

**WSR 08-07-045**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Division of Child Support)  
[Filed March 14, 2008, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-116.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS), division of child support (DCS) is adopting new sections and/or amendments in chapter 388-14A WAC to implement state legislation, which implements the federal Deficit Reduction Act of 2005, and to clarify DCS procedure and policy around the establishment and enforcement of child support obligations.

Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3200 How does DCS determine my support obligation?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3315 When DCS serves a notice of support debt or notice of support owed or notice of support owed for unreimbursed medical expenses, we notify the ~~((custodial parent and/or the payee under the))~~ other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3925 Who can ask to modify an administrative support order?, 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do?, 388-14A-4120 DCS uses the national medical support notice to enforce an obligation to provide health insurance coverage, 388-14A-4122 What kind of information is included in the national medical support notice?, 388-14A-4124 Who are the parties involved with the national medical support notice?, 388-14A-4125 What must an employer do after receiving a national medical support notice?, 388-14A-4130 What must a plan administrator do after receiving a national medical support notice from the division of child support?, 388-14A-4135 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent has health insurance but the children are not included in the coverage?, 388-14A-4140 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent is eligible for health insurance but is not yet enrolled?, 388-14A-4143 What must the plan administrator do when the employer provides health insurance but the ~~((noncustodial))~~

obligated parent is not yet eligible for coverage?, 388-14A-4145 What must the plan administrator do when the insurance plan in which the ~~((noncustodial))~~ obligated parent is enrolled does not provide coverage which is accessible to the children?, 388-14A-4150 What must the plan administrator do when the ~~((noncustodial))~~ obligated parent has more than one family?, 388-14A-4160 Are there any limits on the amount ~~((a noncustodial))~~ an obligated parent may be required to pay for health insurance premiums?, 388-14A-4175 Is an employer ~~((obligated))~~ required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS ~~((medical assistance))~~ health and recovery services administration?, 388-14A-5000 How does the division of child support distribute support payments?, 388-14A-5002 How does DCS distribute support money in a nonassistance case?, 388-14A-5005 How does DCS distribute intercepted federal income tax refunds?, 388-14A-5100 What kind of distribution notice does the division of child support send?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation, 388-14A-6400 The division of child support's grievance and dispute resolution method is called a conference board and 388-14A-6415 Scope of authority of conference board chair defined; and new sections WAC 388-14A-2200 When does DCS charge a twenty-five dollar annual fee on a child support case?, 388-14A-2205 How can a custodial parent be excused from payment of the annual fee?, 388-14A-3312 The division of child support serves a notice of support owed for unreimbursed medical expenses to establish a fixed dollar amount owed under a child support order, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, and 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide health insurance coverage?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m., May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The federal Deficit Reduction Act of 2005 (DRA) made changes in the child support enforcement program under Title IV-D of the Social Security Act. DCS must adopt and amend rules to comply with the state law changes under the DRA. DCS adopted emergency rules under WSR 07-16-023 with an effective date of July 22, 2007, and then filed a second emergency rule

under WSR 07-23-058 (effective November 16, 2007) to carry through the regular rule-making process. Due to extensive stakeholder work, DCS is filing a third emergency rule to be effective March 16, 2008.

**Reasons Supporting Proposal:** The department is adopting new sections and/or amendments in chapter 388-14A WAC to implement state legislation, which implements the federal Deficit Reduction Act of 2005, and to clarify DCS procedure and policy around the establishment and enforcement of child support obligations.

**Statutory Authority for Adoption:** DCS rule-making authority is found in sections 1, 2, 3, 4, 5, 7, 8, and 9, chapter 143, Laws of 2007.

**Statute Being Implemented:** Chapter 143, Laws of 2007.

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

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

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

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

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

March 12, 2008

Stephanie E. Schiller

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

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

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

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

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

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

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

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

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

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

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

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

**"Annual fee"** means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

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

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

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

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

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

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

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

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

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

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

**"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought"** means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains

responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

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

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

**"Dependent child"** means a person:

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

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

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

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

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

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

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

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

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

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

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

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

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

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

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

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

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

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

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

~~**"Health care costs":**~~

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

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

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

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

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

**"Income"** includes:

(1) All gains in real or personal property;

(2) Net proceeds from the sale or exchange of real or personal property;

(3) Earnings;

(4) Interest and dividends;

(5) Proceeds of insurance policies;

(6) Other periodic entitlement to money from any source; and

(7) Any other property subject to withholding for support under the laws of this state.

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

(1) Asserting liens under RCW 74.20A.060;

(2) Serving and enforcing liens under chapter 74.20A RCW;

(3) Issuing orders to withhold and deliver under chapter 74.20A RCW;

(4) Issuing notices of payroll deduction under chapter 26.23 RCW; and

(5) Obtaining wage assignment orders under RCW 26.18.080.

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

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

**"Medical expenses"** for the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means:

• Medical costs incurred on behalf of a child, which include:

• Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and

• Prescribed medical equipment and prescribed pharmacy products;

• Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;

• Dental and optometrical costs incurred on behalf of a child; and

• Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

**"Medical support"** means either or both:

(1) ~~((Health care costs stated as a fixed dollar amount in a support order))~~ Medical expenses; and

(2) Health insurance coverage for a dependent child.

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

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

**"Obligated parent"** means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

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

(1) Directly benefits the dependent child; and

(2) Relates to the parent's residential time or visitation with the child.

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

**"Past support"** means support arrears.

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

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

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

**"Physical custodian"** means custodial parent (CP).

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

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

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

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Support money"** means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, ~~((medical support))~~ enforcement of medical expenses, health insurance, or birth costs.

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

**"TANF"** means the temporary assistance for needy families (TANF) program.

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

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

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

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

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

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

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

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

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

**"Tribal TANF"** means a temporary assistance for needy families (TANF) program run by a tribe.

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

**"Uninsured medical expenses":**

(1) For the purpose of enforcing support obligations under RCW 26.23.110, means

(a) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

(b) Copayments, or deductibles incurred on behalf of a child; and

(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:

(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or

(b) The premium for covering the child exceeds the maximum limit provided in the support order.

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

**"Unreimbursed medical expenses"** means any amounts paid by one parent for uninsured medical expenses, for which that parent claims the obligated parent owes a percentage share under a child support order, which percentage is stated in the child support order itself, not just in the worksheets.

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

**"WSSR"** is the Washington state support registry.

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

**AMENDATORY SECTION** (Amending WSR 01-24-080, filed 12/3/01, effective 1/3/02)

**WAC 388-14A-1025 What are the responsibilities of the division of child support?** (1) The division of child support (DCS) provides support enforcement services when:

(a) The department of social and health services pays public assistance or provides foster care services;

(b) A former recipient of public assistance is eligible for services, as provided in WAC 388-14A-2000 (2)(c);

(c) A custodial parent (CP) or noncustodial parent (NCP) requests nonassistance support enforcement services under RCW 74.20.040 and WAC 388-14A-2000;

(d) A support order or wage assignment order under chapter 26.18 RCW directs the NCP to make support payments through the Washington state support registry (WSSR);

(e) A support order under which there is a current support obligation for dependent children is submitted to the WSSR;

(f) A former custodial parent (CP) requests services to collect a support debt accrued under a court or administrative support order while the child(ren) resided with the CP;

(g) A child support enforcement agency in another state or foreign country requests support enforcement services; or

(h) A child support agency of an Indian tribe requests support enforcement services.

(2) DCS takes action under chapters 26.23 and 74.20A RCW to establish, enforce and collect child support obligations.

(a) DCS refers cases to the county prosecuting attorney or attorney general's office when judicial action is required.

(b) If DCS has referred a case to the county prosecuting attorney or attorney general's office and the CP has been granted good cause level A, DCS does not share funding under Title IV-D for any actions taken by the prosecutor or attorney general's office once DCS advises them of the good cause finding.

(3) DCS does not take action on cases where the community services office (CSO) has granted the CP good cause not to cooperate under WAC 388-422-0020, when the CSO grants "level A good cause." If the CSO grants "level B good cause," DCS proceeds to establish and/or enforce support obligations but does not require the CP to cooperate with DCS. WAC 388-14A-2065 and 388-14A-2070 describe the way DCS handles cases with good cause issues.

(4) DCS establishes, maintains, retains and disposes of case records in accordance with the department's records management and retention policies and procedures adopted under chapter 40.14 RCW.

(5) DCS establishes, maintains, and monitors support payment records.

(6) DCS receives, accounts for and distributes child support payments required under court or administrative orders for support.

(7) DCS charges and collects fees as required by federal and state law regarding the Title IV-D child support enforcement program.

(8) DCS files a satisfaction of judgment when we determine that a support obligation is either paid in full or no longer legally enforceable. WAC 388-14A-2099 describes the procedures for filing a satisfaction of judgment. WAC 388-14A-2099(4) describes how DCS determines a support obligation is satisfied or no longer legally enforceable.

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

**WAC 388-14A-2000 Who can receive child support enforcement services from the division of child support?**

(1) The division of child support (DCS) provides payment processing and records maintenance services (called "payment services only") to parties to a court order who are not receiving a public assistance grant when:

(a) A Washington superior court order, tribal court order, administrative order, or wage assignment order under chapter 26.18 RCW directs payments through DCS or through the Washington state support registry (WSSR);

(b) The custodial parent (CP) of a dependent child or a noncustodial parent (NCP) requests payment services only, provided that:

(i) An NCP's request for payment services only may not cause a reduction of service from the level of service provided under section (2) of this section; and

(ii) The support obligation is set by a Washington state superior court order, tribal court order, administrative order or wage assignment order, directing payment to DCS or to WSSR.

(2) DCS provides full support enforcement services under Title IV-D of the social security act to custodial parents or noncustodial parents who are not receiving a public assistance grant when:

(a) The custodial parent or former physical custodian of a child requests support enforcement services;

(b) The noncustodial parent of a dependent child requests support enforcement services;

(c) An NCP submits a support order for inclusion in or a support payment to the WSSR, together with an application for support enforcement services;

~~((e))~~ (d) A public assistance recipient stops receiving a cash grant under the temporary assistance for needy families program;

~~((e))~~ (e) The department provides Medicaid-only benefits to a CP on behalf of a dependent child, unless the recipient of the Medicaid-only benefits declines support enforce-

ment services not related to paternity establishment, medical support establishment or medical support enforcement; or

~~((e))~~ (f) A man requests paternity establishment services alleging he is the father of a dependent child.

(3) DCS provides payment processing, records maintenance, paternity establishment, medical support establishment, and medical support enforcement services when a recipient of Medicaid-only benefits declines support enforcement services in writing.

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

**WAC 388-14A-2010 Can I apply for support enforcement services if I do not receive public assistance?**

(1) If you are not receiving public assistance, you can apply for support enforcement services. Your case is called a non-assistance case. A nonassistance case receives the same level of services as a case that was opened because of the payment of public assistance.

(2) Generally, the person applying for nonassistance support enforcement services is the custodial parent or former custodial parent of a child. However, the noncustodial parent may apply for services as well, as provided in WAC 388-14A-2000 (2)(b), (c) and ~~((e))~~ (f).

(3) A person wishing to apply for nonassistance support enforcement services must submit a written application for support enforcement services except as provided in WAC 388-14A-2000 (2)~~((e))~~(d); and

(a) Have or have had physical custody of the child for whom support is sought, or for whom a support debt has accrued, or be the person with whom the child resided the majority of the time for which support is sought; or

(b) Be the noncustodial parent.

(4) The applicant must:

(a) Give consent for the division of child support (DCS) to take an assignment of earnings from the noncustodial parent (NCP) if the parents are still married;

(b) Agree to send to DCS any support payments received directly from the NCP within eight days of receipt;

(c) Agree to direct a payor or forwarding agent to make payments to the Washington state support registry (WSSR);

(d) Agree not to hire an attorney or collection agency, or apply to any other state's IV-D agency to collect the same support obligation or support debt, without notifying DCS;

(e) Complete, sign, date and submit to DCS the application form and any other required documents;

(f) Supply copies of divorce and dissolution decrees, support orders and modification orders, and any related documents affecting a support obligation;

(g) Provide a statement of the amount of support debt owed by the NCP; ~~(and)~~

(h) Include or attach a list, by date, of the support payments received from the NCP during the time period for which the CP seeks support; and

(i) Pay any applicable fee imposed by state or federal law.

(5) If someone other than the CP has legal custody of the child under a court order, the CP must affirm that:

(a) The CP has not wrongfully deprived the legal custodian of custody; and

(b) The person with legal custody has not been excused from making support payments by a court or administrative tribunal.

NEW SECTION

**WAC 388-14A-2200 When does DCS charge a twenty-five dollar annual fee on a child support case?** (1) Under RCW 74.20.040, the division of child support (DCS) must impose an annual fee of twenty-five dollars for each case in which:

(a) The custodial parent (CP) has never received TANF, Tribal TANF or AFDC as the custodian of minor children; and

(b) DCS has collected and disbursed to the CP at least five hundred dollars on the case during that federal fiscal year. The federal fiscal year runs from October 1 through September 30.

(2) A custodial parent who has children with more than one noncustodial parent (NCP) may be assessed a separate twenty-five dollar fee for each case in which DCS collects at least five hundred dollars in a federal fiscal year.

(3) If DCS has already collected the twenty-five dollar annual fee on a Washington state case and the CP begins receiving TANF or Tribal TANF during the same federal fiscal year, DCS is not required to refund or cancel the fee.

(4) If the CP with a Washington case has paid a fee to another state during the same federal fiscal year, the CP is still subject to the fee in Washington if the Washington case qualifies for a fee under subsection (1) above.

(5) A CP has the burden of proving prior receipt of TANF, Tribal TANF or AFDC in any jurisdiction, which would exempt the CP from paying the annual fee.

(a) DCS may impose the fee until the CP provides proof of prior receipt of TANF, Tribal TANF or AFDC.

(b) DCS does not refund any fee which has been retained by the state, but stops charging the fee immediately when the CP provides proof that the CP is not subject to the fee.

(6) The fee is retained from support payments collected, which means that the NCP gets credit against the child support obligation for the total amount of the payment.

NEW SECTION

**WAC 388-14A-2205 How can a custodial parent be excused from payment of the annual fee?** (1) WAC 388-14A-2200 describes the cases that qualify for the twenty five dollar annual fee.

(2) A custodial parent (CP) seeking to be excused from payment of the fee may provide proof that he or she is exempt from the fee because he or she received TANF, Tribal TANF or AFDC from another state or tribe.

(3) A CP may request a conference board under WAC 388-14A-6400 to request a waiver of the fee for hardship reasons. The CP must provide proof that hardship in the CP's household justifies waiver of the fee.

(4) Payment of the annual fee in another state does not excuse the CP from the annual fee charged for a Washington case.

(5) If the CP seeks a waiver from payment of the annual fee during a year when the fee has already been collected, the fee for that year is not refunded, but DCS waives collection of the fee for future years unless the waiver is overturned at a later time.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

**WAC 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue.** (1) A notice and finding of financial responsibility (NFFR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.055.

(2) The NFFR:

(a) Advises the noncustodial parent and the custodial parent (who can be either a parent or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFFR fully and fairly advises the parents of their rights and responsibilities under the NFFR.

(b) Includes the information required by RCW 26.23.050 and 74.20A.055.

(c) Includes ~~((the noncustodial parent's health insurance obligation))~~ a provision that both parents are obligated to provide medical support, as required by RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(d) Includes a provision that apportiones the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

(e) May include an obligation to provide support for day care or special child-rearing expenses, pursuant to chapter 26.19 RCW.

~~((e))~~ (f) Warns the noncustodial parent (NCP) and the custodial parent (CP) that at an administrative hearing, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFFR, if necessary for an accurate support order.

(3) After service of the NFFR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

(4) The NCP must make all support payments to the Washington state support registry after service of the NFFR. DCS does not give the NCP credit for payments made to any other party after service of a NFFR, except as provided by WAC 388-14A-3375.

(5) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFFR is a final order. WAC 388-14A-3110 describes when the notice becomes a final order.

(6) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFFR can end sooner or later than age eighteen.

(7) If paternity has been established by an affidavit or acknowledgment of paternity, DCS attaches a copy of the acknowledgment, affidavit, or certificate of birth record information to the notice. A party wishing to challenge the acknowledgment or denial of paternity may only bring an action in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335.

(8) If the parents filed a paternity affidavit or acknowledgment of paternity in another state, and by that state's law paternity is therefore conclusively established, DCS may serve a NFFR to establish a support obligation.

(9) A hearing on a NFFR is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

**WAC 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity.** (1) A notice and finding of parental responsibility (NFPR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.056.

(2) The NFPR differs from a notice and finding of financial responsibility (NFFR) (see WAC 388-14A-3115) because the parties may request genetic testing to contest paternity after being served with a NFPR.

(3) DCS serves a NFPR when:

(a) An affidavit acknowledging paternity is on file with the center for health statistics and was filed before July 1, 1997; or

(b) An affidavit acknowledging paternity is on file with the vital records agency of another state and the laws of that state allow the parents to withdraw the affidavit or challenge paternity.

(4) DCS attaches a copy of the acknowledgment of paternity or certification of birth record information to the NFPR.

(5) The NFPR advises the noncustodial parent (NCP) and the custodial parent (who is either the mother or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFPR fully and fairly advises the parents of their rights and responsibilities under the NFPR. The NFPR warns the NCP and the custodial parent (CP) that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFPR, if necessary for an accurate support order.

(6) The NFPR includes the information required by RCW 26.23.050, 74.20A.055, and 74.20A.056.

(7) The NFPR includes ~~((the NCP's health insurance obligation))~~ a provision that both parents are obligated to provide medical support, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custo-



dial parent when the custodial parent is not one of the parents of the child covered by the order.

~~(8)~~ The NFPR includes a provision that apportions the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

~~(9)~~ The NFPR may include an obligation to provide support for day care expenses or special child-rearing expenses, pursuant to chapter 26.19 RCW.

~~((9))~~ (10) DCS may not assess an accrued support debt for a period longer than five years before the NFPR is served. This limitation does not apply to the extent that the NCP hid or left the state of Washington for the purpose of avoiding service.

~~((10))~~ (11) After service of the NFPR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

~~((11))~~ 12 The NCP must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made to any other party after service of the NFPR, except as provided by 388-14A-3375.

~~((12))~~ (13) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFPR is a final order. See WAC 388-14A-3110 for when the notice becomes a final order.

~~((13))~~ (14) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFPR can end sooner or later than age eighteen.

~~((14))~~ (15) Either the NCP, or the mother, if she is also the CP, may request genetic tests. A mother who is not the CP may at any time request that DCS refer the case for paternity establishment in the superior court.

~~((15))~~ (16) DCS does not stop enforcement of the order unless DCS receives a timely request for hearing or a timely request for genetic tests. See WAC 388-14A-3110 for time limits. DCS does not refund any money collected under the notice if the NCP is later:

- (a) Excluded from being the father by genetic tests; or
- (b) Found not to be the father by a court of competent jurisdiction.

~~((16))~~ (17) If the NCP requested genetic tests and was not excluded as the father, he may request within twenty days from the date of service of the genetic tests in Washington, or sixty days from the date of service of the genetic tests outside of Washington:

- (a) A hearing on the NFPR.
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

~~((17))~~ (18) If the NCP was not excluded as the father, the CP (or the mother, if she is also the CP), may within twenty days of the date of service of the genetic tests request:

- (a) A hearing on the NFPR; or
- (b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

~~((18))~~ (19) If the NCP is excluded by genetic testing, DCS may refer the case for paternity establishment in the superior court.

~~((19))~~ (20) A hearing on a NFPR is for the limited purpose of resolving the NCP's current support obligation, accrued support debt and amount of reimbursement to DCS for paternity-related costs. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

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

AMENDATORY SECTION (Amending WSR 07-06-053, filed 3/2/07, effective 4/2/07)

**WAC 388-14A-3200 How does DCS determine my support obligation?** (1) The division of child support (DCS) determines support obligations using the Washington state child support schedule (the WSCSS), which is found in chapter 26.19 RCW, for the establishment and modification of support orders.

(2) See WAC 388-14A-8100 for rules on completing the worksheets under the WSCSS for cases where DCS is determining support for a child in foster care.

(3) DCS does not have statutory authority to set the child support obligations of both the noncustodial parent (NCP) and custodial parent (CP) in the same administrative proceeding, except that RCW 26.09.105, 26.18.170 and 26.23.050 provide that an administrative order that sets the NCP's child support obligation can also determine the CP's medical support obligation.

(a) DCS orders can not set off the support obligation of one parent against the other.

(b) Therefore, the method set forth in Marriage of Arvey, 77 Wn. App 817, 894 P.2d 1346 (1995), must not be applied when DCS determines a support obligation.

(4) The limitations in this section apply to DCS staff and to administrative law judges (ALJs) who are setting child support obligations.

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

**WAC 388-14A-3205 How does DCS calculate my income?** (1) The division of child support (DCS) calculates a parent's income using the best available information, in the following order:

- ~~((1))~~ (a) Actual income;
- ~~((2))~~ (b) Estimated income, if DCS has:
- ~~((a))~~ (i) Incomplete information;
- ~~((b))~~ (ii) Information based on the prevailing wage in the parent's trade or profession; or
- ~~((c))~~ (iii) Information that is not current.

~~((3))~~ (c) Imputed income under RCW 26.19.071(6).  
(2) In the absence of actual income information, DCS imputes full time earnings at the minimum wage to a TANF recipient. You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

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

**WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order.** (1) The division of child support (DCS) may serve a notice of support owed on a noncustodial parent (NCP) under RCW 26.23.110 to establish a fixed dollar amount of monthly support and accrued support debt:

(a) If ~~((a))~~ the support obligation under ~~((a-court))~~ an order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of ~~((the))~~ a court order.

(2) The notice of support owed may include day care costs and medical support if the court order provides for such costs. WAC 388-14A-3312 describes the use of a notice of support owed to collect unreimbursed medical expenses from either of the parties to a support order, no matter which one has custody of the child.

(3) DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.

(4) Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(5) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support;

(b) Any other information not contained in the order that was used to calculate monthly support and the support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

(6) The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(7) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(8) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(9) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.

(10) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(11) If an NCP or custodial parent (CP) requests a late hearing, the party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

(12) A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.

(13) For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," ~~((or))~~ "custodial parent," or "party seeking reimbursement."

#### NEW SECTION

**WAC 388-14A-3312 The division of child support serves a notice of support owed for unreimbursed medical expenses to establish a fixed dollar amount owed under a child support order.** (1) The division of child support (DCS) may serve a notice of support owed for unreimbursed medical expenses under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) in order to collect the obligated parent's share of unreimbursed medical expenses owed to the party seeking reimbursement.

(2) Either the NCP or CP (if the CP is a party to the support order) may ask DCS to serve a notice of support owed for unreimbursed medical expenses on the other party to the support order, if that party is an obligated party under the support order.

(a) If the CP is not a party to the support order, DCS can not assist the CP in making a claim for unreimbursed medical expenses, but the CP may seek to recover such expenses by filing an action in court.

(b) DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.

(3) A notice of support owed for unreimbursed medical expenses:

(a) May be for a period of up to twenty-four consecutive months.

(b) May include only medical services provided after July 21, 2007.

(c) May not include months which were included in a prior notice of support owed for unreimbursed medical expenses or a prior judgment.

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for unreimbursed medical expenses.

(4) The party seeking reimbursement must ask DCS to serve a notice of support owed for unreimbursed medical expenses within two years of the expense being incurred.

