 3—Hoop or ring toss amusement game standards. In Group 3 games, players toss one or more hoops or rings over one or more targets which may consist of bottles, pegs, blocks, prizes, or any item capable of having a ring or hoop tossed over it to win prizes. In hoop or ring toss amusement games:

(1) The operator must advise the player as to the degree that the hoop(s) or ring(s) must go over the target; and

(2) Hoops or rings for each game must be uniform in size and shape and must be capable of going over the target; and

(3) Targets used at an individual stand must be the same size. If not, the operator must post signs or use color codes to point out the different sizes.

NEW SECTION

WAC 230-13-030 Group 4—Coin or token toss amusement game standards. In Group 4 games, players toss one or more coins or tokens onto a surface or into a target area to win a prize. In coin or token toss amusement games:

(1) The game must have a clear and unobstructed thirty-six inch vertical airspace above the target area or surface; and

(2) The target or surface must be level and not altered to give an advantage to the operator; and

(3) Any game which has a target area of four square inches or less must award a prize if any part of the coin or token is within the target area.

NEW SECTION

WAC 230-13-035 Group 5—Hand/eye coordination amusement game standards. In Group 5 games, players

perform task(s) using hand and eye coordination to win a prize.

(1) Hand and eye coordination amusement games must include one or more of the following:

(a) Striking a moving or fixed object or target including a sequence of moving or fixed objects or targets; or

(b) Launching object(s) at target(s) from a mechanism. Players must aim object(s) so they may land in, on, or go through a target(s), including catching the target(s) or having the object(s) caught in the target(s). In games where players launch, toss, or catapult objects at target(s), the launching machine must respond in an identical manner on repetitive uses when the player applies or selects an equal amount of force; or

(c) Dropping object(s) onto target area(s) or surface(s), including covering the area(s), or surface(s) with the object(s). If a player must cover a spot or specific target area, then the target area must be a circular spot and:

(i) The player must receive at least five circular discs to drop on the target or target area; and

(ii) The diameter of the circular discs used to cover the target or target area must be at least sixty-four percent of the diameter of the target spot or area; and

(iii) The target spot or area must be permanently affixed to a solid surface; or

(d) Capturing, lassoing, hooking, or getting a hold of an object(s) and causing them to move or change position; or

(e) Guiding object(s) or images through a pattern, maze, or task; or

(f) Climbing on, over, through, or around object(s); or

(g) Similar tasks.

(2) For any game requiring a player to perform a task normally associated with playing billiards or pool, operators must allow players to use a regulation billiard table, balls, and cue.

NEW SECTION

WAC 230-13-040 Group 6—Strength test amusement game standards. In Group 6 games, players test their strength by performing task(s) for a predetermined number of times or length of time to win a prize. The tasks must do one or more of the following:

(1) Test hand, arm, or whole body strength; or

(2) Require the player to use a tool to strike an object or target, and cause the object to travel a specific distance; or

(3) Require the object(s) to strike another object(s) to achieve the goal of the game.

NEW SECTION

WAC 230-13-045 Group 7—Crane amusement game standards. In Group 7 games, players maneuver a crane or claw mechanism to attempt to retrieve a prize. All crane amusement games must:

(1) Allow at least twenty seconds playing time per operation; and

(2) Have a crane or claw capable of reaching, picking up, and dispensing all prizes in the machine; and

(3) Have the machine controls clearly labeled as to their function; and

(4) Have prizes loose and not packed, arranged, lodged, or intertwined in the machine in any way that would prevent the crane or claw from picking up and dispensing the prize.

NEW SECTION

WAC 230-13-050 Group 8—Penny fall amusement game standards. In Group 8 games, players insert coins or tokens (coins) into a chute and aim the chute to win a prize. The coins land on a flat surface(s) which has sweeper and/or pusher arm(s) moving across the surface(s). Carefully aimed coins may cause coins on the flat surface(s) to be pushed or swept into holes or chutes which dispense tokens or tickets to the player.

(1) Coin fall games must:

- (a) Have level surfaces and contain similar coins; and
- (b) Have the outcome of the game determined by player's skill.

(2) Coin fall games may contain obstacles which if properly passed or struck by a coin, award additional tickets.

(3) If coin fall games have obstacles, operators must:

- (a) Turn on the obstacles before the player inserts the coin; and
- (b) Keep them on long enough to allow the player to attempt to strike or pass the obstacles.