(a) The fact that a claim for unreimbursed medical expenses is rejected by DCS does not mean that the parent

cannot pursue reimbursement of those expenses by proceeding in court.

(b) If a parent obtains a judgment for unreimbursed medical expenses, DCS enforces the judgment.

(5) DCS does not serve a notice of support owed for unreimbursed medical expenses unless the party seeking reimbursement declares under penalty of perjury that he or she has asked the obligated party to pay his or her share of the medical expenses, or provides good cause for not asking the obligated party.

(a) If the medical expenses have been incurred within the last twelve months, this requirement is waived.

(b) If the obligated party denies having received notice that the other party was seeking reimbursement for medical expenses, the service of the notice of support owed for unreimbursed medical expenses constitutes the required notice.

(6) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

(7) DCS serves a notice of support owed on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

(8) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

(9) In a notice of support owed for unreimbursed medical expenses, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

(10) A notice of support owed for unreimbursed medical expenses becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the obligated parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

(11) A notice of support owed for unreimbursed medical expenses served in another state becomes final according to WAC 388-14A-7200.

(12) For the rules on a hearing on a notice of support owed for unreimbursed medical expenses, see WAC 388-14A-3320.

(13) A notice of support owed for unreimbursed medical expenses or a final administrative order issued under WAC

388-14A-3320 must inform the parties of the right to request an annual review of the order.

(14) If the obligated parent is the NCP, any amounts owing determined by the final administrative order are added to the debt on the main case.

(15) If the obligated parent is the CP, any amounts owing determined by the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final, but not to exceed ten percent of the current support amount; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order, but not to exceed ten percent of the current support amount.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

(16) If either the obligated parent or the parent seeking reimbursement requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed for unreimbursed medical expenses.

(17) A notice of support owed for unreimbursed medical expenses fully and fairly informs the obligated parent of the rights and responsibilities in this section.

(18) A notice of support owed for unreimbursed medical expenses under this section is subject to annual review as provided in WAC 388-14A-3318.

(19) If both CP and NCP request that DCS serve a notice of support owed for unreimbursed medical expenses on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

(20) DCS does not serve a second or subsequent notice of support owed for unreimbursed medical expenses on an obligated parent until the party seeking reimbursement meets the conditions set forth in WAC 388-14A-3318.

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

**WAC 388-14A-3315** When DCS serves a notice of support debt or notice of support owed or notice of support owed for unreimbursed medical expenses, we notify the ~~((custodial parent and/or the payee under the))~~ **other party to the child support order**. (1) The division of child support (DCS) sends a notice to ((~~Ⓐ~~)) the payee under a

~~((court))~~ Washington child support order or a foreign ~~((administrative))~~ child support order ~~((for support))~~ when DCS receives proof of service on the noncustodial parent (NCP) of:

(a) A notice of support owed under WAC 388-14A-3310; or

(b) A notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312; or

(c) A notice of support debt under WAC 388-14A-3304.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the NCP.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3310, a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, or a notice of support debt under WAC 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

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

(6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.

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

**WAC 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?** (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(a) This type of annual review concerns the annual review that takes place after service of a notice of support owed under WAC 388-14A-3310.

(b) For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, see WAC 388-14A-3318.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or

decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though the statute mentions only the NCP.

(5) DCS may request an annual review of the support order but has no duty to do so.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(7) The twelve-month requirement for an annual review under this section runs separately from the twelve-month requirement for an annual review under WAC 388-14A-3318.

#### NEW SECTION

**WAC 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?** (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noncustodial parent (NCP) or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement.

(b) The party seeking reimbursement must provide proof of payment of at least five hundred dollars in unreimbursed medical expenses for services provided in the last twenty-four months.

(c) At least twelve months must have passed since:

(i) The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party became a final administrative order.

(3) In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

**WAC 388-14A-3320 What happens at a hearing on a notice of support owed?** (1) A hearing on a notice of support owed is only for interpreting the ~~((court))~~ order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) ~~((The))~~ A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the ~~((court))~~ order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312 is only to determine:

(a) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

(b) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(c) The obligated parent's share of the uninsured medical expenses;

(d) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

(e) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(4) If the administrative law judge (ALJ) determines that the unreimbursed medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

~~((4))~~ (6) Either the noncustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312.

(8) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

~~((5))~~ (9) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the ~~((payee))~~ custodial parent (CP). The NCP and the ~~((payee))~~ CP each may participate in the hearing as an independent party.

~~((6))~~ (10) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the ~~((payee))~~ CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

~~((7))~~ (11) If ~~((the payee))~~ either party requests a late hearing on a notice of support owed, ~~((the payee))~~ that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

(12) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both, except that a CP who is not also the payee under the support order may not ask DCS to serve a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

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

(a) Any circumstances that have changed; ~~((and))~~

(b) Any relief requested; and

(c) The proposed new support amount.

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

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

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

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

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

(5) A request to add a requirement for the custodial parent (CP) to provide health insurance coverage, or to add a provision in the order to include the CP's share of medical expenses, is not by itself a sufficient basis for modification of the order.

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

~~((6))~~ (7) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

~~((7))~~ (8) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

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

~~((8))~~ (9) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4110 If my support order requires me to provide health insurance for my children, what do I have to do?** (1) Once a support order is entered requiring health insurance, the (~~(noncustodial))~~ obligated parent (~~((NCP))~~) must take the following actions within twenty days:

- (a) Provide health insurance coverage; and
- (b) Provide proof of coverage to the division of child support (DCS), such as:
  - (i) The name of the insurer providing the health insurance coverage;
  - (ii) The names of the beneficiaries covered;
  - (iii) The policy number;
  - (iv) That coverage is current; and
  - (v) The name and address of the (~~(NCP's))~~ obligated parent's employer.

(2) If health insurance coverage that is accessible to the children named in the order is available, the (~~(NCP))~~ obligated parent must:

- (a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and
- (b) Submit proof of coverage as outlined in subsection (1)(b) above.
- (3) If health insurance is not immediately available to the (~~(NCP))~~ obligated parent, as soon as health insurance becomes available, the (~~(NCP))~~ obligated parent must:

- (a) Provide for coverage for the children named in the order; and
- (b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.

(5) (~~A child's enrollment in Indian health services satisfies the requirements of this section.~~)

(~~6~~) See WAC 388-14A-4165 for a description of what happens when the combined total of (~~(NCP's))~~ a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

#### NEW SECTION

**WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide health insurance coverage?** (1) A noncustodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the health insurance obligation of the custodial parent (CP).

(2) DCS does not enforce a custodial parent's obligation to provide health insurance coverage when:

- (a) The support order does not include a health insurance obligation for the CP.
- (b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else.

(e) The children are receiving medicaid.

(f) The CP and the children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

(3) If none of the conditions under subsection (2) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

(4) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage.** (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce (~~(a noncustodial))~~ an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the (~~(noncustodial))~~ obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the (~~(NCP))~~ obligated parent to provide insurance coverage for a dependent child;

(b) The (~~(NCP))~~ obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the (~~(NCP's))~~ obligated parent's employer or union.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4122 What kind of information is included in the National Medical Support Notice?** The National Medical Support Notice (NMSN) and its cover letter advise the (~~(noncustodial))~~ obligated parent's employer and the plan administrator that:

(1) The ~~((noncustodial))~~ obligated parent ~~((NCP))~~ is required to provide health insurance coverage for the children named in the notice;

(2) Information regarding the custodial parent and children, especially address information, is confidential and may not be released to anyone, including the noncustodial parent (NCP);

(3) Within twenty business days of the date on the notice, the employer must either:

(a) Respond to the NMSN by completing the response form and returning it to DCS; or

(b) Forward Part B of the NMSN to the plan administrator.

(4) The employer or plan administrator is required to enroll the children in a health insurance plan offered by the employer or the union if insurance the children can use is or will become available as provided in WAC 388-14A-4130;

(5) The employer or plan administrator must provide:

(a) Information about the health insurance plan and policy as requested in the notice; and

(b) Any necessary claim forms or membership cards as soon as they are available.

(6) The employer or union must withhold premiums from the ~~((NCP's))~~ obligated parent's net earnings if the ~~((NCP))~~ obligated parent is required to pay part or all of the premiums for coverage under the health insurance plan.

(7) Noncompliance with the NMSN subjects the employer or union to a fine of up to one thousand dollars under RCW ~~((74.20A.350))~~ 26.18.180. See WAC 388-14A-4123 for a description of noncompliance penalties.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4124 Who are the parties involved with the National Medical Support Notice?** (1) The National Medical Support Notice (NMSN) is a federally mandated form used by child support enforcement agencies to enforce ~~((a noncustodial))~~ an obligated parent's medical support obligation. The division of child support (DCS) uses the NMSN as provided in WAC 388-14A-4120.

(2) DCS sends an NMSN when there is a support order requiring the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ to provide health insurance coverage for the children.

(3) DCS sends the NMSN to the ~~((NCP's))~~ obligated parent's employer.

(4) If the employer provides health insurance coverage, the employer forwards the NMSN to the appropriate plan administrator.

(5) The plan administrator is the entity which handles the ministerial functions for the group health plan maintained by the employer or a group health plan to which the employer contributes.

(6) In some cases, the employer performs the duties of the plan administrator.

(7) In some cases, the ~~((NCP's))~~ obligated parent's union either acts as or contracts with the plan administrator.

(8) The plan administrator sends coverage information to both DCS and the custodial parent (CP). In cases where the

CP is the obligated parent, DCS sends coverage information to the noncustodial parent (NCP).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4125 What must an employer do after receiving a National Medical Support Notice?** (1)

Within twenty business days after the date on the National Medical Support Notice (NMSN), the employer must either send Part B to the plan administrator or send the employer response to the division of child support (DCS).

(2) The employer need take no action beyond responding to the NMSN if:

(a) The employer does not maintain or contribute to plans providing dependent or family health care coverage;

(b) The employee is among a class of employees (for example, part-time or nonunion) that are not eligible for family health coverage under any group health plan maintained by the employer or to which the employer contributes; or

(c) The employee either is no longer, or never has been, employed by this employer.

(3) If subsection (2) of this section does not apply, the employer must respond to the NMSN and must:

(a) Forward Part B of the NMSN to the plan administrator of each group health plan identified by the employer to enroll the ~~((noncustodial))~~ obligated parent's eligible children (see WAC 388-14A-4130 for what the plan administrator must do after receiving an NMSN); and

(b) When notified by the plan administrator that the children are enrolled:

(i) Withhold any employee contributions required for health insurance premiums and transfer those premiums to the appropriate plan; or

(ii) Notify DCS that enrollment cannot be completed because the noncustodial parent's net earnings are not high enough to allow withholding of child support and health insurance premiums; in this situation, the employer must notify DCS of the amount of the premium required to cover the children.

(c) When notified by the plan administrator that the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ is subject to a waiting period, notify the plan administrator when the ~~((NCP))~~ obligated parent is eligible to enroll in the plan, and that the NMSN requires the enrollment of the children named in the NMSN.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4130 What must a plan administrator do after receiving a National Medical Support Notice from the division of child support?** (1) A plan administrator who receives a National Medical Support Notice (NMSN) must respond to the NMSN within forty business days after the date on the NMSN.

(2) If the ~~((noncustodial))~~ obligated parent ~~((NCP))~~ and the children are to be enrolled in a health insurance plan, the plan administrator must:

(a) Notify the ~~((NCP))~~ obligated parent, each child, and the custodial parent (CP) (if the obligated parent is not the

CP) that coverage of the children is or will become available (notifying the CP is considered the same as notifying the child if they live at the same address); and

(b) If not previously provided, send the CP a description of the coverage available, including the effective date of coverage, a summary plan description and any forms or information necessary to start coverage, and information on how to submit claims for benefits.

(3) If there is more than one option available under the plan and the ~~((NCP))~~ obligated parent is not yet enrolled, the plan administrator must:

(a) Provide to the division of child support (DCS) copies of applicable summary plan descriptions for available coverage, including the additional participant contribution necessary to obtain coverage for the children under each option and whether any option has a limited service area; and

(b) If the plan has a default option, enroll the children in the plan's default option if the plan administrator has not received DCS' election within twenty business days of the date the plan administrator returned the response to DCS; or

(c) If the plan does not have a default option, enroll the children in the option selected by DCS.

(4) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires within ninety days from the date the plan administrator receives the NMSN, the plan administrator must enroll the children named in the NMSN immediately.

(5) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires more than ninety days from the date the plan administrator receives the NMSN, the plan administrator must notify the employer, DCS, the ~~((NCP))~~ obligated parent and the CP (if the obligated parent is not the CP) of the waiting period. When the waiting period has expired, the plan administrator must:

(a) Enroll the ~~((NCP))~~ obligated parent and the children named in the NMSN, as provided in subsection (2) or (3) above; and

(b) Notify the employer of enrollment so that the employer may determine if the NCP's income is sufficient to withhold health insurance premiums, and then either withhold accordingly or notify DCS, as provided in WAC 388-14A-4125 (3)(b).

(6) If the ~~((NCP))~~ obligated parent is subject to a waiting period whose duration is determined by a measure other than the passage of time (for example, the completion of a certain number of hours worked), the plan administrator must notify the employer, DCS, the ~~((NCP))~~ obligated parent and the CP (if the CP is not the obligated parent) of the waiting period. When the waiting period has expired, the plan administrator must:

(a) Enroll the ~~((NCP))~~ obligated parent and the children named in the NMSN, as provided in subsection (2) or (3) above; and

(b) Notify the employer of enrollment so that the employer may determine if the ~~((NCP's))~~ obligated parent's income is sufficient to withhold health insurance premiums, and then either withhold accordingly or notify DCS, as provided in WAC 388-14A-4125 (3)(b).

(7) If the plan administrator determines that the NMSN does not constitute a qualified medical child support order as defined by ERISA, the plan administrator must:

(a) Notify DCS using the part of the NMSN called the plan administrator response; and

(b) Notify the ~~((NCP))~~ obligated parent, the CP (if the CP is not the obligated parent) and the children of the specific reasons for the determination. A copy of the plan administrator response is considered sufficient notice under this section.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4135 What must the plan administrator do when the ~~((nonecustodial))~~ obligated parent has health insurance but the children are not included in the coverage?** (1) If the ~~((nonecustodial))~~ obligated parent ~~((NCP))~~ is enrolled in a health insurance plan through the employer but has not enrolled the children named in the National Medical Support Notice (NMSN), the plan administrator must follow the steps outlined in WAC 388-14A-4130(2) and:

(a) Enroll the child(ren) named in the NMSN under the ~~((NCP's))~~ obligated parent's health insurance plan; and

(b) Notify the employer and the division of child support (DCS) that the child(ren) have been enrolled.

(2) Under RCW 48.01.235 (4)(a), the plan administrator must enroll a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions.

(3) WAC 388-14A-4145 discusses what the plan administrator must do if the obligated parent's ~~((NCP's))~~ health insurance plan is not accessible to the children.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4140 What must the plan administrator do when the ~~((nonecustodial))~~ obligated parent is eligible for health insurance but is not yet enrolled?** (1) If the ~~((nonecustodial))~~ obligated parent ~~((NCP))~~ is eligible for health insurance through the employer but has not enrolled on his or her own, the plan administrator must proceed under WAC 388-14A-4130(3) and:

(a) Enroll the ~~((NCP))~~ obligated parent and the children in the least expensive plan which provides accessible coverage for the children named in the National Medical Support Notice (NMSN); and

(b) Notify the employer and the division of child support (DCS) that the ~~((NCP))~~ obligated parent and the children have been enrolled.

(2) The plan administrator notifies DCS of all health insurance plans for which the ~~((NCP))~~ obligated parent is eligible, and notifies DCS which plan is the default option.

(3) If DCS does not specify otherwise within twenty business days of the date the plan administrator responds to DCS, the plan administrator must enroll the ~~((NCP))~~ obligated parent and the children in the default plan.

(4) Under RCW 48.01.235 (4)(a), the plan administrator must enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions. In order to obtain coverage for the children, the plan administrator must enroll an otherwise eligible ~~((NCP))~~ obligated parent without regard to any enrollment season restrictions.



AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4143 What must the plan administrator do when the employer provides health insurance but the ~~((nonecustodial))~~ obligated parent is not yet eligible for coverage?** If the ~~((nonecustodial))~~ obligated parent is subject to a waiting period before being eligible for coverage under a health insurance plan provided by the employer, the plan administrator must proceed as follows:

(1) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires ninety days or less from the date of receipt of the National Medical Support Notice (NMSN), see WAC 388-14A-4130(4);

(2) If the ~~((NCP))~~ obligated parent is subject to a waiting period that expires more than ninety days from the date of receipt of the NMSN, see WAC 388-14A-4130(5); and

(3) If the ~~((NCP))~~ obligated parent is subject to a waiting period whose duration is determined by a measure other than the passage of time, see WAC 388-14A-4130(6).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4145 What must the plan administrator do when the insurance plan in which the ~~((nonecustodial))~~ obligated parent is enrolled does not provide coverage which is accessible to the children?** (1) If more than one insurance plan is offered by the employer or union, and each plan may be extended to cover the child, then the plan administrator must enroll the children named in the national medical support notice (NMSN) in the plan in which the ~~((nonecustodial))~~ obligated parent ~~((NCP))~~ is enrolled.

(2) If the ~~((NCP's))~~ obligated parent's plan does not provide coverage which is accessible to the child, the plan administrator:

(a) May give the ~~((NCP))~~ obligated parent the opportunity to change plans so that ~~((NCP))~~ obligated parent and the children may be enrolled in a plan which provides accessible coverage for the children; but

(b) Is not required to change the ~~((NCP's))~~ obligated parent's plan to one which provides accessible coverage for the children.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4150 What must the plan administrator do when the ~~((nonecustodial))~~ obligated parent has more than one family?** (1) When ~~((a nonecustodial parent (NCP)))~~ an obligated parent has a health insurance obligation for more than one family, the division of child support (DCS) sends one national medical support notice (NMSN) for each family to the ~~((NCP's))~~ obligated parent's employer.

(2) If the ~~((NCP))~~ obligated parent is already enrolled in a health insurance plan, the plan administrator must attempt to enroll all children named in all of the NMSNs in the ~~((NCP's))~~ obligated parent's plan.

(3) If the ~~((NCP))~~ obligated parent is not already enrolled in a health insurance plan, and the employer offers a health insurance plan which would cover all children named in all of

the NMSNs, the plan administrator must enroll the children in that plan. See WAC 388-14A-4140.

(4) If the employer offers only one health insurance plan, or multiple plans which would cover some, but not all of the children named in the NMSNs, the plan administrator must so notify DCS.

(5) DCS chooses the appropriate health insurance plan by considering the following factors:

(a) The wishes of the custodial parent of each family;

(b) The premium limits set by the support orders;

(c) The relative ages of all the children;

(d) How many of ~~((NCP's))~~ the obligated parent's children live in Washington and how many live elsewhere;

(e) How many of ~~((NCP's))~~ the obligated parent's children receive Medicaid;

(f) How many of ~~((NCP's))~~ the obligated parent's children are already covered by private health insurance;

(g) Which plan covers the most children; and

(h) Other factors as may be developed in DCS policy.

(6) The factors listed in subsection (5) are not exclusive, nor are they equally weighted.

(7) Nothing in this section requires the plan administrator to take action to change the ~~((NCP's))~~ obligated parent's plan unless the ~~((NCP))~~ obligated parent requests a change.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4160 Are there any limits on the amount ~~((a nonecustodial))~~ an obligated parent may be required to pay for health insurance premiums?** (1) The National Medical Support Notice (NMSN) advises the employer of any limitations on the amount ~~((a nonecustodial parent (NCP)))~~ an obligated parent may be required to pay for health insurance premiums to cover the children.

(2) Often the support order which contains the health insurance obligation determines the limitation on premium amounts, or states that there is no limitation. See WAC 388-14A-4100 for a discussion of premium limitation amounts.

(3) The premium limitation amount stated in the NMSN:

(a) Describes the premium amount required to cover the children named in the notice; and

(b) Does not include any amounts required to cover the ~~((NCP))~~ obligated parent.

(4) Even if the medical insurance premium is within the limits set by the order or by WAC 388-14A-4100, the fifty percent limitation on withholding found in RCW 26.23.060 (3) still applies. See WAC 388-14A-4165 for a description of what happens when the fifty percent limitation is exceeded.

(5) When calculating the fifty percent limitation for withholding purposes:

(a) The premium attributable to coverage for the children is always included in this calculation; but

(b) The premium attributable to coverage for the ~~((NCP))~~ obligated parent is included only when DCS requires the employer or plan administrator to enroll the ~~((NCP))~~ obligated parent in a health insurance plan in order to obtain coverage for the ~~((NCP's))~~ obligated parent's children. See also WAC 388-14A-4165(3).

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4175 Is an employer (~~(obligated)~~) required to notify the division of child support when insurance coverage for the children ends?** (1) Once the division of child support (DCS) has notified an employer that (~~(the noncustodial)~~) a parent (~~((NCP))~~) is obligated by a support order to provide health insurance coverage for the children named in the order, the national medical support notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

AMENDATORY SECTION (Amending WSR 05-08-060, filed 3/31/05, effective 5/1/05)

**WAC 388-14A-4180 When must the division of child support communicate with the DSHS (~~((medical assistance))~~) health and recovery services administration?** (1) The division of child support (DCS) must inform the DSHS (~~((medical assistance))~~) health and recovery services administration (~~((MAA))~~) (HRSA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. (~~((MAA))~~) HRSA is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide (~~((MAA))~~) HRSA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, Medicaid number or the individual's Social Security number;

(b) Name of the (~~((noncustodial parent (NCP)))~~) obligated parent;

(c) Social Security number of the (~~((NCP))~~) obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the (~~((NCP))~~) obligated parent;

(f) Name and address of the (~~((NCP's))~~) obligated parent's employer;

(g) Information regarding the (~~((NCP's))~~) obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with (~~((MAA))~~) HRSA to determine if there have been any lapses (stops and starts) in the (~~((NCP's))~~) obligated parent's health insurance coverage for Medicaid applicants.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

**WAC 388-14A-5000 How does the division of child support distribute support payments?** (1) Under state and federal law, the division of child support (DCS) distributes support money it collects or receives to the:

(a) Department when the department provides or has provided public assistance payments for the support of the family;

(b) Payee under the order, or to the custodial parent (CP) of the child according to WAC 388-14A-5050;

(c) Child support enforcement agency in another state or foreign country which submitted a request for support enforcement services;

(d) Indian tribe which has a TANF program, child support program and/or a cooperative agreement regarding the delivery of child support services; (~~((or))~~)

(e) Person or entity making the payment when DCS is unable to identify the person to whom the support money is payable after making reasonable efforts to obtain identification information.

(2) DCS distributes support based on the date of collection. DCS considers the date of collection to be the date that DCS receives the payment, no matter when the payment was withheld from the noncustodial parent (NCP).

(3) If DCS is unable to distribute support money because the location of the family or person is unknown, it must exercise reasonable efforts to locate the family or person. When the family or person cannot be located, DCS handles the money in accordance with chapter 63.29 RCW, the Uniform Unclaimed Property Act.

(4) WAC 388-14A-5000 and sections WAC 388-14A-5001 through 388-14A-5008 contain the rules for distribution of support money by DCS.

(5) DCS changes the distribution rules based on changes in federal statutes and regulations.