(4) Operators may set merchandise prizes on the coins, tokens, or other surfaces in the game and if the prize is pushed into a hole or chute, then it is awarded to the player. All prizes must fit down the hole or chute.

NEW SECTION

WAC 230-13-055 Group 9—Ball roll amusement game standards. In Group 9 games, players roll balls to a target area to win a prize. Ball roll amusement games may be either:

(1) One player:

- (a) Attempting to score a predetermined number of points by landing in a target area; or
 - (b) Striking and/or knocking down target(s); or
- (2) More than one player:

- (a) Attempting to score a predetermined number of points; or
- (b) Striking and/or knocking down target(s); or
- (c) Landing in a target area. The first player to achieve the goal wins a prize.

NEW SECTION

WAC 230-13-060 Group 10—Shooting amusement game standards. In Group 10 games, players use a mechanism to fire projectile(s) to hit target(s) to win prizes. In shooting amusement games:

(1) The game may require a player to:

- (a) Destroy or obliterate all or part of the target; or
- (b) Hit the target or specific portion of it; or
- (c) Hold an electronic beam, light beam, or water stream on the target or portion of it to achieve a specific result.

(2) The projectiles may include pellets, BBs, corks, water, electronic beams, light beams, balls, or suction-cup darts.

(3) The targets may be stationary or mobile.

(4) Operators and players must comply with all safety requirements of the local city or county ordinances.

(5) A short range shooting gallery must give players, at least:

(a) Four shots to shoot out a target which has a diameter of one-quarter inch or less; or

(b) One shot at each target which they must strike. Targets must be at least one-half inch square and may include a bulls-eye section which players must shoot out without touching the outside of the target.

(6) "Shoot-out-the-star" games must give players at least one hundred projectiles in an automatic mechanism to shoot out a star which is no more than one and one-quarter inch from point to point.

(7) Operators may determine a winner and award a prize based on the number of players participating.

(8) If suction-cup darts are used in the game, players must receive another turn if the dart does not stick to the target area.

(9) If targets must be knocked over or off of a shelf, then the bases of the targets must be uniformly shaped front and rear.

(10) If players must destroy or obliterate all or part of a target to win, then the players must have the right to have the target brought to them and to visually inspect it at any time during the game or at the conclusion of the game.

NEW SECTION

WAC 230-13-065 Group 11—Cake walk and fish pond amusement game standards. Group 11 games are:

(1) Cake walk amusement games where players walk on a numbered or color-coded circle while music is played. When the music stops, a player wins a prize depending on the number or color of the portion of the circle the player is standing on; and

(2) Fish pond amusement games where players receive a prize each time they play by:

(a) Either hooking or capturing a fake fish floating in water or similar object with a number or symbol on the bottom. The number or symbol of the fish or object corresponds to a prize; or

(b) Having the operator place a prize directly onto the "line" or catching device of the player from behind a curtain or similar obstruction.

OPERATING AMUSEMENT GAMES

NEW SECTION

WAC 230-13-070 Notifying local law enforcement of amusement game operation. (1) Amusement game operators must notify the local law enforcement agency in writing at least ten days before operating amusement games at any location. The chief officer of the local law enforcement agency may reduce this time limit. The notice must include, at least:

(a) The name and address of the operator; and

(b) The name and address of the person managing the games at the location; and

(c) The date(s) and the location where the operator will conduct the amusement games.

(2) Operators must have all amusement game equipment available for inspection by local law enforcement or us at least the two hours before operating.

(3) Operators may place individual amusement games at locations where amusement games already exist without renotifying local law enforcement.

NEW SECTION

WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games. Amusement game licensees must determine the authorized group number of each game and prepare a list of all games they plan to operate during each license year. They must submit this list to us with their activity report. The list must contain, at least, the name and group number of each game.