(6) DCS uses the fee retained under WAC 388-14A-2200 to offset the fee amount charged by the federal government for IV-D cases that meet the fee criteria in WAC 388-14A-2200(1).

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

**WAC 388-14A-5002 How does DCS distribute support money in a nonassistance case?** (1) A nonassistance case is one where the family has never received a cash public assistance grant.

(2) The division of child support (DCS) applies support money within each Title IV-D nonassistance case:

(a) First, to satisfy the current support obligation for the month DCS received the money;

(b) Second, to the noncustodial parent's support debts owed to the family;

(c) Third, to prepaid support as provided for under WAC 388-14A-5008.

(3) After DCS disburses at least five hundred dollars to the family on a case in a federal fiscal year, DCS may retain a twenty-five dollar annual fee for that case from a custodial parent who has never received AFDC, TANF or Tribal TANF. DCS gives the noncustodial parent credit against the child support debt for the amount retained for the fee.

AMENDATORY SECTION (Amending WSR 05-06-014, filed 2/22/05, effective 3/25/05)

**WAC 388-14A-5005 How does DCS distribute intercepted federal income tax refunds?** (1) The division of child support (DCS) applies intercepted federal income tax refunds in accordance with 42 U.S.C. Sec. 657, as follows:

(a) First, to support debts which are permanently assigned to the department to reimburse public assistance payments; and

(b) Second, to support debts which are temporarily assigned to the department to reimburse public assistance payments; and

(c) Third, to support debts that are not assigned to the department; and

(d) To support debts only, not to current and future support obligations. DCS must refund any excess to the noncustodial parent (NCP).

~~((3))~~ (2) DCS may retain the twenty-five dollar annual fee required under the federal deficit reduction act of 2005 and RCW 74.20.040 from federal income tax refunds applied to nonassistance support debts.

(3) When the Secretary of the Treasury, through the federal Office of Child Support Enforcement (OCSE), notifies DCS that a payment on behalf of an NCP is from an intercepted refund based on a joint return, DCS follows the procedures set forth in WAC 388-14A-5010.

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

**WAC 388-14A-5100 What kind of distribution notice does the division of child support send?** (1) The division of child support (DCS) mails a distribution notice once each month, or more often, to the last known address of a person for whom it received support during the month, except as provided under subsection (6) of this section.

(2) DCS includes the following information in the notice:

(a) The amount of support money DCS received and the date of collection;

(b) A description of how DCS allocated the support money between current support and the support debt and any fees required by state or federal law; and

(c) The amount DCS claims as reimbursement for public assistance paid, if applicable.

(3) The person to whom a distribution notice is sent may file a request for a hearing under subsection (4) of this section within ninety days of the date of the notice to contest how DCS distributed the support money, and must make specific objections to the distribution notice. The effective date of a hearing request is the date DCS receives the request.

(4) A hearing under this section is for the limited purpose of determining if DCS correctly distributed the support money described in the contested notice.

(a) There is no hearing right regarding fees that have been charged on a case.

(b) If a custodial parent (CP) wants to request a hardship waiver of the fee, the CP may request a conference board under WAC 388-14A-6400.

(5) A person who requests a late hearing must show good cause for being late.

(6) This section does not require DCS to send a notice to a recipient of payment services only.

AMENDATORY SECTION (Amending WSR 07-06-053, filed 3/2/07, effective 4/2/07)

**WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation.** (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105 and 26.18.170, and in RCW 26.23.050 (3) and (5). The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) If requested by a party, the NCP's share of any special child-rearing expenses in a sum certain amount per month;

~~((The NCP's obligation))~~ A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, including but not limited to the following:

(i) A requirement that either or both parents are obligated to provide health insurance coverage for the child covered by the support order if coverage that can be extended to cover the child is or becomes available through the parent's employment or union;

(ii) Notice that if proof of health insurance coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent; and

(iii) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

(g) A provision which determines the mother and the father's proportionate share of uninsured medical expenses;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

~~((h))~~ (i) The NCP's current and future monthly support obligation as a per month per child amount and order payments in that amount; and

~~((h))~~ (j) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(4) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(5) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(6) In a hearing held on a notice issued under WAC 388-14A-3312, the ALJ must determine the amount owed by the obligated parent to the other for unreimbursed medical expenses.

(a) The ALJ does not specify how the amount owed by the obligated parent should be paid.

(b) In the event that DCS has served a notice under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

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

**WAC 388-14A-6400 The division of child support's grievance and dispute resolution method is called a conference board.** (1) The division of child support (DCS) provides conference boards for the resolution of complaints and problems regarding DCS cases, and for granting exceptional or extraordinary relief. A conference board is an informal review of case actions and of the circumstances of the parties and children related to a child support case.

(a) The term conference board can mean either of the following, depending on the context:

(i) The process itself, including the review and any meeting convened; or

(ii) The DCS staff who make up the panel which convenes the hearing and makes factual and legal determinations.

(b) A conference board chair is an attorney employed by DCS in the conference board unit. In accordance with section WAC 388-14A-6415, the conference board chair reviews a case, and:

(i) Issues a decision without a hearing, or

(ii) Sets a hearing to take statements from interested parties before reaching a decision.

(2) A person who disagrees with any DCS action related to establishing, enforcing or modifying a support order may ask for a conference board.

(3) DCS uses the conference board process to:

(a) Help resolve complaints and problems over agency actions;

(b) Determine when hardship in the paying parent's household, as defined in RCW 74.20A.160, justifies the release of collection action or the refund of a support payment;

(c) Determine when hardship in the custodial parent's household justifies the waiver of any required fee;

(d) Set a repayment rate on a support debt; and

~~((d))~~ (e) Determine when it is appropriate to write off support debts owed to the department based on:

(i) Hardship to the paying parent or that parent's household;

(ii) Settlement by compromise of disputed claims;

(iii) Probable costs of collection in excess of the support debt; or

(iv) An error or legal defect that reduces the possibility of collection.

(4) A conference board is not a formal hearing under the administrative procedure act, chapter 34.05 RCW.

(5) A conference board does not replace any formal hearing right created by chapters 388-14A WAC, or by chapters 26.23, 74.20 or 74.20A RCW.

(6) This section and WAC 388-14A-6405 through 388-14A-6415 govern the conference board process in DCS cases.

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

**WAC 388-14A-6415 Scope of authority of conference board chair defined.** The conference board chair has the authority to:

(1) Subpoena witnesses and documents, administer oaths and take testimony;

(2) Grant relief by setting payment plans, writing off debt owed to the department, waiving fees, or refunding collected money;

(3) Adjust support debts based on evidence gathered during the conference board process;

(4) Direct distribution of collected support; and

(5) Take any action consistent with Washington law and DCS policy to resolve disputes, grant relief or address issues of equity.

## WSR 08-09-003

### PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 3, 2008, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-050.

Title of Rule and Other Identifying Information: WAC 392-129-150 School emergency closure—Implementation of superintendent of public instruction's determination of eligibility. Provided, the superintendent may excuse more than two scheduled school days per incident or three scheduled school days per year where the school is located in a county which was subject to a state of emergency declaration by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the event giving rise to the emergency declaration prevented operation of the school.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Brouillet Conference Room, Olympia, WA 98504-7200, on May 27, 2008, at 9:00 a.m.

Date of Intended Adoption: May 28, 2008.

Submit Written Comments to: Jennifer Priddy, Assistant Superintendent, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail [jennifer.priddy@k12.wa.us](mailto:jennifer.priddy@k12.wa.us), fax (360) 664-3683 by May 23, 2008.

Assistance for Persons with Disabilities: Contact Fatima Salahuddin by May 23, 2008, TTY (360) 664-3631 or (360) 725-6000.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In the past, individual schools in school districts were only allowed a waiver for two scheduled school days per incident or three scheduled school days per year. With the new language addition, the office of superintendent of public instruction (OSPI) is offering some relief to individual schools in districts hit hard by this year's winter storms.

Reasons Supporting Proposal: We believe that this WAC will give schools in school districts, families, and teachers some relief from the extreme weather impacts they have experienced earlier this school year by allowing some flexibility in scheduling the minimum required instructional hours.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: WAC 392-129-150.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6111.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

April 3, 2008  
Dr. Terry Bergeson  
State Superintendent

AMENDATORY SECTION (Amending Order 22, filed 12/20/89, effective 1/20/90)

**WAC 392-129-150 School emergency closure—Implementation of superintendent of public instruction's determination of eligibility.** If the superintendent of public instruction determines that the school district has provided a conclusive demonstration that one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons prevented the school district from operating the school, the school district shall receive its full annual allocation of state moneys. However, the superintendent of public instruction may only excuse the school district for up to two scheduled school days per incident and not for more than three scheduled school days per school year. Provided, the superintendent may excuse more than two scheduled school days per incident or three scheduled school days per year where the school is located in a county which was subject to

a state of emergency declaration by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the event giving rise to the emergency declaration prevented operation of the school.

If the district did not conclusively demonstrate that it was prevented from operating the school(s), its allocation of state moneys shall be reduced by:

- (1) Dividing the number of days lost by one hundred eighty;
- (2) Multiplying the result obtained in subsection (1) of this section by the annual average full-time equivalent enrollment in the school; and
- (3) Dividing the result obtained in subsection (2) of this section by the annual average full-time equivalent enrollment in the school district.

### WSR 08-09-029

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 8, 2008, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-082.

Title of Rule and Other Identifying Information: The department is amending WAC 388-538-050 Definitions, 388-538-060 Managed care and choice, 388-538-061 Voluntary enrollment into managed care—Washington Medicaid integration partnership (WMIP) or Medicare/Medicaid integration program (MMIP), 388-538-067 Managed care provided through managed care organizations (MCOs), 388-538-068 Managed care provided through primary care case management (PCCM), 388-538-070 Managed care payment, 388-538-095 Scope of care for managed care enrollees, 388-538-100 Managed care emergency services, 388-538-110 The grievance system for managed care organizations (MCO), 388-538-111 Primary care case management (PCCM) grievances and appeals, 388-538-112 The department of social and health services' (DSHS) hearing process for enrollees of managed care organization (MCO) actions, 388-538-120 Enrollee request for a second medical opinion, 388-538-130 Exemptions and ending enrollment in managed care, and 388-538-140 Qualify of care.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending the rule to update and clarify existing sections; clarify/add criteria regarding the department's patient review and coordination (PRC) program; add language regarding the monthly capitated premiums the department pays to manage care organizations (MCOs); remove language regarding information on the original agreement when the provider may bill the client for noncovered services; add language regarding MCO coverage of emergency services; and add language to clarify the department pays MCOs a delivery case rate separate from the capitation payment when an enrollee delivers a child(ren) and the MCO pays for any part of labor and delivery.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.522.

Statute Being Implemented: RCW 74.08.090 and 74.09.522.

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

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Michael Paulson, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1641.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has determined that the proposed rule will not create more than minor costs for affected small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Michael Paulson, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1641, fax (360) 753-7315, e-mail paulsmj@dshs.wa.gov.

April 4, 2008  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-050 Definitions.** The following definitions and abbreviations and those found in WAC 388-500-0005, Medical definitions, apply to this chapter. References to managed care in this chapter do not apply to mental health managed care administered under chapter 388-865 WAC.

**"Action" means one or more of the following:**

- (1) The denial or limited authorization of a requested service, including the type or level of service;
- (2) The reduction, suspension, or termination of a previously authorized service;
- (3) The denial, in whole or in part, of payment for a service;

(4) The failure to provide services in a timely manner, as defined by the state; or

(5) The failure of a managed care organization (MCO) to act within the time frames provided in 42 C.F.R. 438.408(b).

**"Ancillary health services"((—)) means healthcare services ((ordered by a provider, including but not limited to, laboratory services, radiology services, and physical therapy)) that are auxiliary, accessory, or secondary to a primary healthcare service.**

**"Appeal"((—)) means** a request by an enrollee or provider with written permission of an enrollee for reconsideration of an action.

**"Assign" or "assignment"((—)) means** the department selects an MCO or primary care case management (PCCM) provider to serve a client who has not selected an MCO or PCCM provider.

**"Auto enrollment"((—))(When) means** the department has automatically ((enrolls)) enrolled a client into an MCO in ((his or her)) the client's area of residence.

**"Basic health" or "BH"((—))(The health care) means** the healthcare program authorized by chapter 70.47 RCW and administered by the health care authority (HCA).

**"Basic health plus"**—Refer to WAC 388-538-065.

**"Children with special ((health care)) healthcare needs"((—)) means** children ((under)) younger than age nineteen ((years of age)) who are identified by the department as having special ((health care)) healthcare needs. This includes:

- (1) Children designated as having special ((health care)) healthcare needs by the department of health (DOH) and receiving services under the Title V program;
- (2) Children eligible for Supplemental Security Income under Title ((+6)) XVI of the Social Security Act (SSA); and
- (3) Children who are in foster care or who are served under subsidized adoption.

**"Client"((—)) means,** for the purposes of this chapter, an individual eligible for any medical assistance program, including managed care programs, but who is not enrolled with an MCO or PCCM provider. In this chapter, "client" refers to a person before he or she is enrolled in managed care, while "enrollee" refers to an individual eligible for any medical assistance program who is enrolled in managed care.

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

**"Disenrollment" See "end enrollment."**

**"Emergency medical condition"((—)) means** a condition meeting the definition in 42 C.F.R. 438.114(a).

**"Emergency services"((—)) means** services defined in 42 C.F.R. 438.114(a).

**"End enrollment"((—)) means ending the enrollment of an enrollee ((is currently enrolled in managed care, either with an MCO or with a PCCM provider, and his or her enrollment is discontinued and he or she returns to the fee-for-service delivery system)) for one of the reasons outlined in WAC 388-538-130. ((This is also referred to as "disenrollment."))**

**"Enrollee"((—)) means** an individual eligible for any medical assistance program ((who is)) enrolled in managed care ((through)) with an MCO or PCCM provider that has a contract with the state.

**"Enrollee's representative"**~~((—))~~ means an individual with a legal right or written authorization from the enrollee to act on behalf of the enrollee in making decisions.

**"Enrollees with special health care needs"**~~((—))~~~~(Persons)~~ means enrollees having chronic and disabling conditions~~((including persons with special health care needs that meet all of the following))~~ and the conditions:

- (1) Have a biologic, psychologic, or cognitive basis;
- (2) Have lasted or are virtually certain to last for at least one year; and
- (3) Produce one or more of the following conditions stemming from a disease:
  - (a) Significant limitation in areas of physical, cognitive, or emotional function;
  - (b) Dependency on medical or assistive devices to minimize limitation of function or activities; or
  - (c) In addition, for children, any of the following:
    - (i) Significant limitation in social growth or developmental function;
    - (ii) Need for psychological, educational, medical, or related services over and above the usual for the child's age; or
    - (iii) Special ongoing treatments, such as medications, special diet, interventions, or accommodations at home or school.

**"Exemption"**~~((—))~~ means department approval of a client's preenrollment request to remain in the fee-for-service delivery system for one of the reasons outlined in WAC 388-538-130.

**"Grievance"**~~((—))~~ means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

**"Grievance system"**~~((—))~~ means the overall system that includes grievances and appeals handled at the MCO level and access to the department's hearing process.

**"~~(Health care)~~ Healthcare service" or "service"**~~((—))~~ means a service or item provided for the prevention, cure, or treatment of an illness, injury, disease, or condition.

**"Healthy Options program" or "HO program"**~~((—))~~ means the department's prepaid managed care health program for Medicaid-eligible clients and clients enrolled in the state children's health insurance program (SCHIP).

**"Managed care"**~~((—))~~ means a comprehensive ~~((health care))~~ healthcare delivery system that includes preventive, primary, specialty, and ancillary services. These services are provided through either an MCO or PCCM provider.

**"Managed care contract"**~~((—))~~ means the agreement between the department and an MCO to provide prepaid contracted services to enrollees.

**"Managed care organization" or "MCO"**~~((—))~~ means an organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with the department under a comprehensive risk contract to provide prepaid ~~((health care))~~ healthcare services to eligible clients under the department's managed care programs.

**"Mandatory enrollment"**~~((—))~~ means the department's requirement that a client enroll in managed care.

**"Mandatory service area"**~~((—))~~ means a service area in which eligible clients are required to enroll in an MCO.

~~("Medicare/Medicaid integration program" or "MMIP")~~ The department's prepaid managed care program that integrates medical and long-term care services for clients who are sixty-five years of age or older and eligible for Medicare only or eligible for Medicare and Medicaid. Clients eligible for Medicaid only are not eligible for this program.)

**"Nonparticipating provider"**~~((—))~~ means a healthcare provider that does not have a written agreement with an MCO but that provides MCO-contracted ~~((health care))~~ healthcare services to managed care enrollees with the MCO's authorization.

**"Participating provider"**~~((—))~~ means a healthcare provider with a written agreement with an MCO to provide ~~((health care))~~ healthcare services to the MCO's managed care enrollees. A participating provider must look solely to the MCO for payment for such services.

**"Primary care case management" or "PCCM"**~~((—))~~ means the ~~((health care))~~ healthcare management activities of a provider that contracts with the department to provide primary ~~((health care))~~ healthcare services and to arrange and coordinate other preventive, specialty, and ancillary health services.

**"Primary care provider" or "PCP"**~~((—))~~ means a person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant who supervises, coordinates, and provides health services to a client or an enrollee, initiates referrals for specialist and ancillary care, and maintains the client's or enrollee's continuity of care.

**"Prior authorization" or "PA"**~~((—))~~ means a process by which enrollees or providers must request and receive department approval for services provided through the department's fee-for-service system, or MCO approval for services provided through the MCO, for certain medical services, equipment, drugs, and supplies, based on medical necessity, before the services are provided to clients, as a precondition for provider reimbursement. ~~((Expedited prior authorization and limitation extension are forms of prior authorization. See WAC 388-501-0165-))~~

**"Timely"**~~((—))~~ means in relation to the provision of services, ~~((means))~~ an enrollee has the right to receive medically necessary ~~((health care))~~ healthcare as expeditiously as the enrollee's health condition requires. In relation to authorization of services and grievances and appeals, "timely" means according to the department's managed care program contracts and the time frames stated in this chapter.

**"Washington Medicaid integration partnership" or "WMIP"**~~((—))~~ means the managed care program that is designed to integrate medical, mental health, chemical dependency treatment, and long-term care services into a single coordinated health plan for eligible aged, blind, or disabled clients.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-060 Managed care and choice.** (1) Except as provided in subsection (2) of this section, the department requires a client to enroll in managed care when that client:

(a) Is eligible for one of the medical assistance programs for which enrollment is mandatory;

(b) Resides in an area where enrollment is mandatory; and

(c) Is not exempt from managed care enrollment or the department has not ended the client's managed care enrollment, consistent with WAC 388-538-130, and any related hearing has been held and decided.

(2) American Indian/Alaska Native (AI/AN) clients who meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants may choose one of the following:

(a) Enrollment with a managed care organization (MCO) available in their area;

(b) Enrollment with an Indian or tribal primary care case management (PCCM) provider available in their area; or

(c) The department's fee-for-service system.

(3) ~~((A client may))~~ To enroll with an MCO or PCCM provider ((by calling the department's toll-free enrollment line or by sending a completed enrollment form to the department's unit responsible for managed care enrollment as listed on the department's enrollment form-)), a client may:

(a) ~~((A client must enroll with an MCO or PCCM provider available in the area where the client lives-))~~ Call the department's toll-free enrollment line at 800-562-3022;

(b) ~~((All family members must either enroll with the same MCO or enroll with PCCM providers-))~~ Mail a postage-paid completed managed care enrollment form (healthy options sign-up form, DSHS 13-664) to the department's unit responsible for managed care enrollment; or

(c) ~~((Enrollees may request an MCO or PCCM provider change at any time))~~ Fax the managed care enrollment form (healthy options sign-up form, DSHS 13-664) to the department at 360-725-2144.

(4) A client must enroll with an MCO provider available in the area where the client resides

(5) All family members of an enrollee placed in the patient review and coordination (PRC) program under WAC 388-501-0135 must enroll with the same MCO but may enroll in a different MCO than the family member placed in the PRC program.

~~((4))~~ (6) When a client requests enrollment with an MCO or PCCM provider, the department enrolls a client effective the earliest possible date given the requirements of the department's enrollment system. The department does not enroll clients retrospectively.

~~((4))~~ (7) The department assigns a client who does not choose an MCO or PCCM provider as follows:

(a) If the client has a family member((s)) or family members enrolled with an MCO, the client is enrolled with that MCO;

(b) If the client does not have a family member or family members enrolled with an MCO that is currently under contract with the department, and the client was previously enrolled with the MCO or PCCM provider, and the department can identify the previous enrollment, the client is reenrolled with the same MCO or PCCM provider;

(c) ~~((If a client does not choose an MCO or a PCCM provider, but indicates a preference for a provider to serve as the client's primary care provider (PCP), the department attempts~~

~~to contact the client to complete the required choice. If the department is not able to contact the client in a timely manner, the department documents the attempted contacts and, using the best information available, assigns the client as follows. If the client's preferred PCP is:~~

~~(i) Available with one MCO, the department assigns the client in the MCO where the client's PCP provider is available. The MCO is responsible for PCP choice and assignment;~~

~~(ii) Available only as a tribal PCCM provider and the client meets the criteria of subsection (2) of this section, the department assigns the client to the preferred provider as the client's PCCM provider;~~

~~(iii) Available with multiple MCOs or through an MCO and as a PCCM provider, the department assigns the client to an MCO as described in (d) of this subsection;~~

~~(iv) Not available through any MCO or as a PCCM provider, the department assigns the client to an MCO or PCCM provider as described in (d) of this subsection.~~

~~((4))~~ If the client cannot be assigned according to (a)((s)) or (b)((s) or (e)) of this subsection, the department assigns the client as follows:

(i) If an AI/AN client does not choose an MCO or PCCM provider, the department assigns the client to a tribal PCCM provider if that client ~~((lives))~~ resides in a zip code served by a tribal PCCM provider. If there is no tribal PCCM provider in the client's area, the client continues to be served by the department's fee-for-service system. A client assigned under this subsection may request to end enrollment at any time.

(ii) If a non-AI/AN client does not choose an MCO provider, the department assigns the client to an MCO available in the area where the client ~~((lives))~~ resides. The MCO is responsible for primary care provider (PCP) choice and assignment.

(iii) For clients who are new recipients ~~((to medical assistance))~~ or who have had a break in eligibility of greater than two months, the department sends a written notice to each household of one or more clients who are assigned to an MCO or PCCM provider. The assigned client has ten calendar days to contact the department to change the MCO or PCCM provider assignment before enrollment is effective. The notice includes the name of the MCO or PCCM provider to which each client has been assigned, the effective date of enrollment, the date by which the client must respond in order to change the assignment, and the toll-free telephone number of either:

(A) The MCO (for enrollees assigned to an MCO); or

(B) The department (for enrollees assigned to a PCCM provider).

(iv) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent.

~~((5))~~ (8) The department helps facilitate the choice of a PCP by providing information regarding available providers in the MCOs in the client's service area.

(9) An MCO enrollee's selection of ((the enrollee's)) a PCP or ((the enrollee's)) assignment to a PCP occurs as follows:

(a) An MCO enrollee((s)) may choose:



(i) A PCP or clinic that is in the enrollee's MCO and accepting new enrollees; or

(ii) A different PCP(s) or clinic(s) participating with the enrollee's MCO for different family members.