NEW SECTION

WAC 230-13-080 Operating coin or token activated amusement games. (1) Coin or token activated amusement games must have nonresetting coin-in meters, certified as accurate to within plus or minus one coin or token in one thousand plays, which stop play of the machine if the meter is removed or disconnected when operating at:

- (a) Amusement parks; or
- (b) Regional shopping malls; or
- (c) Movie theaters; or
- (d) Bowling alleys; and
- (e) Miniature golf course facilities; and
- (f) Skating facilities; and

(g) Amusement centers. "Amusement center" means a permanent location whose primary source of income is from the operation of ten or more amusement devices; and

(h) Restaurants; and

(i) Grocery or department stores. A "department or grocery store" means a business that offers the retail sale of a full line of clothing, accessories, and household goods, or a full line of dry grocery, canned goods, or nonfood items plus some perishable items, or a combination of these. A department or grocery store must have more than ten thousand square feet of retail and support space, not including the parking areas; and

(j) Any premises that a charitable or nonprofit organization currently licensed to operate punch boards, pull-tabs, or bingo controls or operates.

(2) All coin or token activated amusement games must have a coin acceptor capable of taking money for one play and may have an additional acceptor to include paper money.

(3) Operators using amusement games that do not return change must have a change-making bill acceptor or the ability to get change in the immediate vicinity of such games. All amusement games using paper money acceptors must either:

(a) Return change; or

(b) Clearly disclose to the player before play that change is not returned and tell them where at the location they may get change.

NEW SECTION

WAC 230-13-085 Control and maintenance of amusement games. Amusement game operators must:

(1) Closely monitor and control all games to ensure they are operated according to all provisions of Title 230 WAC and chapter 9.46 RCW; and

(2) Protect players from fraud and game manipulation; and

(3) Maintain all games or machines in proper condition to ensure they comply with their authorized amusement game group.

NEW SECTION

WAC 230-13-090 Adult supervision of unattended amusement games. (1) Operators must provide adult supervision at all locations where school-aged minors are allowed to play amusement games during all hours of operation.

(a) "School aged minors" means anyone at least six, but not yet eighteen years old.

(b) An "unattended amusement game" means a game that does not require the player to interact with an attendant, for example, a coin activated game.

(2) An adult supervisor must ensure that school-age minors:

(a) Do not enter or play amusement games during school hours at regional shopping centers; and

(b) Do not enter or play amusement games during school hours at and after 10:00 p.m. on any day at any location mentioned in RCW 9.46.0331.

NEW SECTION

WAC 230-13-100 Material degree of skill required in amusement games. Amusement game operators must conduct games in which the outcome depends to a material degree on the skill of the player. We consider a "material degree of skill" to be present when both of these requirements are met:

(1) The player's physical or mental abilities play an important and integral role in determining the outcome of the game; and

(2) The success rate of the average player would improve with repeated play or practice.

NEW SECTION

WAC 230-13-105 Attended amusement game requirements. (1) Attendants of amusement games must, at least:

(a) Collect payment from the player(s); and

(b) Give equipment or components to the player(s) to participate in the game; and

(c) Award merchandise prize(s) to any winners.

(2) Attendants must not:

(a) Materially assist players; or

(b) Participate in the game.

NEW SECTION

WAC 230-13-110 Charitable or nonprofit amusement game operation and management. (1) Charitable and nonprofit organizations must closely supervise all persons operating their gambling activities according to all provisions of Title 230 WAC and chapter 9.46 RCW.

(2) Only full and regular members of charitable or nonprofit organizations may supervise or manage amusement games.

(3) Organizations may use nonmembers for positions that are not of a supervisory or management nature if the nonmembers are:

(a) Employees of the organization, hired on a regular or part-time basis, and employed primarily for purposes other than to conduct the activities; or

(b) Volunteers under the supervision of a member and not directly or indirectly compensated for their work.

NEW SECTION

WAC 230-13-115 "Limited location" license requirements. Amusement game licensees operating under a "limited location" license must assign each game a number and keep a list of all games and their booth numbers available in the operator's on-site office.

NEW SECTION

WAC 230-13-120 Posting amusement game rules. (1) Amusement game operators must fully inform players of game rules. They must prominently post a sign made of permanent material printed in lettering at least one and one-half inches in height that includes, at least:

(a) Fees charged for play; and

(b) Rules of play; and

(c) Prizes or number of tickets to be won; and

(d) Any variation in the size or weight of objects used in the game which is not readily visible to the player; and

(e) Name of the operator; and

(f) Booth number, if applicable; and

(g) Amusement game group number.

(2) For coin or token activated games, if all aspects of the activity are within four feet of the player, operators may use lettering smaller than one and one-half inches in height as long as they prominently post the sign and make it legible to players. The operator must ensure that the manufacturer either:

(a) Preprints the sign and information on the machine; or

(b) Attaches it to the machine.

NEW SECTION

WAC 230-13-125 Factors affecting skill readily visible for amusement games. If there are physical limitations which affect the degree of skill needed to win a prize, the amusement game operator must make these factors readily visible to the player. For example, if a target, basket, or hoop used in the amusement game has a limiting feature, such as shape or size, the operator must prominently post a duplicate of the target, basket, or hoop which shows the limitation.

NEW SECTION

WAC 230-13-130 Display and exchange of amusement game prizes. (1) Amusement game operators must prominently display a sample of each type of prize available.

(2) Operators must only award prizes that are posted. However, after a player has won two or more prizes, operators may offer that player the opportunity to exchange those prizes for one or more other prizes, but only if that prize was on display during the play of the game.

(3) Operators must not allow winners to forfeit previously won prize(s) in exchange for another play.

(4) Operators may give winners tickets which winners may combine with other tickets won and redeem for a merchandise prize.

NEW SECTION

WAC 230-13-135 Maximum wagers and prize limitations at certain amusement game locations. The maximum wager is fifty cents and the maximum cost for a prize is two hundred fifty dollars if school-aged minors are allowed to play amusement games at the following locations:

(1) Regional shopping centers; and

(2) Movie theaters; and

(3) Bowling alleys; and

(4) Miniature golf course facilities; and

(5) Skating facilities; and

(6) Amusement centers; and

(7) Department or grocery stores within a regional shopping center as defined in WAC 230-13-090 (2)(b); and

(8) Any business whose primary activity is to provide food service for on premises consumption.

NEW SECTION

WAC 230-13-140 Price to play amusement games must be paid in cash or check. (1) Amusement game operators must charge cash or check for playing.

(2) Operators may accept tokens, scrip, or tickets, but only if:

(a) The equivalent value in cash for each token, scrip, or ticket is printed on the token, ticket, or scrip; and

(b) Tokens, tickets or scrip are not redeemable for cash; and

(c) Tickets or scrip show the name of the operator or sponsor.

NEW SECTION

WAC 230-13-145 Marking the difference between objects thrown in multiple amusement games on the same premises. Amusement game operators must not operate more than one game of a similar type on the same premises using similar objects of a different size or weight unless the difference in each game's objects is readily apparent.

AUTHORIZED LOCATIONS AND RENTAL OF AMUSEMENT GAMES OR PREMISES

NEW SECTION

WAC 230-13-150 Amusement game locations. (1) Amusement game operators must obtain written permission to operate at any location from the person or organization owning the premises or sponsoring the event where the operator will hold the activity.

(2) Operators may only conduct commercial amusement games at locations set out in RCW 9.46.0331.

(3) Operators must conduct amusement games in conformance with local zoning, fire, health, and similar regulations.

NEW SECTION

WAC 230-13-155 Contracts for commercial amusement games. (1) Operators must ensure that all contracts are written and specific in terms, setting out the term of the contract, amount of rent or consideration, rent due dates, and all expenses each party must pay.

(2) All contracts become part of the operator's license file. If commercial amusement game operators violate any terms of a contract, it may be grounds for suspension or revocation of their license.

(3) Class B or above licensees may enter into contracts with business owners of any of the following locations to operate amusement games on their premises:

- (a) Amusement parks; or
 - (b) Regional shopping centers; or
 - (c) Any location that possesses a valid license from the Washington state liquor control board and prohibits minors on their premises; or
 - (d) Movie theaters; or
 - (e) Bowling alleys; or
 - (f) Miniature golf course facilities; or
 - (g) Skating facilities; or
 - (h) Amusement centers; or
 - (i) Department or grocery stores having more than ten thousand square feet of retail and support space, not including the parking areas; or
 - (j) Charitable or nonprofit organizations with a premises licensed for Class A amusement games; or
 - (k) Any commercial business that provides food service for on premises consumption as its primary activity.
- (4) Operators must not place amusement games at a location which does not have a valid license.

NEW SECTION

WAC 230-13-160 Basing rent on a percentage of gross receipts. Class B or above amusement game operators:

(1) May base the rent or consideration paid to a Class A commercial amusement game location on a percentage of revenue the activity generates if the method of distribution is specific.

(2) May not base the rent or consideration paid to a charitable or nonprofit organization on a percentage of revenue the activity generates unless the amount returned to the orga-

nization is equal to or exceeds twenty-two percent of the gross gambling receipts. Operators must pay the organization at least once a month.