(b) The MCO assigns a PCP or clinic that meets the access standards set forth in the relevant managed care contract if the enrollee does not choose a PCP or clinic(s).

(c) An MCO enrollee(s) may change PCPs or clinics in an MCO for any reason, with the change becoming effective no later than the beginning of the month following the enrollee's request(s).

(d) ~~(In accordance with this subsection,)~~ An MCO enrollee(s) may file a grievance with the MCO (and may change plans) if the MCO does not approve an enrollee's request to change PCPs or clinics.

(e) MCO enrollees required to participate in the department's PRC program may be limited in their right to change PCPs (see WAC 388-501-0135).

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-061 Voluntary enrollment into managed care—Washington Medicaid integration partnership (WMIP) ~~(or Medicare/Medicaid integration program (MMIP))~~.** (1) The purpose of this section is to describe the managed care requirements for clients eligible for ~~(either)~~ the Washington Medicaid Integration Partnership (WMIP) ~~(or the Medicare/Medicaid Integration Program (MMIP))~~.

(2) Unless otherwise stated in this section, all of the provisions of chapter 388-538 WAC apply to clients enrolled in WMIP ~~(and MMIP)~~.

(3) The following sections of chapter 388-538 WAC do not apply to WMIP enrollees ~~(or MMIP enrollees)~~:

(a) WAC 388-538-060. However, WAC ~~(388-538-060(5))~~ 388-538-060(9), describing enrollees' ability to choose their PCP, does apply to WMIP enrollees ~~(and MMIP enrollees)~~;

(b) WAC 388-538-063;

(c) WAC 388-538-065;

(d) WAC 388-538-068; and

(e) WAC 388-538-130. However, WAC 388-538-130 (3) and (4), describing the process used when the department receives a request from an MCO to remove an enrollee from enrollment in managed care, do apply to WMIP enrollees ~~(and MMIP enrollees)~~. Also, WAC 388-538-130(9), describing the MCO's ability to refer enrollees to the department's "Patient Review and ~~(Restriction)~~ Coordination" program, does apply to WMIP enrollees ~~(and MMIP enrollees)~~.

(4) The process for enrollment of WMIP ~~(and MMIP)~~ clients is as follows:

(a) Enrollment in WMIP ~~(and MMIP)~~ is voluntary, subject to program limitations in ~~(subsection)~~ (b) and ~~((e))~~ (d) of this subsection.

(b) For WMIP, the department automatically enrolls clients, with the exception of American Indian/Alaska natives and clients eligible for both Medicare and Medicaid, when they:

(i) Are aged, blind, or disabled;

(ii) Are twenty-one years of age or older; and

(iii) Receive categorically needy medical assistance.

~~(c) ((For MMIP, clients may enroll when they:~~

~~(i) Are sixty five years of age or older; and~~

~~(ii) Receive Medicare and/or Medicaid.~~

~~(d)) American Indian/Alaska native (AI/AN) clients and clients who are eligible for both Medicare and Medicaid who meet the eligibility criteria in (b) ~~((or (e)))~~ of this subsection may voluntarily enroll or end enrollment in WMIP ~~((or MMIP))~~ at any time.~~

~~((e))~~ (d) The department will not enroll a client in WMIP ~~((or MMIP))~~, or will end an enrollee's enrollment in WMIP ~~((or MMIP))~~ when the client has, or becomes eligible for, CHAMPUS/TRICARE or any other third-party ~~((health care))~~ healthcare coverage that would:

(i) Require the department to either exempt the client from enrollment in managed care; or

(ii) End the enrollee's enrollment in managed care.

~~((f))~~ (e) A client or enrollee in WMIP ~~((or MMIP))~~, or the client's or enrollee's representative, may end enrollment from the MCO at any time without cause. The client may then reenroll at any time with the MCO. The department ends enrollment for clients prospectively to the first day of the month following the request to end enrollment, except as provided in ~~(subsection (g))~~ (f) of this subsection.

~~((g) Clients)~~ (f) A client or enrollee may request that the department retroactively end enrollment from WMIP ~~((and MMIP))~~. On a case-by-case basis, the department may retroactively end enrollment from WMIP ~~((and MMIP))~~ when, in the department's judgment:

(i) The client or enrollee has a documented and verifiable medical condition; and

(ii) Enrollment in managed care could cause an interruption of on-going treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(5) In addition to the scope of medical care services described in WAC 388-538-095, WMIP ~~(and MMIP are designed to include the following services:~~

~~(a) For WMIP enrollees—))~~ includes mental health, chemical dependency treatment, and long-term care services ~~(and~~

~~(b) For MMIP enrollees—long term care services)).~~

(6) The department sends each client written information about covered services when the client is eligible to enroll in WMIP ~~((or MMIP))~~, and any time there is a change in covered services. In addition, the department requires MCOs to provide new enrollees with written information about covered services. This notice informs the client about the right to end enrollment and how to do so.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-067 Managed care provided through managed care organizations (MCOs).** (1) Managed care organizations (MCOs) may contract with the department to provide prepaid ~~((health care))~~ healthcare services to eligible clients. The MCOs must meet the qualifications in this sec-

tion to be eligible to contract with the department. The MCO must:

(a) Have a certificate of registration from the office of the insurance commissioner (OIC) that allows the MCO to provide the healthcare services (~~(in subsection (1) of this section)~~);

(b) Accept the terms and conditions of the department's managed care contract;

(c) Be able to meet the network and quality standards established by the department; and

(d) Accept the prepaid rates published by the department.

(2) The department reserves the right not to contract with any otherwise qualified MCO.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-068 Managed care provided through primary care case management (PCCM).** A provider may contract with the department as a primary care case management (PCCM) provider to coordinate (~~(health care)~~) healthcare services to eligible clients under the department's managed care program. The PCCM provider or the individual providers in a PCCM group or clinic must:

(1) Have a core provider agreement with the department;

(2) Be a recognized urban Indian health center or tribal clinic;

(3) Accept the terms and conditions of the department's PCCM contract;

(4) Be able to meet the quality standards established by the department; and

(5) Accept PCCM rates published by the department.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-070 Managed care payment.** (1) The department pays managed care organizations (MCOs) monthly capitated premiums that:

(a) Have been (~~(determined using generally accepted actuarial methods)~~) developed in accordance with generally accepted actuarial principles and practices;

(b) Are appropriate for the populations to be covered and the services to be furnished under the MCO contract;

(c) Have been certified by actuaries who meet the qualification standards established by the American Academy of Actuaries and follow the practice standards established by the Actuarial Standards Board;

(d) Are based on historical analysis of financial cost and/or rate information; and

~~((e))~~ (e) Are paid based on legislative allocations.

(2) The department pays primary care case management (PCCM) providers a monthly case management fee according to contracted terms and conditions.

(3) The department does not pay providers under the fee-for-service system for (~~(services)~~) a service that (~~(are)~~) is the MCO's responsibility, even if the MCO has not paid for the service for any reason. The MCO is solely responsible for payment of MCO-contracted (~~(health care)~~) healthcare services.

(4) The department pays an enhancement rate to federally qualified (~~(health care)~~) healthcare centers (FQHC) and rural health clinics (RHC) for each client enrolled with MCOs through the FQHC or RHC. The enhancement rate from the department is in addition to the negotiated payments FQHCs and RHCs receive from the MCOs for services provided to MCO enrollees.

(5) The department pays MCOs a delivery case rate, separate from the capitation payment, when an enrollee delivers a child(ren) and the MCO pays for any part of labor and delivery.

**AMENDATORY SECTION** (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

**WAC 388-538-095 Scope of care for managed care enrollees.** (1) Managed care enrollees are eligible for the scope of medical care services as described in WAC 388-501-0060 for categorically needy clients.

(a) A client is entitled to timely access to medically necessary services as defined in WAC 388-500-0005.

(b) The managed care organization (MCO) covers the services included in the MCO contract for MCO enrollees. MCOs may, at their discretion, cover additional services not required under the MCO contract. However, the department may not require the MCO to cover any additional services outside the scope of services negotiated in the MCO's contract with the department.

(c) The department covers medically necessary services described in WAC 388-501-0060 and 388-501-0065 that are excluded from coverage in the MCO contract.

(d) The department covers services through the fee-for-service system for enrollees with a primary care case management (PCCM) provider. Except for emergencies, the PCCM provider must either provide the covered services needed by the enrollee, or refer the enrollee to other providers who are contracted with the department for covered services. The PCCM provider is responsible for instructing the enrollee regarding how to obtain the services that are referred by the PCCM provider. (~~(The)~~) Services that require PCCM provider referral are described in the PCCM contract. The department informs an enrollee(s) about the enrollee's program coverage, limitations to covered services, and how to obtain covered services.

(e) MCO enrollees may obtain (~~(certain)~~) specific services described in the managed care contract from either an MCO provider or from a (~~(department-enrolled)~~) provider with a (~~(current core provider)~~) separate agreement with the department without needing to obtain a referral from the PCP or MCO. These services (~~(are described in the managed care contract, and)~~) are communicated to enrollees by the department and MCOs as described in (f) of this subsection.

(f) The department sends each client written information about covered services when the client is required to enroll in managed care, and any time there is a change in covered services. This information describes covered services, which services are covered by the department, and which services are covered by MCOs. In addition, the department requires MCOs to provide new enrollees with written information about covered services.

(2) For services covered by the department through PCCM contracts for managed care:

(a) The department covers medically necessary services included in the categorically needy scope of care and rendered by providers who have a current core provider agreement with the department to provide the requested service;

(b) The department may require the PCCM provider to obtain authorization from the department for coverage of nonemergency services;

(c) The PCCM provider determines which services are medically necessary;

(d) An enrollee may request a hearing for review of PCCM provider or the department coverage decisions (see WAC 388-538-110); and

(e) Services referred by the PCCM provider require an authorization number in order to receive payment from the department.

(3) For services covered by the department through contracts with MCOs:

(a) The department requires the MCO to subcontract with a sufficient number of providers to deliver the scope of contracted services in a timely manner. Except for emergency services, MCOs provide covered services to enrollees through their participating providers;

(b) The department requires MCOs to provide new enrollees with written information about how enrollees may obtain covered services;

(c) For nonemergency services, MCOs may require the enrollee to obtain a referral from the primary care provider (PCP), or the provider to obtain authorization from the MCO, according to the requirements of the MCO contract;

(d) MCOs and their providers determine which services are medically necessary given the enrollee's condition, according to the requirements included in the MCO contract;

(e) The department requires the MCO to coordinate benefits with other insurers in a manner that does not reduce benefits to the enrollee or result in costs to the enrollee;

(f) A managed care enrollee does not need a PCP referral to receive women's ~~((health care))~~ healthcare services, as described in RCW 48.42.100, from any women's ~~((health care))~~ healthcare provider participating with the MCO. Any covered services ordered and/or prescribed by the women's ~~((health care))~~ healthcare provider must meet the MCO's service authorization requirements for the specific service.

(g) For enrollees temporarily outside their MCO~~((s))~~ services area, the MCO is required to cover enrollees for up to ninety days for emergency care and medically necessary covered benefits that cannot wait until the enrollees return to their MCO services area.

(4) Unless the MCO chooses to cover these services, or an appeal, independent review, or a hearing decision reverses an MCO or department denial, the following services are not covered:

(a) For all managed care enrollees:

(i) Services that are not medically necessary~~((; and))~~.

(ii) Services not included in the categorically needy scope of services~~((; and))~~.

(iii) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions.

(b) For MCO enrollees:

(i) Services received from a participating specialist that require prior authorization from the MCO, but were not authorized by the MCO~~((; and))~~.

(ii) Services received from a nonparticipating provider that require prior authorization from the MCO that were not authorized by the MCO. All nonemergency services covered under the MCO contract and received from nonparticipating providers require prior authorization from the MCO.

(c) For PCCM enrollees, services that require a referral from the PCCM provider as described in the PCCM contract, but were not referred by the PCCM provider.

(5) A provider may bill an enrollee for noncovered services as described in subsection (4) of this section, if the requirements of WAC 388-502-0160 are met. ~~((The provider must give the original agreement to the enrollee and file a copy in the enrollee's record.~~

~~((a) The agreement must state all of the following:~~

~~((i) The specific service to be provided;~~

~~((ii) That the service is not covered by either the department or the MCO;~~

~~((iii) An explanation of why the service is not covered by the MCO or the department, such as:~~

~~((A) The service is not medically necessary; or~~

~~((B) The service is covered only when provided by a participating provider.~~

~~((iv) The enrollee chooses to receive and pay for the service; and~~

~~((v) Why the enrollee is choosing to pay for the service, such as:~~

~~((A) The enrollee understands that the service is available at no cost from a provider participating with the MCO, but the enrollee chooses to pay for the service from a provider not participating with the MCO;~~

~~((B) The MCO has not authorized emergency department services for nonemergency medical conditions and the enrollee chooses to pay for the emergency department's services rather than wait to receive services at no cost in a participating provider's office; or~~

~~((C) The MCO or PCCM has determined that the service is not medically necessary and the enrollee chooses to pay for the service.~~

~~((b) For enrollees with limited English proficiency, the agreement must be translated or interpreted into the enrollee's primary language to be valid and enforceable.~~

~~((c) The agreement is void and unenforceable, and the enrollee is under no obligation to pay the provider, if the service is covered by the department or the MCO as described in subsection (1) of this section, even if the provider is not paid for the covered service because the provider did not satisfy the payor's billing requirements:))~~

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-100 Managed care emergency services.** (1) A managed care enrollee may obtain emergency

services, for emergency medical conditions from any qualified Medicaid provider. ("Emergency services" and "emergency medical condition" are ((as)) defined in ((this chapter)) WAC 388-538-050.)

(a) The managed care organization (MCO) covers emergency services for MCO enrollees.

(b) The department covers emergency services for primary care case management (PCCM) enrollees.

(2) Emergency services for emergency medical conditions do not require prior authorization by the MCO, primary care provider (PCP), PCCM provider, or the department.

(3) MCOs must cover all emergency services provided to an enrollee by a provider who is qualified to furnish Medicaid services, without regard to whether the provider is a participating or nonparticipating provider.

(4) An enrollee who requests emergency services is entitled to receive an exam to determine if the enrollee has an emergency medical condition. What constitutes an emergency medical condition may not be limited on the basis of diagnosis or symptoms.

(5) The MCO must cover emergency services provided to an enrollee when:

(a) The enrollee had an emergency medical condition, including cases in which the absence of immediate medical attention would not have had the outcomes specified in the definition of an emergency medical condition; and

(b) The plan provider or other MCO representative instructs the enrollee to seek emergency services.

(6) In any disagreement between a hospital and the MCO about whether the enrollee is stable enough for discharge or transfer, or whether the medical benefits of an unstabilized transfer outweigh the risks, the judgment of the attending physician(s) actually caring for the enrollee at the treating facility prevails.

(7) Under 42 C.F.R. 438.114, the enrollee's MCO must cover and pay for:

(a) Emergency services provided to enrollees by an emergency room provider, hospital or fiscal agent outside the managed care system; and

(b) Any screening and treatment the enrollee requires subsequent to the provision of the emergency services.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-110 The grievance system for managed care organizations (MCO).** (1) This section contains information about the grievance system for managed care organization (MCO) enrollees, which includes grievances and appeals. See WAC 388-538-111 for information about the grievance system for PCCM enrollees, which includes grievances and appeals.

(2) An MCO enrollee may voice a grievance or appeal an action by an MCO to the MCO either orally or in writing.

(3) MCOs must maintain records of grievances and appeals and must review the information as part of the MCO's quality strategy.

(4) MCOs must provide information describing the MCO's grievance system to all providers and subcontractors.

(5) Each MCO must have a grievance system in place for enrollees. The system must comply with the requirements of this section and the regulations of the state office of the insurance commissioner (OIC). If a conflict exists between the requirements of this chapter and OIC regulations, the requirements of this chapter take precedence. The MCO grievance system must include all of the following:

(a) A grievance process for complaints about any matter other than an action, as defined in WAC 388-538-050. See subsection (6) of this section for this process;

(b) An appeal process for an action, as defined in WAC 388-538-050. See subsection (7) of this section for the standard appeal process and subsection (8) of this section for the expedited appeal process;

(c) Access to the department's hearing process for actions as defined in WAC 388-538-050. The department's hearing process described in chapter 388-02 WAC applies to this chapter. Where conflicts exist, the requirements in this chapter take precedence. See WAC 388-538-112 for the department's hearing process for MCO enrollees;

(d) Access to an independent review (IR) as described in RCW 48.43.535, for actions as defined in WAC 388-538-050 (see WAC 388-538-112 for additional information about the IR); and

(e) Access to the board of appeals (BOA) for actions as defined in WAC 388-538-050 (also see chapter 388-02 WAC and WAC 388-538-112).

(6) The MCO grievance process:

(a) Only an enrollee may file a grievance with an MCO; a provider may not file a grievance on behalf of an enrollee.

(b) To ensure the rights of MCO enrollees are protected, each MCO's grievance process must be approved by the department.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MCO's grievance process, including how to use the department's hearing process. The MCOs must have department approval for all written information the MCO sends to enrollees.

(d) The MCO must give enrollees any assistance necessary in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers).

(e) The MCO must acknowledge receipt of each grievance either orally or in writing, and each appeal in writing, within five working days.

(f) The MCO must ensure that the individuals who make decisions on grievances are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are ((health-care)) healthcare professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) A grievance regarding denial of an expedited resolution of an appeal; or

(B) A grievance involving clinical issues.

(g) The MCO must complete the disposition of a grievance and notice to the affected parties within ninety days of receiving the grievance.

(7) The MCO appeal process:

(a) An MCO enrollee, or the enrollee's representative with the enrollee's written consent, may appeal an MCO action.

(b) To ensure the rights of MCO enrollees are protected, each MCO's appeal process must be approved by the department.

(c) MCOs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MCO's appeal process and the department's hearing process. The MCOs must have department approval for all written information the MCO sends to enrollees.

(d) For standard service authorization decisions, an enrollee must file an appeal, either orally or in writing, within ninety calendar days of the date on the MCO's notice of action. This also applies to an enrollee's request for an expedited appeal.

(e) For appeals for termination, suspension, or reduction of previously authorized services, if the enrollee is requesting continuation of services, the enrollee must file an appeal within ten calendar days of the date of the MCO mailing the notice of action. Otherwise, the time frames in subsection (7)(d) of this section apply.

(f) The MCO's notice of action must:

- (i) Be in writing;
- (ii) Be in the enrollee's primary language and be easily understood as required in 42 C.F.R. 438.10 (c) and (d);
- (iii) Explain the action the MCO or its contractor has taken or intends to take;
- (iv) Explain the reasons for the action;
- (v) Explain the enrollee's or the enrollee's representative's right to file an MCO appeal;
- (vi) Explain the procedures for exercising the enrollee's rights;
- (vii) Explain the circumstances under which expedited resolution is available and how to request it (also see subsection (8) of this section);
- (viii) Explain the enrollee's right to have benefits continue pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services (also see subsection (9) of this section); and

(ix) Be mailed as expeditiously as the enrollee's health condition requires, and as follows:

(A) For denial of payment, at the time of any action affecting the claim. This applies only when the client can be held liable for the costs associated with the action.

(B) For standard service authorization decisions that deny or limit services, not to exceed fourteen calendar days following receipt of the request for service, with a possible extension of up to fourteen additional calendar days if the enrollee or provider requests extension. If the request for extension is granted, the MCO must:

(I) Give the enrollee written notice of the reason for the decision for the extension and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(II) Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(C) For termination, suspension, or reduction of previously authorized services, ten days prior to such termination, suspension, or reduction, except if the criteria stated in 42 C.F.R. 431.213 and 431.214 are met. The notice must be mailed by a method which certifies receipt and assures delivery within three calendar days.

(D) For expedited authorization decisions, in cases where the provider indicates or the MCO determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, no later than three calendar days after receipt of the request for service.

(g) The MCO must give enrollees any assistance necessary in taking procedural steps for an appeal (e.g., interpreter services and toll-free numbers).

(h) The MCO must acknowledge receipt of each appeal.

(i) The MCO must ensure that the individuals who make decisions on appeals are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are ~~((health-care))~~ healthcare professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) An appeal of a denial that is based on lack of medical necessity; or

(B) An appeal that involves clinical issues.

(j) The process for appeals must:

(i) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal), and must be confirmed in writing, unless the enrollee or provider requests an expedited resolution. Also see subsection (8) for information on expedited resolutions;

(ii) Provide the enrollee a reasonable opportunity to present evidence, and allegations of fact or law, in person as well as in writing. The MCO must inform the enrollee of the limited time available for this in the case of expedited resolution;

(iii) Provide the enrollee and the enrollee's representative opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, and any other documents and records considered during the appeal process; and

(iv) Include as parties to the appeal, the enrollee and the enrollee's representative, or the legal representative of the deceased enrollee's estate.

(k) MCOs must resolve each appeal and provide notice, as expeditiously as the enrollee's health condition requires, within the following time frames:

(i) For standard resolution of appeals and notice to the affected parties, no longer than forty-five calendar days from the day the MCO receives the appeal. This time frame may not be extended.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than three calendar days after the MCO receives the appeal.

(iii) For appeals for termination, suspension, or reduction of previously authorized services, no longer than forty-five calendar days from the day the MCO receives the appeal.

(l) The notice of the resolution of the appeal must:

(i) Be in writing. For notice of an expedited resolution, the MCO must also make reasonable efforts to provide oral notice (also see subsection (8) of this section).

(ii) Include the results of the resolution process and the date it was completed.

(iii) For appeals not resolved wholly in favor of the enrollee:

(A) Include information on the enrollee's right to request a department hearing and how to do so (also see WAC 388-538-112);

(B) Include information on the enrollee's right to receive services while the hearing is pending and how to make the request (also see subsection (9) of this section); and

(C) Inform the enrollee that the enrollee may be held liable for the cost of services received while the hearing is pending, if the hearing decision upholds the MCO's action (also see subsection (10) of this section).

(m) If an MCO enrollee does not agree with the MCO's resolution of the appeal, the enrollee may file a request for a department hearing within the following time frames (see WAC 388-538-112 for the department's hearing process for MCO enrollees):

(i) For hearing requests regarding a standard service, within ninety days of the date of the MCO's notice of the resolution of the appeal.

(ii) For hearing requests regarding termination, suspension, or reduction of a previously authorized service, within ten days of the date on the MCO's notice of the resolution of the appeal.

(n) The MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing(+) with the department.

(8) The MCO expedited appeal process:

(a) Each MCO must establish and maintain an expedited appeal review process for appeals when the MCO determines (for a request from the enrollee) or the provider indicates (in making the request on the enrollee's behalf or supporting the enrollee's request), that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.

(b) When approving an expedited appeal, the MCO will issue a decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the appeal.

(c) The MCO must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(d) If the MCO denies a request for expedited resolution of an appeal, it must:

(i) Transfer the appeal to the time frame for standard resolution; and

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

(9) Continuation of previously authorized services:

(a) The MCO must continue the enrollee's services if all of the following apply:

(i) The enrollee or the provider files the appeal on or before the later of the following:

(A) Unless the criteria in 42 C.F.R. 431.213 and 431.214 are met, within ten calendar days of the MCO mailing the notice of action, which for actions involving services previously authorized, must be delivered by a method which certifies receipt and assures delivery within three calendar days; or

(B) The intended effective date of the MCO's proposed action.

(ii) The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(iii) The services were ordered by an authorized provider;

(iv) The original period covered by the original authorization has not expired; and

(v) The enrollee requests an extension of services.

(b) If, at the enrollee's request, the MCO continues or reinstates the enrollee's services while the appeal is pending, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the appeal;

(ii) Ten calendar days pass after the MCO mails the notice of the resolution of the appeal and the enrollee has not requested a department hearing (with continuation of services until the department hearing decision is reached) within the ten days;

(iii) Ten calendar days pass after the state office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee and the enrollee has not requested an independent review (IR) within the ten days (see WAC 388-538-112);

(iv) Ten calendar days pass after the IR mails a decision adverse to the enrollee and the enrollee has not requested a review with the board of appeals within the ten days (see WAC 388-538-112);

(v) The board of appeals issues a decision adverse to the enrollee (see WAC 388-538-112); or

(vi) The time period or service limits of a previously authorized service has been met.

(c) If the final resolution of the appeal upholds the MCO's action, the MCO may recover the amount paid for the services provided to the enrollee while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.

(10) Effect of reversed resolutions of appeals:

(a) If the MCO or OAH reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MCO must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

(b) If the MCO or OAH reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the MCO must pay for those services.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-111 Primary care case management (PCCM) grievances and appeals.** (1) This section contains information about the grievance system for primary care case

management (PCCM) enrollees, which includes grievances and appeals. See WAC 388-538-110 for information about the grievance system for managed care organization (MCO) enrollees.

(2) A PCCM enrollee may voice a grievance or file an appeal, either orally or in writing. PCCM enrollees use the department's grievance and appeal processes.

(3) The grievance process for PCCM enrollees;

(a) A PCCM enrollee may file a grievance with the department. A provider may not file a grievance on behalf of a PCCM enrollee.

(b) The department provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (7)(c).

(c) When a PCCM enrollee files a grievance with the department, the enrollee is entitled to:

(i) Any reasonable assistance in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers);

(ii) Acknowledgment of the department's receipt of the grievance;

(iii) A review of the grievance. The review must be conducted by a department representative who was not involved in the grievance issue; and

(iv) Disposition of a grievance and notice to the affected parties within ninety days of the department receiving the grievance.

(4) The appeal process for PCCM enrollees:

(a) A PCCM enrollee may file an appeal of a department action with the department. A provider may not file an appeal on behalf of a PCCM enrollee.

(b) The department provides PCCM enrollees with information equivalent to that described in WAC 388-538-110 (8)(c).

(c) The appeal process for PCCM enrollees follows that described in chapter 388-02 WAC. Where a conflict exists, the requirements in this chapter take precedence.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-112 The department of social and health services' (DSHS) hearing process for enrollee appeals of managed care organization (MCO) actions.** (1) The hearing process described in chapter 388-02 WAC applies to the hearing process described in this chapter. Where a conflict exists, the requirements in this chapter take precedence.

(2) ~~((A))~~ A managed care organization (MCO) enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing with the department. See WAC 388-538-110 for the MCO grievance system.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may file a request for a department hearing within the following time frames:

(a) For hearing requests regarding a standard service, within ninety calendar days of the date of the MCO's notice of the resolution of the appeal.

(b) For hearing requests regarding termination, suspension, or reduction of a previously authorized service, and the enrollee is requesting continuation of services, within ten calendar days of the date on the MCO's notice of the resolution of the appeal.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a department hearing.

(5) Expedited hearing process:

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH indicates that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH gives prompt oral notice to the enrollee followed by written notice within two calendar days of request and transfer the hearing to the time frame for a standard service.

(6) Parties to the hearing include the department, the MCO, the enrollee, and the enrollee's representative or the representative of a deceased enrollee's estate.

(7) If an enrollee disagrees with the hearing decision, then the enrollee may request an independent review (IR) in accordance with RCW 48.43.535.

(8) If there is disagreement with the IR decision, any party may request a review by the department's board of appeals (BOA) within twenty-one days of the IR decision. The department's BOA issues the final administrative decision.

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-120 Enrollee request for a second medical opinion.** (1) A ~~((managed care))~~ managed care enrollee has the right to a timely referral for a second opinion upon request when:

(a) The enrollee needs more information about treatment recommended by the provider or managed care organization (MCO); or

(b) The enrollee believes the MCO is not authorizing medically necessary care.

(2) A managed care enrollee has a right to a second opinion from a participating provider. At the MCO's discretion, a clinically appropriate nonparticipating provider who is agreed upon by the MCO and the enrollee may provide the second opinion.

(3) Primary care case management (PCCM) enrollees have a right to a timely referral for a second opinion by another provider who has a core provider agreement with the department.

AMENDATORY SECTION (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-130 Exemptions and ending enrollment in managed care.** (1) The department exempts a client from mandatory enrollment in managed care or ends an enrollee's enrollment in managed care (~~((also referred to as disenrollment))~~) as specified in this section.

(2) A client or enrollee, or the client's or enrollee's representative as defined in RCW 7.70.065, may request the department to exempt or end enrollment in managed care as described in this section.

(a) If a client requests exemption prior to the enrollment effective date, the client is not enrolled until the department approves or denies the request.

(b) If an enrollee requests to end enrollment, the enrollee remains enrolled pending the department's final decision, unless staying in managed care would adversely affect the enrollee's health status.

(c) The client or enrollee receives timely notice by telephone or in writing when the department approves or denies the client's or enrollee's request. The department follows a telephone denial by written notification. The written notice contains all of the following:

- (i) The action the department intends to take;
- (ii) The reason(s) for the intended action;
- (iii) The specific rule or regulation supporting the action;
- (iv) The client's or enrollee's right to request a hearing;

and

(v) A translation into the client's or enrollee's primary language when the client or enrollee has limited English proficiency.

(3) A managed care organization (MCO) or primary care case management (PCCM) provider may request the department to end enrollment. The request must be in writing and be sufficient to satisfy the department that the enrollee's behavior is inconsistent with the MCO's or PCCM provider's rules and regulations (e.g., intentional misconduct). The department does not approve a request to remove an enrollee from managed care when the request is solely due to an adverse change in the enrollee's health or the cost of meeting the enrollee's (~~(health care))~~ healthcare needs. The MCO or PCCM provider's request must include documentation that:

(a) The provider furnished clinically appropriate evaluation(s) to determine whether there is a treatable problem contributing to the enrollee's behavior;

(b) Such evaluation either finds no treatable condition to be contributing, or after evaluation and treatment, the enrollee's behavior continues to prevent the provider from safely or prudently providing medical care to the enrollee; and

(c) The enrollee received written notice of the provider's intent to request the enrollee's removal, unless the department has waived the requirement for provider notice because the enrollee's conduct presents the threat of imminent harm to others. The provider's notice must include:

(i) The enrollee's right to use the provider's grievance system as described in WAC 388-538-110 and 388-538-111; and

(ii) The enrollee's right to use the department's hearing process, after the enrollee has exhausted all grievance and

appeals available through the provider's grievance system (see WAC 388-538-110 and 388-538-111 for provider grievance systems, and WAC 388-538-112 for the hearing process for enrollees).

(4) When the department receives a request from an MCO or PCCM provider to remove an enrollee from enrollment in managed care, the department attempts to contact the enrollee for the enrollee's perspective. If the department approves the request, the department sends a notice at least ten days in advance of the effective date that enrollment will end. The notice includes:

(a) The reason the department approved ending enrollment; and

(b) Information about the enrollee's hearing rights.

(5) The department will exempt a client from mandatory enrollment or end an enrollee's enrollment in managed care when any of the following apply:

(a) The client or enrollee is receiving foster care placement services from the division of children and family services (DCFS);

(b) The client has or the enrollee becomes eligible for Medicare, basic health (BH), CHAMPUS/TRICARE, or any other third-party (~~(health care))~~ healthcare coverage comparable to the department's managed care coverage that would require exemption or involuntarily ending enrollment from:

(i) An MCO, in accordance with the department's managed care contract; or

(ii) A primary care case management (PCCM) provider, according to the department's PCCM contract.

(c) The enrollee is no longer eligible for managed care.

(6) The department will grant a client's request for exemption or an enrollee's request to end enrollment when:

(a) The client or enrollee is American Indian/Alaska native (AI/AN) as specified in WAC 388-538-060(2);

(b) The client or enrollee has been identified by the department as a child who meets the definition of "children with special (~~(health care))~~ healthcare needs";

(c) The client or enrollee is homeless or is expected to live in temporary housing for less than one hundred twenty days from the date of the request; or

(d) The client or enrollee speaks limited English or is hearing impaired and the client or enrollee can communicate with a provider who communicates in the client's or enrollee's language or in American sign language and is not available through the MCO and the MCO does not have a provider available who can communicate in the client's language and an interpreter is not available.

(7) On a case-by-case basis, the department may grant a client's request for exemption or an enrollee's request to end enrollment when, in the department's judgment, the client or enrollee has a documented and verifiable medical condition, and enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(8) Upon request, the department may exempt the client or end enrollment for the period of time the circumstances or conditions that lead to exemption or ending enrollment are expected to exist. The department may periodically review those circumstances or conditions to determine if they con-



tinue to exist. If the department approves the request for a limited time, the client or enrollee is notified in writing or by telephone of the time limitation, the process for renewing the exemption or the ending of enrollment.

~~((9) An MCO may refer enrollees to the department's patients requiring regulation (PRR) program according to WAC 388-501-0135.))~~

**AMENDATORY SECTION** (Amending WSR 06-03-081, filed 1/12/06, effective 2/12/06)

**WAC 388-538-140 Quality of care.** (1) To assure that managed care enrollees receive quality ~~((health care))~~ healthcare services, the department requires managed care organizations (MCOs) to comply with quality improvement standards detailed in the department's managed care contract. MCO's must:

(a) Have a clearly defined quality organizational structure and operation, including a fully operational quality assessment, measurement, and improvement program;

(b) Have effective means to detect over and under utilization of services;

(c) Maintain a system for provider and practitioner credentialing and recredentialing;

(d) Ensure that MCO subcontracts and the delegation of MCO responsibilities are in accordance with the department standards and regulations;

(e) Ensure MCO oversight of delegated entities responsible for any delegated activity to include:

(i) A delegation agreement with each entity describing the responsibilities of the MCO and the entity;

(ii) Evaluation of the entity prior to delegation;

(iii) An annual evaluation of the entity; and

(iv) Evaluation or regular reports and follow-up on issues out of compliance with the delegation agreement or the department's managed care contract specifications.

(f) Cooperate with a department-contracted, qualified independent external review organization (EQRO) conducting review activities as described in 42 C.F.R. 438.358;

(g) Have an effective mechanism to assess the quality and appropriateness of care furnished to enrollees with special ~~((health care))~~ healthcare needs;

(h) Assess and develop individualized treatment plans for enrollees with special ~~((health care))~~ healthcare needs which ensure integration of clinical and nonclinical disciplines and services in the overall plan of care;

(i) Submit annual reports to the department on performance measures as specified by the department;

(j) Maintain a health information system that:

(i) Collects, analyzes, integrates, and reports data as requested by the department;

(ii) Provides information on utilization, grievances and appeals, enrollees ending enrollment for reasons other than the loss of Medicaid eligibility, and other areas as defined by the department;

(iii) Collects data on enrollees, providers, and services provided to enrollees through an encounter data system, in a standardized format as specified by the department; and

(iv) Ensures data received from providers is adequate and complete by verifying the accuracy and timeliness of

reported data and screening the data for completeness, logic, and consistency.

(k) Conduct performance improvement projects designed to achieve significant improvement, sustained over time, in clinical care outcomes and services, and that involve the following:

(i) Measuring performance using objective quality indicators;

(ii) Implementing system changes to achieve improvement in service quality;

(iii) Evaluating the effectiveness of system changes;

(iv) Planning and initiating activities for increasing or sustaining performance improvement;

(v) Reporting each project status and the results as requested by the department; and

(vi) Completing each performance improvement project timely so as to generally allow aggregate information to produce new quality of care information every year.

(l) Ensure enrollee access to ~~((health care))~~ healthcare services;

(m) Ensure continuity and coordination of enrollee care; and

(n) Maintain and monitor availability of ~~((health care))~~ healthcare services for enrollees.

(2) The department may:

(i) Impose intermediate sanctions in accordance with 42 C.F.R. 438.700 and corrective action for substandard rates of clinical performance measures and for deficiencies found in audits and on-site visits;

(ii) Require corrective action for findings for noncompliance with any contractual state or federal requirements; and

(iii) Impose sanctions for noncompliance with any contractual, state, or federal requirements not corrected.

## WSR 08-09-031

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed April 9, 2008, 8:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-035.

Title of Rule and Other Identifying Information: WAC 308-93-010 Definitions, 308-93-055 Vessels from out-of-state operating in this state—Identification document required, 308-93-056 Out-of-country vessel operating in this state—Identification documents required, and 308-93-230 Procedure for perfecting security interest.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on May 28, 2008, at 1:30 p.m.

Date of Intended Adoption: June 24, 2008.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail [dbrown@dol.wa.gov](mailto:dbrown@dol.wa.gov), fax (360) 902-7821 or 902-7822, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Dale R. Brown by May 27, 2008, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to bring them into compliance with current law and update language to make it more understandable.

Reasons Supporting Proposal: Language was unclear and laws had changed.

Statutory Authority for Adoption: RCW 88.02.070, 88.02.100, and 88.02.030.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Gary VanCamp, 1125 Washington Street S.E., Olympia, WA, (360) 902-0122.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

April 7, 2008  
Mykel D. Gable  
Assistant Director  
Vehicle Services

**AMENDATORY SECTION** (Amending WSR 06-21-025, filed 10/9/06, effective 11/9/06)

**WAC 308-93-010 Definitions.** The following definitions apply to the rules in this chapter:

(1) "Bare boat" means a vessel rented without a captain or crew.

(2) "Carpenter certificate" means a certificate issued by a manufacturer describing the vessel and certifying the first conveyance of the vessel after its manufacture.

(3) "Certificate of ownership" means the ownership document issued by the department or other jurisdiction, sometimes referred to as a title.

(4) "Charter vessel" means a vessel rented with a crew.

(5) "Commercial fishing vessel" means a vessel primarily used for commercial or charter fishing.

(6) "Conveyance" means transfer of title of a vessel from one person to another.

(7) "Declaration of value form" means the department of licensing form used to declare the value for purposes of assessing excise tax when a vessel is acquired by lease, trade, gift, is homemade, or the most recent purchase price is not known.

(8) "Director" means the director of the department of licensing.

(9) "Display permit" means the document issued by the department, its agents or subagents, for display on the vessel for which it was issued under the authority of WAC 308-93-055 or 308-93-056.

(10) "Docking hull" means vessels that are powered by one or more personal watercrafts and are designed for use with personal watercraft.

(11) "Documented vessel" means a vessel that is documented by the United States Coast Guard and is issued a valid marine certificate.

(12) "Exclusively" means solely and without exception.

(13) (~~"Foreign vessel" means a vessel registered in accordance with the laws of another state or jurisdiction. Also referred to as "out of country."~~)

(14) "Houseboat" means any vessel as defined in RCW 88.02.010(1). For registration and certificate of ownership purposes, a houseboat does not include any building on a float used in whole or in part for human habitation as a single-family dwelling which is not powered by self-propulsion by mechanical means or wind.

(14) "Identification documents" means the vessel registration receipt and display permit issued under the authority of WAC 308-93-055 or 308-93-056.

(15) "Issuing authority" means the number system has not been approved by the Coast Guard or it is a state or other jurisdiction that has a vessel identification numbering system approved by the Coast Guard. (Also see definition for out-of-country vessel.)

(16) "Legal owner/secured party" means a person, business, or institution having a security interest in a vessel perfected in accordance with RCW 88.02.070.

(17) "Lifeboat" means watercraft used exclusively for lifesaving purposes.

(18) "Manufacturer's certificate of origin" (MCO) or "Manufacturer's statement of origin" (MSO) means a certificate issued by a manufacturer describing the vessel and certifying the first conveyance of the vessel after manufacture.

(19) "Natural person" means a human being.

(20) "Normal course of business" means a business practice specific to the purpose of the business by a legitimate, licensed business or its agents, employees, or contractors; and

(a) To verify the accuracy of personal information submitted by the individual to the business or its agencies, employees, or contractors; and

(b) If such information submitted is not correct or is no longer correct, to obtain correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against the individual. If acting as agent of lien holder, requestor must submit proof of contract with lien holder.

(21) "Out-of-country vessel" means a vessel registered or numbered by the laws of another country or has a valid United States (~~Customs Service~~) Cruising (~~License~~) Permit.

(22) "Overall length" means a straight-line measurement of the overall distance from the foremost point of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bowsprits, bumpkins or boomkins, rudders, outboard motor brackets, outdrive units, propellers, Stern Castles and similar fittings or attachments are not included in the measurement.

~~((22))~~ (23) "Paperless title" means electronic ownership record.

~~((23))~~ (24) "Person" includes every natural person, firm, copartnership, corporation, association or organization.

~~((24))~~ (25) "Personal watercraft" for the purpose of this rule has the same meaning as in RCW 79A.60.010, such as Jet Ski or Wet Bike.

~~((25))~~ (26) "Primarily" means the principal purpose for which a vessel is used when considered in conjunction with all of its uses.

~~((26))~~ (27) "Principal use" means when a vessel is used on waters of this state for one hundred eighty-three days or more.

~~((27))~~ (28) "Private investigator" means a person who is licensed under chapter 18.165 RCW and is employed by a private investigator agency for the purpose of investigation, escort or bodyguard services, or property loss prevention activities.

(29) "Propulsion machinery/mechanical power" means any device providing motion to a vessel through such means as combustion, steam, or electric machinery.

~~((28))~~ (30) "Racing vessel" is a vessel used exclusively in racing events.

~~((29))~~ (31) "Release of interest" means the act of signing over any ownership in a vessel. A notarized or certified release of interest is also a document relinquishing interest in a vessel.

~~((30))~~ (32) "Renewal notice" and "special mailer" means the notice to renew a vessel registration mailed by the department to the owner.

~~((31))~~ (33) "Tender" means watercraft used exclusively to furnish transportation from a larger vessel to shore and return.

~~((32))~~ (34) "Time share charters" means leased vessels where none of the parties leasing the vessel under a "time share" option agreement is acquiring an equity in the vessel and there is no option to buy.

~~((33))~~ (35) "United States (~~Customs Service~~) Cruising (~~License~~) Permit" also known as a "Cruising License" means an annual certificate issued by U.S. Customs Service under 19 C.F.R. Sec. 4.94, (~~which~~) that exempts pleasure boats from certain countries from formal entry and clearance procedures, from payment of tonnage tax and clearance fees at all but the first port of entry.

~~((34))~~ (36) "Use of waters" means to navigate, operate, employ, or moor any vessel upon the waters.

~~((35))~~ (37) "Unsolicited business contact" means (for public disclosure rules) a contact that is intended to result in or promote the sale of any goods or services to a person named in the disclosure information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(38) "Valid marine document" means a document issued by the Coast Guard which declares it to be a United States documented vessel.

~~((36))~~ (39) "Vessel data form" means the form, approved by the department, completed by the applicant describing the vessel.

~~((37))~~ (40) "Vessel seller's report of sale." A vessel seller's report of sale is a document that protects the seller from certain criminal and civil liabilities arising from use of the vessel by another person after the vessel has been sold or a change in ownership has occurred.

~~((38))~~ (41) "Washington vehicle licensing office" means a vehicle and vessel licensing office as an agent or subagent appointed under RCW 46.01.140.

(42) "Waters of this state" means any waters within the territorial limits of this state as defined in U.S. Code: Title 43, Section 1312.

AMENDATORY SECTION (Amending WSR 06-21-025, filed 10/9/06, effective 11/9/06)

**WAC 308-93-055 Vessels from out-of-state operating in this state—Identification document required.** (1) **What documentation must be carried aboard a vessel from another state (~~or out of country~~) when being operated upon the waters of this state?** The current (~~foreign vessel~~) out-of-state registration is valid for the first sixty consecutive days of operation. (~~In addition the following must apply:~~

(~~a~~) • The vessel must have been issued a valid number or registration under federal law or by an approved issuing authority of the state of principal operation, if the vessel is remaining in this state for personal use or enjoyment.

(~~b~~) • On or before the sixty-first consecutive day of use, the (~~foreign vessel~~) out-of-state owner must obtain a vessel sixty-day temporary identification document (~~issued by the department, its agents or subagents~~) from any Washington vehicle licensing office. This identification document is good for sixty consecutive days.

(~~c~~) • A second sixty-day temporary identification document must be purchased on or before the one hundred twenty-first day of use in this state.

• An out-of-state use permit issued by a vessel dealer under chapters 82.08, 88.02, and 82.12 RCW.

(2) **What must I provide to obtain a vessel sixty-day temporary identification document?**

(a) Proof of nonresidency by showing the vessel owner's out-of-state driver's license or out-of-state photo identification;

(b) A copy of the current (~~foreign~~) out-of-state vessel registration or current United States Coast Guard certificate of documentation;

(c) Date the vessel first came into the state;

(d) A nonrefundable identification document fee (~~of twenty-five dollars plus a filing fee and subagent fee, if applicable,~~) described in RCW 88.02.030 and other applicable fees per vessel sixty-day temporary identification document.

(3) **How many vessel sixty-day temporary identification documents may be obtained?** Not more than two may be obtained in any continuous twelve-month period for any single vessel. The twelve months begins on the date the vessel first entered this state.

(4) **How do I display the vessel sixty-day temporary identification document?**

(a) Keep aboard at all times when moored and during operation;

(b) Displayed in the windshield, side window, cockpit or operation area of the vessel, so that it is visible to law enforcement from either the dock or from the water;

(c) Protected from the weather.

(5) **If the vessel owner is not available, how do I obtain a vessel sixty-day temporary identification document?** The person applying for the vessel sixty-day temporary identification document must have a:

(a) Notarized/certified power of attorney from a registered owner of the vessel;

(b) Copy of the vessel owner's out-of-state driver's license or photo identification; and

(c) Copy of the out-of-state (~~(or out-of-country)~~) registration certificate.

AMENDATORY SECTION (Amending WSR 01-03-128, filed 1/23/01, effective 2/23/01)

**WAC 308-93-056 Out-of-country vessel operating in this state—Identification document required.** (1) **What documentation must be carried aboard an out-of-country vessel when being operated upon the waters of this state?**

(a) The current out-of-country vessel registration or a United States (~~(Customs Service)~~) Cruising (~~(License)~~) Permit is valid for the first sixty days of operation when the vessel is remaining in this state for personal use or enjoyment.

(b) The foreign vessel must have been issued a valid number or registration issued by a country other than the United States or a United States (~~(Customs Service)~~) Cruising (~~(License)~~) Permit.

(c) On or before the sixty-first consecutive day of use, the out-of-country vessel owner must obtain a vessel out-of-country permanent identification document issued by (~~the department, its agents or subagents~~) any Washington vehicle licensing office; or

(d) An out-of-state use permit issued by a vessel dealer under chapters 82.08, 88.02, and 88.12 RCW.

(2) **What must I provide to obtain a vessel out-of-country permanent identification document?** You must provide the following:

(a) Proof of identification as described in WAC 308-56A-275(2);

(b) A copy of the current foreign vessel registration or current United States Coast Guard certificate of documentation;

(c) Date the vessel first came into the state;

(d) A nonrefundable identification document fee (~~(of twenty-five dollars plus a filing fee and subagent fee, if applicable)~~) described in RCW 88.02.030 and other applicable fees.

(3) **How many vessel out-of-country permanent identification document(~~s~~) certificates may be obtained?** One(~~s~~). The vessel out-of-country permanent identification document is valid as long as the vessel continues to be registered in a country other than the United States or has a United States (~~(Customs Service)~~) Cruising (~~(License)~~) Permit. New owners may apply for a corrected vessel out-of-country permanent identification document listing the new owner's name and address. The new owner shall pay a nonrefundable fee of three dollars plus a filing fee and subagent fee, if applicable.

If the original out-of-country identification document is lost or destroyed, the owner must apply for a replacement.

(4) **How do I display the vessel out-of-country permanent identification document?** The vessel out-of-country permanent identification document must be:

(a) Kept aboard the vessel at all times when moored and during operation;

(b) Displayed in the windshield, side window, cockpit or operation area of the vessel, so that it is visible to law enforcement from either the dock or from the water;

(c) Protected from the weather.

(5) **If the vessel owner is not available, how do I obtain a vessel out-of-country permanent identification document?** If the vessel owner is not available, the person applying for the vessel out-of-country permanent identification document must have a:

(a) Notarized/certified power of attorney from a registered owner of the vessel;

(b) Copy of the valid registration numbers issued by a country other than the United States or a United States (~~(Customs Service)~~) Cruising (~~(License)~~) Permit.

AMENDATORY SECTION (Amending WSR 03-15-019, filed 7/8/03, effective 8/8/03)

**WAC 308-93-230 Procedure for perfecting security interest.** (1) **How is the security interest in a vessel perfected?**

A security interest in a vessel is perfected when the requirements similar to RCW 46.12.095 for vehicles is followed. Security interest in a vessel (other than one held as inventory by a manufacturer or a dealer and for which a certificate of ownership is required) is perfected only by completing the requirements of RCW 46.12.103 for vessels under the circumstances provided for in this section:

(a) The existing certificate and application for certificate of ownership containing the name and address of the secured party is received by the department with required fees; or

(b) The secured interest is perfected as of the time of its creation if the secured party's name and address appear on the outstanding certificate of ownership when received in (a) of this subsection with appropriate fees; or

(c) The vessel is subject to a security interest when brought into this state. The perfection of the security interest is determined by the jurisdiction in which the vessel was either purchased, registered and/or titled and the security interest is attached.

If perfected through the laws of another jurisdiction, the following applies:

(i) If the name of the secured party is shown on the existing certificate of ownership issued by that jurisdiction, the security interest continues perfected in this state.

(ii) If the security interest was not perfected under the law of the jurisdiction where the vessel was when the security interest was attached, it may be perfected in this state, in that case perfection dates from the time of perfection in this state.

The application must be in the same manner as provided for vehicles and WAC 308-93-069 and 308-93-070 as provided for vessels.

**(2) When would the department of licensing not issue a certificate of ownership?**

(a) Vessels that are documented in compliance with federal regulations are issued a registration and are not issued a certificate of ownership; or

(b) When ownership in doubt; or

(c) The out-of-state lien holder retains title.

**(3) What fees are charged for adding, deleting or changing a secured party?**

An application fee and filing fee are due for each transaction. ~~Some Washington vehicle licensing offices charge an additional service fee ((is charged if a licensing subagent processes the transaction as))~~ referenced in RCW 88.02.070.

**(4) What is the secured party's obligation when the lien has been satisfied?**

When a certificate of ownership is required, the secured party must comply with RCW 46.12.170 as provided for vehicles, and WAC 308-93-069 and 308-93-070 as provided for vessels and pay the required fees.

Requirements for application for certificate of ownership:

(a) New vessels:

(i) Application for certificate of ownership to a vessel never before licensed or titled shall be accompanied by a manufacturer's statement of origin, carpenter's certificate, or a copy of the factory invoice.

(ii) The manufacturer's statement of origin, carpenter's certificate, or factory invoice must reflect the model year, make, length and hull identification number of the vessel.

(iii) The department will not accept any manufacturer's statement of origin, carpenter's certificate, or factory invoice for the issuance of a certificate of ownership unless all persons named on the manufacturer's statement of origin, including dealers, have released or assigned their interest, or on a release of interest form approved by the department.

(iv) Dealer-to-dealer transfers may be accomplished either by appropriate endorsement of the manufacturer's statement of origin, carpenter's certificate, or factory invoice, or release of interest form approved by the department. A complete chain of ownership must be reflected from the original dealer named on the manufacturer's statement of origin to the retail selling dealer making the application.

(v) A copy of the factory invoice may be used in lieu of the manufacturer's statement of origin or carpenter's certificate only when such documents are not available and obtaining a replacement from the manufacturer would cause an undue amount of delay in titling the vessel. A certificate of fact describing why the statement of origin or carpenter's certificate is not available must be accompanied by the photocopy of the factory invoice and any necessary releases of interest on a form approved by the department.

(b) Vessels with existing certificate of ownership from a foreign titling jurisdiction:

(i) Excise exemption affidavit;

(ii) A copy of the bill of sale or sales agreement;

(iii) Declaration of value form;

(iv) Previous ownership document properly released;

(v) Proof of sales tax paid;

(vi) Release of interest;

(vii) Other verification of ownership approved by the department, such as:

(A) A judgment from a district or superior court of any county of this state awarding ownership; or

(B) Document from an involuntary divestiture sale or auction; and/or

(C) Copy of certificate of documentation of vessel issued by the United States Coast Guard.

(c) Vessels without existing certificate of ownership or from a nontitling jurisdiction:

(i) Excise exemption affidavit;

(ii) A copy of the bill of sale or sales agreement;

(iii) Declaration of value form;

(iv) Previous ownership document properly released;

(v) The registration, if it is from a nontitle state;

(vi) Proof of sales tax paid;

(vii) Manufacturer's statement of origin, factory invoice, or carpenter's certificate;

(viii) An affidavit in lieu of title;

(ix) Release of interest;

(x) Other verification of ownership approved by the department to include:

(A) A judgment from a district or superior court of any county of this state awarding ownership; or

(B) Document from an involuntary divestiture sale or auction; and/or

(C) Copy of certificate of documentation of vessel issued by the United States Coast Guard; and/or

(D) An affidavit certifying when and where the vessel was acquired or brought into the state.

**(5) What is the secured party's obligation when the lien has been satisfied due to the sale of the vessel?**

The secured party must comply with RCW 46.12.101 as provided for vehicles and WAC 308-93-069 and 308-93-070 as provided for vessels.

Vessel owners applying for certificate of ownership and/or registration of a vessel must submit an application, which includes, but is not limited to:

(a) Expiration date of the certificate of registration;

(b) The name of each owner of the vessel and if the vessel is subject to security interest, the name of each secured party;

(c) The department-assigned customer account number for each owner of the vessel including secured parties if available;

(d) The address at which one of the owners regularly receives mail;

(e) The mailing address of the first secured party;

(f) The Washington registration number as assigned;

(g) Make and model year;

(h) Length of vessel;

(i) Type of power (gasoline, diesel, etc.);

(j) Primary use (commercial, pleasure, etc.);

(k) Primary method of propulsion (inboard, sail, etc.);

(l) Type of vessel (runabout, cabin, etc.);

(m) Primary vessel construction (fiberglass, wood, etc.);

(n) County of moorage;

(o) Hull identification number, if one has been assigned;

(p) Latest purchase price and purchase year or, if the vessel was not acquired by purchase, a declaration of value and year of declaration.

For the purposes of this section, purchase price or declared value includes the vessel, vessel motor, or engine, and all other equipment and accessories, excluding a boat trailer, purchased or acquired in a single transaction;

(q) United States Coast Guard document number, if applicable.

In addition to the information listed above, upon original application for certificate of ownership and/or registration of a homemade vessel, the owner (~~(shall)~~) must complete and sign a declaration of value form. The owner's signature must be notarized/certified in accordance with WAC 308-93-470.

**(6) Is the secured party liable for the acts of the vessel owner?**

No. The secured party is not liable or responsible for any act or contract made by the vessel owner or by any person representing the vessel owner.

Selstead, 310 Maple Park Drive, Olympia, WA 98504, (360) 705-7801.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not apply to "business in an industry," as described in RCW 19.85.030 (1)(a), but rather the rules apply to vehicles using the Tacoma Narrows Bridge.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state transportation commission is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 7, 2008

Paul Parker

for Reema Griffith

Administrator

Transportation Commission

AMENDATORY SECTION (Amending WSR 08-06-032, filed 2/26/08, effective 4/7/08)

**WAC 468-270-070 What will the toll rates be for the Tacoma Narrows Bridge?**

((Rate table \$3.00 cash/\$1.75 "Good to Go!<sup>TM</sup>" (two axle vehicles)

**WSR 08-09-032  
PROPOSED RULES  
DEPARTMENT OF TRANSPORTATION**  
[Filed April 9, 2008, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-134.

Title of Rule and Other Identifying Information: Amendment of toll rates for the Tacoma Narrows Bridge, WAC 468-270-070.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, on May 27, 2008, at 6:00 p.m.

Date of Intended Adoption: May 31, 2008.

Submit Written Comments to: Reema Griffith, P.O. Box 47308, Olympia, WA 98504, e-mail griffir@wstc.wa.gov, fax (360) 705-6802, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Reema Griffith by May 27, 2008, TTY (800) 833-6388 ask to be connected to (360) 705-7070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to RCW 47.56.240, this rule establishes toll rates for the Tacoma Narrows Bridge.

Reasons Supporting Proposal: The transportation commission's proposed toll rates establish charges for vehicles using the Tacoma Narrows Bridge. The rates are calculated to provide adequate revenue to repay bonds, cover operating costs, and other expenses.

Statutory Authority for Adoption: RCW 47.56.240.

Statute Being Implemented: RCW 47.56.240.

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

Name of Proponent: Washington state transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Reema Griffith, P.O. Box 47308, Olympia, WA 98504, (360) 705-7070; and Implementation: Greg

Tacoma Narrows Bridge			
	Cash toll rate	"Good To Go! <sup>TM</sup> " toll rates	
2 axle	\$3.00	\$1.75	
3 axle	\$4.50	\$2.65	(3)
4 axle	\$6.00	\$3.50	
5 axle	\$7.50	\$4.40	(3)
6 or more axles	\$9.00	\$5.25	

- Notes: (1) The base toll rate is the toll rate per axle. It is only used to calculate multi-axle rates, which are calculated as a multiplier of the base toll rate (\$1.50 for cash and \$0.875 for "Good to Go!<sup>TM</sup>" toll rates).  
 (2) The "Good To Go!<sup>TM</sup>" toll rates are in effect through June 30, 2008, or until changed by the commission. If no further action is taken by the commission, on July 1, 2008, the cash toll rate column becomes the toll rate for all vehicles.  
 (3) Rate rounded up to nearest five cents.))

Tacoma Narrows Bridge  
Proposed Toll Rates for All Vehicles<sup>1</sup>

		7/1/2008 - 6/30/2009 <sup>2</sup>	
Vehicle Type	Axles	Cash	Electronic <sup>3</sup>
Passenger vehicle/Motorcycle	2	\$4.00	\$2.75
Passenger vehicle with small trailer	3	\$6.00	\$4.15
Tractor trailer rig/Passenger vehicle with trailer	4	\$8.00	\$5.50
Tractor trailer with big trailer	5	\$10.00	\$6.90

Tacoma Narrows Bridge  
Proposed Toll Rates for All Vehicles<sup>1</sup>

Vehicle Type	Axles	7/1/2008 - 6/30/2009 <sup>2</sup>	
		Cash	Electronic <sup>3</sup>
Tractor trailer with bigger trailer (6 or more axles)	6	\$12.00	\$8.25

Note: <sup>1</sup>The base toll rate per axle. It is only used to calculate multi-axle rates, which are calculated as a multiplier of the base toll rate (\$2.00 for cash and \$1.375 for electronic toll rates).

<sup>2</sup>The toll rates are in effect through June 30, 2009, or until changed by the commission.

<sup>3</sup>The rate for the electronic tolls has been rounded up to the nearest five cents where appropriate.

**WSR 08-09-036**  
**PROPOSED RULES**  
**THE EVERGREEN STATE COLLEGE**

[Filed April 9, 2008, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-01-130.

Title of Rule and Other Identifying Information: Chapter 174-168 WAC, Library circulation policy.

Hearing Location(s): The Evergreen State College, Daniel J. Evans Library, Room 3301, 2700 Evergreen Parkway N.W., Olympia, WA 98505, on May 28, 2008, at 1:00 p.m.

Date of Intended Adoption: June 30, 2008.

Submit Written Comments to: Lee Lyttle, Dean of Library Services, The Evergreen State College, Library 2309, Olympia, WA 98505, e-mail [lyttlel@evergreene.edu](mailto:lyttlel@evergreene.edu), fax (360) 867-6678, by May 26, 2008.

Assistance for Persons with Disabilities: Contact John Carmichael by May 23, 2008, TTY (360) 867-6834 or (360) 867-5100.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revision to the library circulation rules eliminates obsolete and redundant language. The schedule of library fines is removed from the WAC and would be published on the college web site.

Reasons Supporting Proposal: The proposed revision to the library circulation rules would make library circulation rules more consistent with best practices in the field and would eliminate obsolete and redundant language.

Statutory Authority for Adoption: RCW 28B.40.120.

Statute Being Implemented: None.

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

Name of Proponent: The Evergreen State College, public.

Name of Agency Personnel Responsible for Drafting: John Carmichael, Sem I Annex A, 2700 Evergreen Parkway N.W., Olympia, WA, (360) 867-5100; Implementation and

Enforcement: Lee Lyttle, Library 3509, 2700 Evergreen Parkway N.W., Olympia, WA, (360) 867-6678.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule imposes no costs on small businesses as defined by chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The Evergreen State College is not among the agencies required to prepare a cost-benefit analysis as specified in RCW 34.05.328.

April 3, 2008

J. P. Carmichael  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

**WAC 174-168-020 Loan periods and fines. (1) General use library resources (print and nonprint).**

(a) Polices for handling requests for library resources, including a schedule of fines and charges, will be published on the college web site. Requests for library resources will be handled according to college policies and any licensing or contractual agreements to which the college is a party.

(b) Due dates will not exceed one academic quarter. ((Requests for extended loan periods should be cleared through the head of circulation. Renewals should be requested)) Users should request renewals before due date.

~~((b))~~ (c) Users are guaranteed the use of the material for ((ten days)) a period defined by policy, after which ((#)) the material may be recalled to meet the needs of another user. ((A five dollar service charge will be levied if the recall due date is not honored. If an item is not returned within sixty days, a replacement charge and processing fee will be levied.

~~(2) Limited use library resources.~~

~~(a) Limited use library resources (e.g., video tapes) will only be loaned for specific periods.~~

~~(b) Slides are checked out for showings only.~~

~~(c) 16mm films and video cassettes will be checked out for showings only and are circulated through the services of the Washington state film library.~~

~~((d))~~ The library will levy a fine if the user fails to return material by the recall date. In addition, if material is not returned within a specified period after the due date, the library will levy an additional fine.

(d) Special collections (print and nonprint) include, but are not limited to the following materials: Rare books, 16mm, reference, archives, DVD, and videotapes. These materials either do not circulate or are available for shorter loan periods. Some materials may require special permission or training before access is granted. If a special collection item is released for circulation and the item is not returned within a specified period after the due date, the library will levy a fine.

~~(2) Media services resources.~~

~~((#))~~ (a) The Evergreen State College will adopt policies for handling requests for media services and resources and will publish those policies, including a schedule of fines or service charges, on the college web site. Requests for

media resources and services will be handled according to college policies.

(b) Media services resources may be borrowed by members of the college community. The first priority for use of media services resources is for coordinated and contracted studies and evening and weekend studies. ((Resource requests will be handled by and administered in accordance with policy formulated by the coordinator of media services.

(ii) Charges consistent with current commercial rates will be made to users outside The Evergreen State College community and to nonacademic)) (c) Media services may be provided to persons outside the college community. Charges for such services will reflect the cost to the college and the price of such services in the private marketplace. Reduced charges will apply for college-sponsored nonacademic programs, workshops, ((seminars, conferences)) auxiliary services or self-sustaining programs.

((e) Portable media loan equipment. Media loan circulates audio/visual equipment to students, staff, and faculty of the college to support academic work and college business. The first priority for use of media loan resources is for coordinated and contracted studies. Borrowers are liable for loss or damage of equipment and any associated processing fees.

(i) Media loan reserves the right to deny privileges if a borrower is in violation of state operating procedures (see media loan policy statement). Campus security may be asked to contact the borrower in cases where equipment is more than two weeks overdue.

(ii) To assure borrowers that equipment will be available for reservations, overdue fines will be assessed for late equipment. Fines are uniform regardless of the kind of equipment. A three dollar charge per transaction will be levied when equipment is one day overdue. A five dollar additional charge will be levied once a week for the next two weeks. If equipment is more than two weeks overdue, the borrower may lose privileges and twenty dollars weekly fines (up to the cost of the items) will be assessed until the equipment is returned.

(iii) If the borrower keeps equipment out over the end of the academic quarter, the replacement cost and a two dollar service fee will be charged to his or her account. This replacement fee will be rescinded when the equipment is returned, but accumulated overdue fees and service fees will be not rescinded.

(iv) When equipment is returned and all fees and charges have been paid, a borrower may make an appointment with the head of media loan to review policies and procedures in order to determine if borrowing privileges may be restored.

(v) Late fees, replacement charges and service fees are deposited in a library account for replacement of media loan equipment.

(vi) Charges will be made to funded workshops, seminars, conferences or self-sustaining programs. Charges will be consistent with current commercial rates.

(vii) Borrowers may be required to carry insurance for large packages of equipment (the college has no insurance). Insurance is a requirement if equipment is to leave the country.

(f) Other library resources can circulate by special arrangement with the head of circulation or appropriate account manager and are subject to recall and replacement

charges.)) (d) Borrowers may be required to carry insurance for high demand or high cost equipment for an extended loan period, or if the equipment is taken outside the country.

(e) College policies will specify overdue fines and will be published on the college's web site. After an initial overdue fine is levied, additional, daily fines may be levied if the equipment is not returned. Daily fines may accumulate up to the replacement value of the item(s).

(f) Media loan reserves the right to deny privileges if a borrower is in violation of any media loan policy. Borrowers are liable for loss or damage of equipment and any associated overdue fines. The library may ask campus police to contact borrowers in cases when equipment is overdue.

(g) When equipment is returned and all fines have been paid, a borrower may request reinstatement of borrowing privileges.

(3) Borrowers who repeatedly ignore the rights of other borrowers or abuse the responsibilities inherent in sharing library resources with the rest of the Evergreen community ((shall be denied the privilege of borrowing those resources for the remainder of the quarter)) may be denied the privilege of borrowing media and library resources for a period of time determined by the circulation manager or media services manager or their designees. Appeals of decisions by the circulation manager or media services manager or their designees must be made in writing within twenty calendar days to the dean of library and media services.

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

**WAC 174-168-030 Lost and damaged library resources.** (1) The borrower is responsible for ~~((loss-~~

~~(2) The borrower is responsible for damage.~~

~~(3)) lost or damaged resources.~~

(2) The borrower is responsible for the proper operation of media loan equipment.

((4) It is the borrower's responsibility to pay for lost resources before the end of the quarter. The cost of lost resources shall be their replacement value and a processing fee (twelve dollars for library books.)) (3) When a borrower reports an item as lost or fails to return an item within a specified time, or when a borrowed item must be replaced due to damage, the borrower will be charged the full replacement value of the item. The method of determining the replacement value of items is established by college policy and published on the college web site.

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

**WAC 174-168-070 Circulation records.** ~~((In order to prevent an unreasonable invasion of personal privacy (including but not limited to RCW 42.17.260 and 42.17.310) all records relating to the registration of patrons and their requests for use and subsequent circulation of materials by The Evergreen State College library are hereby deemed confidential, regardless of the source of inquiry or request for information.)) Unless otherwise required by law, all library records that contain information about individual users of~~



library services are confidential as provided in RCW 42.56-310.

AMENDATORY SECTION (Amending WSR 90-13-028, filed 6/12/90, effective 7/13/90)

**WAC 174-168-080 Selection of resources and services.** It is the policy of The Evergreen State College to select for its library the best and most suitable library materials, library equipment, and library services. The college expressly rejects any form of selection based on censorship of materials or prejudicial considerations based upon race, color, religion, creed, national origin, sex, (~~((national origin, or political view point))~~) sexual orientation, gender identity, gender expression, marital status, age, disability, pregnancy, or status as a disabled veteran, a Vietnam era veteran or other covered veteran.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 174-168-040	Reserve.
WAC 174-168-050	Charging out library resources.
WAC 174-168-060	Interlibrary loan.

**WSR 08-09-043**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed April 10, 2008, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-031.

Title of Rule and Other Identifying Information: The department is amending WAC 388-412-0040 Can I get my benefits replaced?

Hearing Location(s): Blake Office Park East, Rose Room, 450 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m. on May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change is needed to correct a typographical error in subsection (4) of the WAC. The proposal is to change the word "shoes" to "those."

Reasons Supporting Proposal: The proposed changes are editorial in nature and do not change current policy.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jenny Grayum, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4583.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by correcting a typographical error in subsection (4) of WAC 388-412-0040.

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

April 9, 2008

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-22-038, filed 10/28/03, effective 12/1/03)

#### **WAC 388-412-0040 Can I get my benefits replaced?**

Under certain conditions, we may replace your benefits.

(1) You may get your EBT benefits replaced if:

- (a) We make a mistake that causes you to lose benefits;
- (b) Both your EBT card and personal identification number (PIN) are stolen from the mail; you never had the ability to use the benefits; and you lost benefits;
- (c) You left a drug or alcohol treatment on or before the fifteenth of the month and the facility does not have enough Basic Food benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake along with your state benefits; or

(e) Your food that was purchased with Basic Food benefits was destroyed in a disaster.

(2) If you want a replacement, you must:

(a) Report the loss to your local office within ten days from the date of the loss; and

(b) Sign a department affidavit form stating you had a loss of benefits.

(3) For Basic Food, we replace the loss up to a one-month benefit amount.

(4) We will not replace your benefits if your loss is for a reason other than ~~((shoes [those]))~~ those listed in subsection (1) above or:

- (a) We decided that your request is fraudulent;
  - (b) Your Basic Food benefits were lost, stolen or misplaced after you received them;
  - (c) You already got two countable replacements of Basic Food benefits within the last five months; or
  - (d) You got disaster food stamp benefits for the same month you requested a replacement for Basic Food.
- (5) Your replacement does not count if:
- (a) Your benefits are returned to us; or
  - (b) We replaced your benefits because we made an error.

**WSR 08-09-048**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**

[Filed April 11, 2008, 3:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-08-109.

Title of Rule and Other Identifying Information: WAC 314-42-020 Appearance and practice before the board—Who may appear, 314-42-025 Appearances in certain proceedings may be limited to attorneys, 314-42-030 Appearance by former employees of the board or former member of the attorney general's staff, 314-42-040 Practice and procedure, 314-42-045 Service of process—Filing with the agency, 314-42-050 Subpoenas—Fees, 314-42-060 Depositions upon interrogatories—Submission of interrogatories, 314-42-065 Official notice—Material facts, 314-42-070 Presumptions, 314-42-075 Stipulations and admissions of record, 314-42-080 Form and content of decisions in contested cases and proposed orders, 314-42-085 Written arguments, 314-42-090 Definition of issues before hearing, 314-42-100 How can a person petition other board for the adoption, amendment, or repeal of a rule?, 314-42-105 How can a person petition the board for a declaratory order?, 314-29-003 Purpose (what happens when a liquor law or rule is violated?), 314-29-005 What are the procedures for a licensee or a mandatory alcohol server training permit holder to be notified of an alleged violation of a board statute or rule?, and 314-29-010 What options does a license or permit holder have once he/she receives a notice of initial board action?

Hearing Location(s): Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on June 4, 2008, at 10:00 a.m.

Date of Intended Adoption: June 18, 2008.

Submit Written Comments to: Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4921, by June 10, 2008.

Assistance for Persons with Disabilities: Contact Pam Madson by June 10, 2008, TTY (800) 885-2880 or (360) 664-1648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal clarifies how liquor control board rules for administrative hearings differs from the processes outlined in the Adminis-

trative Procedures Act (APA) and the model rules of procedure adopted by the office of administrative hearings. This proposal eliminates duplicative rules and keeps those rules that provide agency specific processes for the liquor control board. It further clarifies the process for licensees when their license is affected by an administrative violation.

Reasons Supporting Proposal: As part of an on-going review of agency rules, this proposal eliminates duplication with the APA and model rules applied to agency adjudicative proceedings and updates references within the remaining rules. Rules have been rewritten for clarity.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.010(3), chapter 35.04 RCW.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Pam Madson, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1648; Implementation and Enforcement: Pat Kohler, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1703.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared. This proposal imposes only minor impact on businesses in the industry.

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

April 9, 2008  
Lorraine Lee  
Chairman

**Chapter 314-29 WAC**

**~~((HEARINGS))~~ VIOLATIONS AND PENALTIES**

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

**WAC 314-29-003 Purpose.** The purpose of chapter 314-29 WAC is to outline what a liquor licensee or a mandatory alcohol server training permit holder can expect if a licensee or employee ~~((violates))~~ or permit holder receives an administrative violation notice alleging a violation of a liquor control board law or rule.

AMENDATORY SECTION (Amending WSR 01-03-086, filed 1/17/01, effective 2/17/01)

**WAC 314-29-005 What are the procedures for notifying a licensee or a mandatory alcohol server training permit holder ~~((to be notified))~~ of an alleged violation of a board statute or regulation?** (1) When an enforcement ~~((agent))~~ officer believes that a licensee or a mandatory alcohol server training permit holder has violated a board statute or regulation, the ~~((agent will))~~ officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee, licensee's agent or permit holder. ~~((This notice will constitute the notice of initial board action.~~

and the remaining steps in the prehearing procedure as outlined in WAC 314-17-010 will be followed.)

(2) The AVN notice will include:

(a) A brief narrative description of the violation(s) the agent is charging;

(b) The date(s) of the violation(s);

(c) A copy of the law(s) and/or regulation(s) allegedly violated;

(d) An outline of the licensee's or permit holder's options as outlined in WAC 314-29-010; and

(e) The recommended penalty ((as follows:)).

(i) ~~((For cases in which there are no aggravating circumstances as outlined in WAC 314-12-330 and 314-12-340 as now or hereafter amended,))~~ If the recommended penalty ((will be)) is the standard penalty ((as outlined in WAC 314-12-170 and 314-12-300 through WAC 314-12-320)), see WAC 314-29-020 through 314-29-035 for licensees, and ~~((in WAC 314-14-160 and 314-14-165))~~ WAC 314-17-100 and 314-17-105 for mandatory alcohol server training permit holders~~((, as now or hereafter amended))~~.

(ii) For cases in which there are aggravating or mitigating circumstances ~~((as outlined in WAC 314-12-330 and 314-12-340 as now or hereafter amended, the agent will describe the circumstances in a report to the director of the enforcement and education division or the director of the licensing and regulation division. Under the provisions of WAC 314-12-330 and 314-12-340 as now or hereafter amended, the director of the education and enforcement division or the director of the licensing and regulation division may recommend a penalty other than the standard penalty outlined in WAC 314-12-170 and 314-12-300 through WAC 314-12-320)), the penalty may be adjusted from the standard penalty. See WAC 314-29-015 for licensees, and ~~((in WAC 314-14-160))~~ WAC 314-17-110 for mandatory alcohol server training permit holders~~((, as now or hereafter amended))~~ describing aggravating and mitigating circumstances.~~

AMENDATORY SECTION (Amending WSR 01-03-086, filed 1/17/01, effective 2/17/01)

**WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of ~~((initial board action))~~ an administrative violation?** (1) ~~((When))~~ A licensee or a mandatory alcohol server training permit holder ~~((receives a notice of initial board action from a liquor control agent in the mail or in person, the licensee or permit holder))~~ has twenty days from receipt of the notice to:

(a) Accept the recommended penalty; or

(b) Request a settlement conference; or

(c) Request an administrative hearing in writing.

(2) **What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days? If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended penalty will go into effect.**

(3) **What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) The captain or designee will contact the licensee or permit holder to discuss the violation. If the licensee or permit holder requests a settlement conference, the ~~((agent in charge))~~ captain or designee will schedule the conference.

(b) Both the licensee or permit holder and the ~~((agent in charge))~~ captain or designee will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the ~~((agent in charge))~~ captain or designee will prepare a proposed settlement agreement and will forward it to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will conclude the case and become part of the licensing history.

(ii) If the board does not approve the compromise, ~~((the board will notify))~~ the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option of agreeing to any changes the board has made in the agreement, or of requesting an administrative hearing on the charges in writing within twenty days of receipt of the notice of board action.

(d) If the licensee or permit holder and the ~~((agent in charge))~~ captain or designee cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the ~~((agent in charge))~~ captain or designee will forward a request for an administrative hearing to the board's hearings coordinator.

~~((3))~~ **What are the procedures when a licensee or mandatory alcohol server training permit holder requests an administrative hearing?**

(a) If the licensee or permit holder requests an administrative hearing in writing within twenty days, it is conducted pursuant to chapter 34.05 RCW (Washington Administrative Procedure Act).

(b) The board's hearing coordinator will notify the assistant attorney general of the licensee's or permit holder's request for an administrative hearing.

(c) The assistant attorney general will draft an administrative complaint and send it to the licensee or permit holder and to the office of administrative hearings.

(d) The office of administrative hearings will schedule the hearing date, and notify the licensee or permit holder and his/her attorney and the assistant attorney general in writing of the hearing date, time, and location.

(e) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings. Subpoenas may be issued by an attorney for any party, or by the assigned administrative law judge.

(f) At the hearing, the assistant attorney general or a designee will present witnesses and other evidence on behalf of the board's enforcement staff.

(g) At the hearing, the licensee or permit holder may be represented by an attorney or may choose to represent himself or herself. The licensee or permit holder or his/her attorney will be allowed to present witnesses or other relevant information.

**~~(4) What will happen after the administrative hearing?~~**

~~(a) Following the hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder and the assistant attorney general.~~

~~(b) Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty days of the date of service of the initial order. The petition for review must:~~

~~(i) Specify the portions of the initial order to which exception is taken;~~

~~(ii) Refer to the evidence of record which is relied upon to support the petition; and~~

~~(iii) Be filed with the liquor control board within twenty days of the date of service of the petition.~~

~~(iv) Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.~~

~~(e) The administrative record, the initial order, and any exceptions filed by the parties will be circulated to the board members for review.~~

~~(d) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act).~~

~~(5) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the notice of initial board action within twenty days? If a licensee or permit holder does not respond to the notice of initial board action within twenty days, the recommended penalty will go into effect.)~~

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-030 ((~~Appearance by~~)) May a former employee of board or former member of attorney general's staff(=) appear before the board and under what circumstances?** No former employee of the board or member of the attorney general's staff may ~~((at any time after severing his/her employment with the board or the attorney general))~~ appear ~~((, except with the written permission of the board,))~~ in a representative capacity on behalf of other parties in a formal proceeding wherein he/she previously took an active part as a representative of the board unless the board grants permission in writing.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-040 ((~~Practice and procedure~~)) What rules apply to the procedures used in practice before the board?** The board ~~((hereby))~~ adopts the model rules of procedure, found in chapter 10-08 WAC, promulgated by the office of administrative hearings ~~((insofar as they are not in conflict with a specific board))~~ unless the board implements a different procedure by rule.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-045 ((~~Service of process—Filing~~)) How do you file papers with ((agency-)) the board?** Papers required to be filed with the board are deemed filed upon actual receipt by the board during office hours at its headquarters office in Olympia.

NEW SECTION

**WAC 314-42-051 What are the procedures when a licensee or mandatory alcohol server training permit holder requests an administrative hearing?** (1) If the licensee or permit holder requests an administrative hearing in writing within twenty days, it is conducted pursuant to chapter 34.05 RCW (Washington Administrative Procedure Act and chapter 314-42 WAC).

(2) The board's hearing coordinator will notify the assistant attorney general of the licensee's or permit holder's request for an administrative hearing.

(3) If the hearing concerns an administrative violation notice, the assistant attorney general will draft an administrative complaint and send it to the licensee or permit holder and to the office of administrative hearings.

(4) The office of administrative hearings will schedule the hearing date, and notify the licensee or permit holder and his/her attorney and the assistant attorney general in writing of the hearing date, time, and location.

(5) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings. Subpoenas may be issued by an attorney for any party, or by the assigned administrative law judge.

NEW SECTION

**WAC 314-42-055 What happens after an administrative hearing?** (1) Following an administrative hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder, the assistant attorney general, the board's offices, and any other party to the administrative hearing.

(2)(a) Either the licensee, permit holder, or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty days of the date of service of the initial order. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must:

(i) Specify the portions of the initial order to which exception is taken; and

(ii) Refer to the evidence of record which is relied upon to support the petition.

(b) Within ten days after service of the petition for review, any party may file a reply with the liquor control board and copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(3) The administrative record, the initial order, and any petitions for review and replies filed by the parties will be circulated to the board members for review.

(4) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-070 Presumptions.** Upon proof by direct, clear, and convincing evidence of the predicate facts ~~((specified))~~ in the following ~~((six))~~ subdivisions ~~((hereof without substantial dispute and by direct, clear, and convincing evidence))~~, the board, with or without prior request and with adequate notice to all parties, may make the following presumptions ~~((, where consistent with all surrounding facts and circumstances and consistent with the following subsections:))~~. The facts may not be in substantial dispute and must be consistent with all surrounding facts and circumstances.

(1) ~~((Continuity. That a fact of a continuous nature, proved to exist at a particular time, continues to exist as of the date of the presumption, if the fact is one which usually exists for at least that period of time;~~

~~((2)) Identity. ((That)) Persons and objects of the same name and description are identical((;)).~~

~~((3)) (2) Delivery. ((Except in a proceeding where the liability of the carrier for nondelivery is involved, that)) Mail ((matter)), communications, express or freight, properly addressed, marked, billed and delivered ~~((respectively))~~ to the post office, ~~((telegraph, cable or radio company,))~~ or authorized common carrier of property with all postage ~~((, tolls and charges))~~ properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business((;)).~~

~~((4) Ordinary course. That a fact exists or does not exist, upon proof of the existence or nonexistence of another fact which in the ordinary and usual course of affairs, usually and regularly coexists with the fact presumed;~~

~~((5) Acceptance of benefit. That a person for whom an act is done or to whom a transfer is made has, does or will accept same where it is clearly in his/her own self-interest to do so;~~

~~((6)) (3) Interference with remedy. ((That)) Evidence, with respect to a material fact which in bad faith is destroyed, removed, suppressed or withheld by a party in control thereof, would if produced, corroborate the evidence of the adversary party with respect to such fact.~~

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-085 Written arguments.** (1) At the conclusion of the evidentiary portion of a hearing, the ~~((examiner))~~ administrative law judge may call for an oral legal argument on the record, ~~((after which the examiner shall render his/her oral proposals;))~~ or ~~((;))~~ the ~~((examiner))~~ administrative law judge may call for written arguments to be submit-

ted to his/her office by the licensee or his/her attorney and the board's attorney. Such written arguments must be submitted in triplicate to the ~~((hearing examiner))~~ administrative law judge and may not be exchanged by opposing counsel.

(2) When both arguments have been received, the ~~((hearing examiner))~~ administrative law judge shall deliver one of the copies of the licensee's argument to the board's attorney, and one copy of the board's argument shall be forwarded to the licensee or his/her attorney.

(3) Unless a different time is fixed at the ~~((field))~~ hearing, written arguments must be filed within ten days after the conclusion of the taking of the testimony at the ~~((field))~~ hearing.

(4) After the receipt of both written arguments, the ~~((hearing examiner))~~ administrative law judge shall ~~((render his/her written proposals))~~ issue an initial order which will be served on the licensee or his/her attorney and the attorney for the board.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-42-020	Appearance and practice before the board—Who may appear.
WAC 314-42-025	Appearance in certain proceedings may be limited to attorneys.
WAC 314-42-050	Subpoenas—Fees.
WAC 314-42-060	Depositions upon interrogatories—Submission of interrogatories.
WAC 314-42-065	Official notice—Material facts.
WAC 314-42-075	Stipulations and admissions of record.
WAC 314-42-080	Form and content of decisions in contested cases and proposed orders.
WAC 314-42-090	Definition of issues before hearing.
WAC 314-42-100	How can a person petition the board for the adoption, amendment, or repeal of a rule?
WAC 314-42-105	How can a person petition the board for a declaratory order?

**WSR 08-09-050**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed April 14, 2008, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-18-041.

Title of Rule and Other Identifying Information: Chapter 16-42 WAC, Biological products.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor Conference Room #259, Olympia, WA 98504, on June 4, 2008, at 9:00 a.m.

Date of Intended Adoption: June 18, 2008.

Submit Written Comments to: Dannie McQueen, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., June 5, 2008.

Assistance for Persons with Disabilities: Contact WSDA receptionist by May 28, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of WSDA's ongoing rules review and regulatory improvement process, the department is proposing to amend chapter 16-42 WAC for readability and clarity. Changes between the proposed and existing rules includes the removal of anaplasmosis and swine erysipelas from, and the addition of avian influenza and foot and mouth disease to, the list of diseases for which veterinary biologics are restricted.

Reasons Supporting Proposal: Proposed changes to chapter 16-42 WAC will allow the director to restrict certain veterinary biologics developed to combat diseases, such as foot and mouth disease and avian influenza. In order to protect animal health, these rules require that certain veterinary biologics are purchased, administered, or otherwise used under the direct supervision of licensed accredited veterinarians.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: RCW 16.36.040.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Paul Kohrs, DVM, Olympia, (360) 902-1835; Implementation and Enforcement: Leonard Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on business in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 14, 2008

Leonard E. Eldridge, DVM

State Veterinarian

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

**WAC 16-42-005 Definitions.** ~~((1))~~ "Department" means the Washington state department of agriculture ~~((of the state of Washington))~~ (WSDA).

~~((2))~~ "Director" means the director of ~~((the department of agriculture of the state of Washington or his/her))~~ WSDA or the director's authorized representative.

~~((3))~~ "Biologics," sometimes referred to as biologicals or biological products, means all bacteria, viruses, serums, toxins, and analogous products of natural or synthetic origin, or products prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment, or prevention of diseases in animals.) "Veterinary biologic" means any virus, serum, toxin, and analogous product of natural or synthetic origin, or product prepared from any type of genetic engineering, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components intended for use in the diagnosis, treatment, or prevention of diseases in animals.

AMENDATORY SECTION (Amending Order 1866, filed 7/10/85)

**WAC 16-42-015 License.** Only veterinary biologics ~~((which))~~ that have been produced under a ~~((regular))~~ U.S. Veterinary Biological Product License ~~((issued by the United States Department of Agriculture))~~ may be imported into the state of Washington. The director may allow the importation of unlicensed veterinary biologics ~~((when the director determines it necessary for the protection of humans or domestic animals))~~ under special use permits.

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

**WAC 16-42-017 Permits required.** (1) Any person manufacturing veterinary biologics within the state for distribution within the state must first obtain a permit from the director. This permit may be revoked or suspended under chapter 34.05 RCW for any violation of this chapter.

(2) Written approval of the director is required before any newly licensed veterinary biologic is imported into the state for sale, use or distribution. The director may also require a special permit for the importation or distribution of ~~((other))~~ prelicensed veterinary biologics into ~~((the))~~ Washington state.

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

**WAC 16-42-023 Sale of licensed products.** Veterinary biologics produced in accordance with WAC 16-42-015 or 16-42-017 may be sold over the counter as well as by persons or firms properly licensed under chapter 18.64 RCW and by any veterinarian licensed ~~((pursuant to))~~ under chapter 18.92 RCW. Persons other than licensed veterinarians or state or federal veterinarians may purchase and administer veterinary biologics to their own animals, except for those veterinary biologics restricted in WAC 16-42-026.

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

**WAC 16-42-026 Restricted products.** (1) All veterinary biologics now in existence or newly developed to diagnose, prevent, or combat the following diseases are declared by the director to be of such a nature that their control is necessary to protect animal ~~((or human))~~ health ~~((and welfare, to ensure accurate diagnosis, to prevent the spread of infectious, contagious, communicable, and dangerous diseases affecting domestic animals within the state and/or to effectuate state-federal animal disease control and eradication programs))~~:

- (a) ~~((Anaplasmosis))~~ Avian influenza.
- (b) Anthrax.
- (c) Bluetongue.
- (d) Brucellosis.
- (e) Equine infectious anemia.
- (f) Equine viral arteritis.
- (g) Paratuberculosis.
- (h) Pseudorabies.
- (i) Rabies.
- (j) Tuberculosis.
- (k) ~~((Swine erysipelas (Avirulent vaccine exempted)))~~

Foot and mouth.

- (l) Vesicular stomatitis.
- (m) All conditionally approved vaccines.

(2) All veterinary biologics used to control or diagnose any of the diseases listed in subsection (1) of this section are restricted, and may only be purchased, administered, or otherwise used by or under the direct supervision of veterinarians licensed ~~((pursuant to))~~ under chapter 18.92 RCW, or by state or federal veterinarians. The director may authorize others by written permit to purchase the veterinary biologics listed in subsection (1) of this section for research agencies or laboratories authorized by the department, for emergency disease control programs, or for other limited and controlled purposes ~~((which are not likely to create a hazard to the public health or to the health of domestic animals. In issuing this permit, the director will consider:~~

- (a) ~~The known effectiveness of the biologic;~~
- (b) ~~Whether or not the disease for which the biologic is used or intended to be used is present in this state and to what extent it is present;~~
- (c) ~~Degree of isolation of the animals and area, and availability of veterinary service; and~~
- (d) ~~Any other factor which, having due regard for the properties of the biologic, may constitute a hazard to animal or public health in this state).~~

AMENDATORY SECTION (Amending WSR 00-17-072, filed 8/14/00, effective 9/14/00)

**WAC 16-42-035 Reports.** In the interest of public health and good cooperative disease control it is recommended that any person using any veterinary biologics immediately report to the department any suspected or actual disease outbreak that occurs in connection with use of the veterinary biologic.

**WSR 08-09-051**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed April 14, 2008, 9:02 a.m.]

Supplemental Notice to WSR 08-07-072.

Preproposal statement of inquiry was filed as WSR 06-16-091.

Title of Rule and Other Identifying Information: Chapter 16-89 WAC, Sheep and goat scrapie disease control, to be retitled as "Sheep and Goat Diseases in Washington State."

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor Conference Room #259, Olympia, WA 98504, on June 4, 2008, at 2:00 p.m.

Date of Intended Adoption: June 18, 2008.

Submit Written Comments to: Dannie McQueen, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARuleComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., June 5, 2008.

Assistance for Persons with Disabilities: Contact WSDA receptionist by May 28, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A public hearing on the proposed rules was originally held on December 20, 2007 (see original CR-102, WSR 07-21-155). Based on comments received at the public hearing and during the extended comment period, WSDA has made revisions to the following sections of their originally proposed rule: WAC 16-89-010, 16-89-015, 16-89-022, 16-89-150, 16-89-170, and 16-89-180. These changes to the originally proposed rule are considered substantive therefore the CR-102 is being filed as a supplemental notice to WSR 08-07-072.

Reasons Supporting Proposal: These changes are necessary to prevent the spread of disease in the state and to help safeguard the health of Washington citizens and livestock. This rule review is also a part of the department's ongoing commitment to regulatory improvement under Executive Orders 06-02, 05-03, and 97-02.

Statutory Authority for Adoption: Chapters 16.36 and 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: [Department of agriculture], governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Paul Kohrs, Olympia, (360) 902-1835; Implementation

and Enforcement: Dr. Leonard Eldridge, Olympia, (360) 902-1881.

April 14, 2008  
Leonard E. Eldridge, DVM  
State Veterinarian

## Chapter 16-89 WAC

### SHEEP AND GOAT (~~(SCRAPIE)~~) DISEASES (~~(CONTROL)~~) IN WASHINGTON STATE

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

**WAC 16-89-010 Definitions.** ~~((For the purposes of))~~ In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

~~((1))~~ "Director" means the director of agriculture of the state of Washington or his or her duly authorized representative.

~~(2)~~ "Department" means the Washington state department of agriculture.

~~(3)~~ "Blackface sheep" means any purebred Suffolk, Hampshire, Shropshire purebred sheep of unknown ancestry with a black face, except for hair sheep.

~~(4))~~ "APHIS" means the United States Department of Agriculture, Animal and Plant Health Inspection Service.

"Department" means the Washington state department of agriculture.

"Director" means the director of agriculture or the director's authorized representative.

"Flock" means a number of animals of sheep or goat species ~~((which))~~ that are kept, fed and herded together ((having)), and have single or multiple ownership. The term "flock" ((shall be)) is interchangeable with the term "herd" and ((shall apply)) applies to purebred and commercial sheep and goats.

~~((5))~~ "Washington flock identification number" means a unique flock identification number assigned to the owner or owners of each flock of blackface breeding sheep in the state of Washington.

~~(6))~~ "High risk animal" means any female genetically susceptible exposed animal. The female offspring of a scrapie-positive female animal or any female genetically less susceptible exposed animal that the designated scrapie epidemiologist (with the concurrence of the USDA area veterinarian in charge, state veterinarian, regional scrapie epidemiologist, and National Scrapie Program coordinator) determines to be a potential risk based on the epidemiology of the flock, including genetics of the positive sheep, the prevalence of scrapie in the flock, any history of recurrent infection, or other characteristics.

"Official ~~((individual))~~ identification" means ~~((the unique identification of individual animals with an alphanumeric number applied as a tamper proof tag, tattoo, electronic device, or other tag approved by USDA or the director. The Washington flock identification number can serve as the official individual identification number if it contains a unique individual animal number in addition to the flock number))~~ an identification mark or device approved by APHIS for use

in the scrapie eradication program. Examples include, but are not limited to, electronic devices, official ear tags, and legible official registry tattoos.

~~((7))~~ "Scrapie" means a transmissible spongiform encephalopathy that is a fatal, nonfebrile, transmissible, insidious, degenerative disease affecting the central nervous system of sheep and goats.

~~((8))~~ "Scrapie exposed animal" means any animal ~~((; which))~~ that has been in the same flock at the same time within the previous sixty months as a scrapie positive animal, excluding limited contacts, as identified in the *Scrapie Eradication Uniform Methods and Rules, effective June 1, 2005.* ((Limited contacts are contacts between animals that occur off the premises of the flock and do not occur during or up to sixty days after parturition for any of the animals involved. Limited contacts do not include commingling or transportation to other flocks for the purposes of breeding. Examples of limited contacts include incidental contact in the show/sales ring. (See Appendix III of USDA's Voluntary Scrapie Flock Certification Program.)

~~(9)~~ "Scrapie high risk animal" means an animal determined by epidemiologic investigation to be a high risk for developing clinical scrapie because the animal was the progeny of a scrapie-positive dam, was born in the same contemporary lambing group as a scrapie-positive animal or was born in the same contemporary lambing group as progeny of a scrapie-positive dam. Based upon evidence from the latest research information available and upon recommendation of the state scrapie certification board, animals that fit the criteria for high risk animals may be exempted by the director as high risk animals if they are determined by genetic testing to be QR or RR at the 171 codon or are determined by other recognized testing procedures to pose no risk.

~~(10)~~ "Scrapie infected flock" means any flock in which a scrapie positive animal has been identified by a state or federal animal health official.

~~(11)~~ "Scrapie positive animal" means an animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories, USDA, laboratories accredited by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) or another laboratory authorized by state or federal officials to conduct scrapie tests through histological examinations of central nervous system or by other diagnostic procedures approved for scrapie diagnosis by USDA. Animals diagnosed by experimental tests for abnormal prion will not be considered infected animals for the purposes of this rule.

~~(12)~~ "Scrapie source flock" means a flock in which an animal was born and subsequently diagnosed as scrapie positive at less than fifty-four months of age.

~~(13))~~ "Scrapie Flock Certification Program" means a national voluntary program for classification of flocks relative to scrapie.

"USDA" means the United States Department of Agriculture.



## SCRAPIE

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

**WAC 16-89-015 Scrapie program standards.** (~~Scrapie Eradication, State-Federal-Industry, Uniform Methods and Rules dated October, 2001;~~) (1) In addition to the rules adopted in this chapter, the Washington state department of agriculture adopts the procedures and methods of the Scrapie Eradication Uniform Methods and Rules, effective June 1, 2005, and Control of Scrapie ((in Sheep and Goats)), Title 9, Code of Federal Regulations, Part((s)) 54 and Scrapie in Sheep and Goats, Part 79 as revised ((August 21, 2001, are adopted by reference as the basic standards for the scrapie control and eradication program in Washington state)) January 1, 2006. Copies of these documents are on file at the Washington Department of Agriculture, Animal Services Division ((of Food Safety/Animal Health)), 1111 Washington Street, Olympia, Washington 98504 and are available ((on request)) for public inspection.

(2) The Scrapie Eradication Uniform Methods and Rules may be found on the internet at: [http://www.aphis.usda.gov/animal\\_health/animal\\_diseases/scrapie/downloads/umr\\_scrapie.pdf](http://www.aphis.usda.gov/animal_health/animal_diseases/scrapie/downloads/umr_scrapie.pdf).

(3) Title 9 CFR, Parts 54 and 79 may be found on the internet at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/9cfrv1\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/9cfrv1_06.html).

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

**WAC 16-89-022 Scrapie identification of sheep and goats.** (1) ~~(Effective January 1, 2003, all sheep and goats of any age not in slaughter channels upon any change of ownership or intrastate movement must be officially identified as defined in 9 CFR Parts 54 and 79 and any sheep or goat over eighteen months of age as evidenced by eruption of the second incisor identified such that the animal may be traced to its flock of birth except:~~

~~(a) Commercial goats in intrastate commerce that have not been in contact with sheep as there has been no case of scrapie in a commercial goat in the past ten years that originated in the state of Washington or attributed to exposure to infected sheep and there are no exposed commercial goat herds in the state of Washington.~~

~~(b) Commercial whitefaced sheep or commercial hair sheep under eighteen months of age in intrastate commerce as there has been no case of scrapie in this exempted class that originated in the state of Washington in the last ten years and there are no exposed commercial whitefaced or hair sheep flocks in the state that have been exposed by a female animal.~~

~~(2) The exemptions granted in subsection (1)(a) and (b) of this section will be void after ninety days if the conditions in subsection (1)(a) and (b) of this section no longer exist.))~~ All sheep that are placed into commerce must have official scrapie program identification.

(2) All goats that are commingled with or exposed to sheep must have official scrapie program identification.

Exemptions

(3) Official scrapie program identification is not required for:

(a) Sheep or goats less than eighteen months of age that are moving directly to a slaughter facility or to an approved terminal feedlot;

(b) Wether goats and low-risk commercial goats (goats that are not registered or exhibited; goats that are not used for milk production; and goats that have not commingled with or have not been exposed to high-risk animals);

(c) Sheep or goats that do not enter commerce and never leave their premises of origin;

(d) Sheep or goats moved for grazing or other management purposes without change of ownership.

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

**WAC 16-89-030 Quarantine.** ~~((Infected and source flocks or flocks that have received high risk animals must be placed and held under quarantine until the infected or high risk animals have been depopulated or the flock has qualified for and has been enrolled in the Scrapie Flock Certification Program (9 CFR Part 54, Subpart B). Flocks not participating in the certification program will remain under quarantine until the entire flock has been slaughtered or depopulated. Infected or high risk animals must be destroyed by means other than by slaughter under the direction of the state veterinarian.))~~ Sheep or goats that are infected or suspected of being infected with an infectious or communicable disease after a positive official test, or other probable cause as determined by the director, will be quarantined as provided under RCW 16.36.010. If owners refuse to allow the department to test for diseases provided for in this chapter, all sheep and goats on the premises will be regarded as a menace to the health of livestock, and the premises on which they are kept will be immediately quarantined and no animals or products of these animals may be removed from the premises.

AMENDATORY SECTION (Amending WSR 99-09-026, filed 4/15/99, effective 5/16/99)

**WAC 16-89-090 ((Condemnation and) Destruction and disposal of scrapie infected animals or flocks.** ~~((Animals))~~ (1) As provided for under RCW 16.36.090, the director may order the slaughter or destruction of animals or flocks determined by the director or representatives of USDA to be infected with scrapie ((may be condemned and destroyed by order of the director)).

(2) The disposal of condemned scrapie infected animals and flocks will be under the direction of the director and the means of disposal will be other than by offering for human or animal consumption.

AMENDATORY SECTION (Amending WSR 02-24-042, filed 12/3/02, effective 1/3/03)

**WAC 16-89-100 Indemnification.** (1) As provided for under RCW 16.36.096, subject to the availability of amounts appropriated for this specific purpose, owners, individuals, partnerships, corporations or other legal entities whose ani-

mals (~~or flocks~~) have been slaughtered or destroyed (~~or otherwise disposed of~~) by order of the director may be eligible for indemnification in (~~the form of cash payment for part of the value of the animals destroyed or otherwise disposed of and for reasonable actual costs for burial or disposal of animal carcasses~~) an amount not to exceed seventy-five percent of the appraised or salvage value of the animal ordered slaughtered or destroyed.

(2) Indemnity payments will be paid only to an owner of sheep or goats that were born in the state of Washington or were imported into the state in compliance with existing Washington state statutes and rules. Payment of indemnity does not apply to animals belonging to the federal government or any of its agencies, this state or any of its agencies, or any municipal corporation. Indemnity may not be paid on animals eligible for federal indemnity payments.

~~((3) The amount of indemnity to be paid for each animal will be determined by the state veterinarian and will not exceed seventy-five percent of the appraised value of the animal up to the following maximum amounts:~~

~~(a) Ewes or does one year of age or older — three hundred dollars per head.~~

~~(b) Rams or bucks one year of age or older — six hundred dollars per head.~~

~~(c) Lambs or kids under one year of age — one hundred twenty-five dollars per head.~~

~~(4) In addition to the indemnity payments authorized in subsection (3) of this section, owners who voluntarily destroy rams found to be genetically prone to scrapie will be paid up to twenty-five dollars of the laboratory diagnostic fee.)~~

## BRUCELLOSIS

### NEW SECTION

**WAC 16-89-150 Brucellosis testing for sheep and goat dairies.** (1) All sheep and goats whose raw milk or raw milk products are offered for sale must be from a flock or herd that is negative to a serological test for brucellosis within the previous twelve months. Any additions to the flock or herd must be tested negative for brucellosis within thirty days before introduction into the flock or herd.

(2) All raw milk and raw milk products from animals that test positive for brucellosis are prohibited from sale and must be destroyed.

(3) All sheep and goats whose raw milk or raw milk products are offered for sale must have official identification.

### NEW SECTION

#### **WAC 16-89-160 Brucellosis quarantine and release.**

(1) Any herd of goats in which brucellosis reactors are found will be quarantined. Positive or reactor classification shall be based on standards listed in USDA Brucellosis Eradication Uniform Methods and Rules, effective October 1, 2003. The department maintains a copy of this document for public inspection. You may also find the information on the internet at: [www.aphis.usda.gov/animal\\_health/animal\\_diseases/brucellosis/downloads/umr\\_bovine\\_bruc.pdf](http://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/umr_bovine_bruc.pdf).

(2) The quarantine will be released when the entire quarantined herd has passed two consecutive negative blood tests

without reactors. The first test must be not less than thirty days following removal of all reactors from the herd. The second test must not be less than ninety days nor more than one year following the date of the previous test.

(3) Goats that test positive to the brucellosis test must not be sold or offered for sale except for immediate slaughter.

(4) Quarantined goats may only be moved when accompanied by an official USDA form number VS1-27.

## Q FEVER

### NEW SECTION

**WAC 16-89-170 Q fever testing requirements for sheep and goat dairies.** (1) All sheep and goats whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for Q fever within the previous twelve months. Q fever is caused by the coccobacillus *Coxiella burnetii* and is highly infectious to humans.

(a) Any additions to the herd must be tested negative for Q fever within thirty days before introduction into the herd.

(b) Herds must be tested negative annually to maintain the dairy's raw milk license.

(c) The state veterinarian shall direct all testing procedures in accordance with state and federal standards for animal disease eradication.

(d) All raw milk and raw milk products from animals that test positive for Q fever are prohibited from sale and must be destroyed or pasteurized.

(2) All sheep and goats whose raw milk or raw milk products are offered for sale must have official identification.

## TUBERCULOSIS

### NEW SECTION

**WAC 16-89-180 Tuberculosis testing for goat dairies.** (1) All goats whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for tuberculosis within the previous twelve months. Any additions to the herd must be tested negative for tuberculosis within sixty days before introduction into the herd.

(2) All raw milk and raw milk products from animals that test positive for tuberculosis are prohibited from sale and must be destroyed.

(3) All goats whose raw milk or raw milk products are offered for sale must have official identification.

### NEW SECTION

**WAC 16-89-190 Tuberculosis quarantine and release.** (1) Any herd of goats in which tuberculosis reactors are found will be quarantined. The sale or removal of any animal out of a quarantined herd is prohibited except for removal for immediate slaughter.

(2) Herds in which no gross lesions reactors occur and in which no evidence of *Mycobacterium bovis* infection has been disclosed may be released from quarantine after a sixty-day negative caudal fold tuberculosis retest of the entire herd. Herds containing one or more suspects to the caudal fold

tuberculosis test will be quarantined until the suspect animals are:

(a) Retested by the comparative-cervical tuberculosis test within ten days of the caudal fold injection; or

(b) Retested by the comparative-cervical tuberculosis test after sixty days and the tuberculosis status of the suspect has been determined; or

(c) Shipped under permit directly to slaughter in accordance with state or federal laws and regulations and the tuberculosis status of the suspect has been determined.

(3) Herds in which *Mycobacterium bovis* infection has been confirmed and the herd has not been depopulated will remain under quarantine and must pass two tuberculin tests at intervals of at least sixty days and one additional test after six months from the previous negative test. Following the release from quarantine, these herds will also be subject to five annual tests on the entire herd.

**NEW SECTION**

The following sections of the Washington Administrative Code are decodified as follows:

Old WAC number	New WAC number
WAC 16-89-030	WAC 16-89-012
WAC 16-89-100	WAC 16-89-013

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 16-89-005	Purpose.
WAC 16-89-025	Recordkeeping.
WAC 16-89-040	Restriction of exposed animals.
WAC 16-89-050	Scrapie source flocks.
WAC 16-89-060	Movement and disposition of restricted animals.
WAC 16-89-070	Importation of exposed, suspect and high risk animals.
WAC 16-89-080	Reporting scrapie.
WAC 16-89-110	Cleaning and disinfection.

**WSR 08-09-057**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
 (By the Code Reviser's Office)  
 [Filed April 15, 2008, 9:07 a.m.]

WAC 308-100-005, 308-100-031, 308-100-033 and 308-100-035, proposed by the department of licensing in WSR 07-20-119 appearing in issue 07-20 of the State Register, which was distributed on October 17, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the

proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 08-09-059**  
**PROPOSED RULES**  
**UNIVERSITY OF WASHINGTON**  
 [Filed April 15, 2008, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-05-101.

Title of Rule and Other Identifying Information: New chapter 478-350 WAC, Alternative contracting process for the University of Washington.

Hearing Location(s): Husky Union Building, Room 310, (HUB), University of Washington, Seattle, WA 98195, on May 28, 2008, at 12:00 noon.

Date of Intended Adoption: June 12, 2008.

Submit Written Comments to: Rebecca Goodwin Dear-dorff, Director of Rules Coordination, Rules Coordination Office, Box 355509, University of Washington, Seattle, WA 98195, e-mail rules@u.washington.edu, fax (206) 221-6917, by May 28, 2008.

Assistance for Persons with Disabilities: Contact disability services office by May 16, 2008, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to establish a new chapter that provides for a fair, open, and efficient contracting method by which the University of Washington may, under limited circumstances, move expeditiously and efficiently to contract for capital projects in a way that protects the best interests of the university and assures the delivery of quality work and products at a reasonable price under the most advantageous terms.

Reasons Supporting Proposal: RCW 28B.20.140 provides the University of Washington with a statutory basis for these WAC rules, concerning contracts for erection of buildings or improvements.

Statutory Authority for Adoption: RCW 28B.20.130 and 28B.20.140.

Statute Being Implemented: RCW 28B.20.140.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: V'ella Warren, Senior Vice President for Finance and Facilities, 4311 11th Avenue N.E., Suite 600, Seattle, WA 98105, (206) 543-8765; Enforcement: Richard Chapman, Associate Vice President for Capital Projects, 45 University Facilities Building, University of Washington, Seattle, WA 98195, (206) 221-4344.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed chapter 478-350 WAC, Alternative contracting process for the Uni-

versity of Washington, does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed chapter 478-350 WAC, Alternative contracting process for the University of Washington, is not considered a significant legislative rule by the University of Washington.

April 15, 2008

Rebecca Goodwin Dearnorff  
UW Director of Rules Coordination

### Chapter 478-350 WAC

#### ALTERNATIVE CONTRACTING PROCESS FOR THE UNIVERSITY OF WASHINGTON

##### NEW SECTION

**WAC 478-350-010 Authority.** The University of Washington adopts these rules pursuant to RCW 28B.20.140.

##### NEW SECTION

**WAC 478-350-020 Purpose.** The purpose of this chapter is to establish a fair, open, and efficient method by which the university may, under certain circumstances, contract for the erection and construction of university buildings or improvements thereto, in lieu of other statutorily authorized contracting methods. These rules are intended to protect the best interests of the university and assure the delivery of quality work and products at a reasonable price under the most advantageous terms.

##### NEW SECTION

**WAC 478-350-030 Applicability.** The contracting method set forth in this chapter may be used only when the president of the university finds that all of the following criteria are met:

(1) The building or improvement involved has a total project cost in excess of twenty-five million dollars;

(2) The design or construction of the building or improvement or its construction schedule may be directly impacted by large construction projects being planned or constructed by other agencies or private developers;

(3) Postponing the building or improvement or delaying it through the use of other contracting methods is likely to have a significant adverse effect on the operation, mission, or financial interests of the university; and

(4) The building or improvement may benefit from a contracting method that integrates services including but not limited to a developer, designer, construction manager and contractor being on the same team and working collaboratively.

A finding by the university president that a project meets all of the above criteria shall be subject to review by the University of Washington board of regents at their discretion.

##### NEW SECTION

**WAC 478-350-040 Contracting method.** Upon an approved finding that a project meets the criteria set forth above, the president or the president's designee may proceed to conduct a competitive process that is open, fair, and unbiased and results in one or more contracts with a qualified entity or team on the most advantageous terms. The process must include at least the following elements:

(1) RFQ/RFP. Contracts will be awarded through either a Request for Qualifications (RFQ) or a Request for Proposals (RFP) process or a combination thereof. The RFQ/RFP will include a clear description of what the university believes to be most important about the project as well as the weight of selection criteria.

(2) Public notice. The university shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the project will be constructed, a notice of its RFQ/RFP, and information regarding the availability and location of the RFQ/RFP documents.

(3) Selection criteria. Selection criteria shall include, but are not limited to, qualifications of the project team, technical excellence and competence, experience, capacity to accomplish the work, ability to deliver a quality project, past performance of the team or its constituent members, and price or fee, taking into consideration the estimated cost of construction as well as the long-term performance, operation and maintenance of the building or improvement.

(4) Negotiations. The university shall first attempt to negotiate a contract with the entity deemed to have submitted the best overall response. If such negotiations are not successful, the university may proceed to negotiate with the entity deemed to have submitted the next best response.

##### NEW SECTION

**WAC 478-350-050 Prevailing wages, bonds and retainage.** Any contract awarded pursuant to these rules shall require full compliance with applicable sections of chapters 39.08, 39.12, and 60.28 RCW. The selected entity shall also be encouraged to work closely with the university's business diversity program.

**WSR 08-09-076**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed April 16, 2008, 7:12 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-916-990 Athletic trainer fees and renewal cycle, this proposed rule establishes fees for licensure of athletic trainers. Chapter 18.250 RCW (SSB 5503, chapter 253, Laws of 2007), established licensure for athletic trainers.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Town Center 2, Room 158, Tumwater, WA 98501, on May 29, 2008, at 1:00 p.m.

Date of Intended Adoption: June 12, 2008.

Submit Written Comments to: Jennifer Bressi, P.O. Box 47867, Olympia, WA 98507, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Jennifer Bressi by May 27, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to establish licensure fees for athletic trainers. The proposed rule will detail fee amounts for applications, renewals, late renewals, inactive status, expired reactivations, expired inactive status, duplicate licenses, and verifications. The proposed fees are authorized by the health professions and facility fees addendum DOH 2008 in the conference operating budget as referenced in ESHB 2687.

Reasons Supporting Proposal: The proposed rule details fee amounts for licensure of athletic trainers. Fees are necessary to administer the new licensing program as mandated by RCW 43.70.250.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: Chapter 18.250 RCW.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Bressi, 310 Israel Road, Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

April 16, 2008  
Mary C. Selecky  
Secretary

NEW SECTION

**WAC 246-916-990 Athletic trainer fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$175.00
License renewal	200.00
Late renewal penalty	100.00
Inactive license renewal	40.00
Expired license reactivation	100.00
Expired inactive license reactivation	40.00
Duplicate license	15.00
Verification	25.00

**WSR 08-09-077  
PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed April 16, 2008, 7:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-20-037.

Title of Rule and Other Identifying Information: WAC 246-254-070, 246-254-080, 246-254-090, 246-254-100, 246-254-120, Radiation protection—Fees.

Hearing Location(s): Department of Health, Town Center 3, Room 224, 243 Israel Road S.E., Tumwater, WA 98501, on May 30, 2008, at 1:30 p.m.

Date of Intended Adoption: May 30, 2008.

Submit Written Comments to: Arden Scroggs, Office of Radiation Protection, Radioactive Materials Section, P.O. Box 47827, Olympia, WA 98504-7827, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2255, by May 30, 2008.

Assistance for Persons with Disabilities: Contact Joy A. Redman by May 23, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The materials program is a fee-supported regulatory program which licenses and inspects approximately 550 facilities in Washington state under RCW 70.98.080. This proposed rule change increases licensing fees for those facilities by approximately 30% to meet the anticipated costs of the materials program including the addition of one inspector. The individual rate of increase per license ranges from 29.4 to 30%. Additionally, this rule making will revise the medical license fee terminology to reflect current terminology and regulatory references, and combine the current two health physics service provider fee categories into a single fee category.

Reasons Supporting Proposal: The department is authorized under RCW 43.20B.020 and 43.70.250 to charge fees that are sufficient to cover the cost of administering the program. The department is also required under RCW 43.70.110 to charge licensing fees to businesses possessing radioactive materials based on the cost of regulating the activity. Also, the regulations pertaining to medical use of radioactive material were recently revised to include new references and language, and the fee rule needs to be revised to reflect that language. This [These] proposed fees are authorized under SBH [SHB] 2687 consistent with Initiative 960.

Statutory Authority for Adoption: RCW 70.98.080, 43.20B.020, 43.70.110, and 43.70.250.

Statute Being Implemented: RCW 70.98.080, 43.20B.020, 43.70.110, and 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Arden Scroggs, 111 Israel Road S.W., Tumwater, WA, (360) 236-3221.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

April 16, 2008  
Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

**WAC 246-254-070 Fees for specialized radioactive material licenses.** (1) Persons licensed or authorized to possess or use radioactive material in the following special categories shall forward annual fees to the department as follows:

(a) (~~(\$7,050)~~) \$9,164 for operation of a single nuclear pharmacy.

(b) (~~(\$12,025)~~) \$15,628 for operation of a single nuclear laundry.

(c) (~~(\$12,025)~~) \$15,628 for a license authorizing a single facility to use more than one curie of unsealed radioactive material in the manufacture and distribution of radioactive products or devices containing radioactive material.

(d) (~~(\$4,215)~~) \$5,476 for a license authorizing a single facility to use less than or equal to one curie of unsealed radioactive material or any quantity of previously sealed sources in the manufacture and distribution of products or devices containing radioactive material.

(e) (~~(\$1,085)~~) \$1,408 for a license authorizing the receipt and redistribution from a single facility of manufactured products or devices containing radioactive material.

(f) (~~(\$8,065)~~) \$10,484 for a license authorizing decontamination services operating from a single facility.

(g) (~~(\$3,815)~~) \$4,956 for a license authorizing waste brokerage including the possession, temporary storage at a single facility, and over-packing only of radioactive waste.

(h) (~~(\$1,700 for a license authorizing equipment servicing involving:~~

(i) ~~Incidental use of calibration sources;~~  
(ii) ~~Maintenance of equipment containing radioactive material; or~~

(iii) ~~Possession of sealed sources for purpose of sales demonstration only.~~

(~~(i) (\$3,175)~~) \$2,208 for a license authorizing health physics services, leak testing, (~~(or)~~) calibration services, equipment servicing, or possession of sealed sources for purpose of sales demonstration only.

(~~((j) \$1,995)~~) (i) \$2,592 for a civil defense license.

(~~((k) \$600)~~) (j) \$780 for a license authorizing possession of special nuclear material as pacemakers or depleted uranium as shielding.

(2) Persons licensed or authorized to possess and use radioactive material in the following broad scope categories shall forward annual fees to the department as follows:

(a) (~~(\$23,860)~~) \$31,016 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than one curie.

(b) (~~(\$11,030)~~) \$14,336 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession of any single isotope greater than 0.1 curie but less than or equal to one curie.

(c) (~~(\$8,865)~~) \$11,520 for a license authorizing possession of atomic numbers three through eighty-three with maximum authorized