(3) If located at regional shopping centers, may use a percentage of receipts to pay rental leases. They are also exempt from the profits restrictions of RCW 9.46.120(2).

NEW SECTION

WAC 230-13-165 Charitable or nonprofit organizations renting amusement game equipment. Charitable or nonprofit organizations may rent or otherwise obtain amusement game equipment as long as the amount paid is:

(1) A reasonable price for the gambling equipment or for use of the gambling equipment; and

(2) A lump sum or hourly rate established in the competitive market; and

(3) Not based on a percentage of the gross receipts, income, or profit.

RECORDKEEPING FOR AMUSEMENT GAMES

NEW SECTION

WAC 230-13-170 Recordkeeping for commercial amusement games. (1) Amusement game licensees must prepare a detailed record for each location where they operate games. They must retain the records for at least three years. The records must include details necessary to determine:

- (a) Gross gambling receipts received from players; and
- (b) Value of prizes awarded to winners.

(2) Records must include, at least:

- (a) The gross gambling receipts collected from amusement games at each location, with receipting records; and
- (b) An entry for each withdrawal of receipts from the games. Coin or token activated amusement games only require an entry of the ending meter reading, the number of plays, and gross gambling receipts at the end of each month; and

(c) A summary of the operation of the activity. This includes, at least, coin-in meter readings and gross gambling receipts. Operators must provide these coin-in meter readings and gross gambling receipts to charitable or nonprofit organizations each time they service a game or disburse money.

(3) Licensees must report at least monthly the number and actual cost of merchandise prizes awarded for each location.

(4) For amusement games that issue tickets for the redemption of prizes, licensees must at least log the beginning and ending nonresettable ticket out meters or ticket numbers during each collection of funds from each game.

(5) Licensees must provide the full details for all amusement game operating expenses.

NEW SECTION

WAC 230-13-175 Recordkeeping for unlicensed charitable and nonprofit amusement games. (1) Unlicensed charitable or nonprofit organizations must keep

records according to WAC 230-07-125 which will allow us to:

(a) Determine the amount of gross gambling receipts received from amusement games; and

(b) Identify individuals responsible for receiving and controlling them.

(2) Records must include, at least, the full names, addresses, and phone numbers of employees and members involved in the activity.

WSR 07-15-068

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed July 17, 2007, 9:19 a.m., effective August 17, 2007]

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

Purpose: At present, Oregon and Washington have established reciprocity for salmon charter vessel licenses on the Columbia River downstream of the Longview Bridge. This new WAC will allow Washington and Oregon to establish reciprocity for Oregon outfitters and guides and Washington professional salmon and game fish guides on the Columbia River upstream of the bridge at Longview and downstream of the Oregon boundary in Lake Wallula, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-005 (Amending Order [WSR] 07-03-142, filed 1/23/07, effective 2/23/07).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-11-170 on May 23, 2007.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: July 16, 2007.

J. P. Koenings
Director

AMENDATORY SECTION (Amending WSR 07-03-142, filed 1/23/07, effective 2/23/07)

WAC 220-20-005 Oregon-Washington commercial license reciprocity. The following Oregon licenses are equivalent to Washington licenses and are valid in the concurrent waters of the Columbia River:

(1) An Oregon Columbia River gill net salmon vessel permit issued under ORS 508.775 - ORS 508.796 is equivalent to a Washington salmon gill net fishery license issued under RCW 77.65.160 (1)(a) or (c) in the concurrent waters of the Columbia River. A person who holds an Oregon Columbia River gill net salmon vessel permit may land salmon in Washington that were taken in the Columbia River salmon gill net salmon fishery.

(2) An Oregon ocean charter vessel license issued under ORS 830.435 is equivalent to a Washington charter license issued under RCW 77.65.150 in the concurrent waters of the Columbia River downstream of the bridge at Longview, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.

(3) An Oregon outfitter and guide registration issued under ORS 704.020 is equivalent to a Washington professional salmon guide license issued under RCW 77.65.370 or to a Washington professional game fish guide license issued under RCW 77.65.480(3), in the concurrent waters of the Columbia River upstream of the bridge at Longview and downstream of the Oregon boundary in Lake Wallula, except that an Oregon vessel may not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington.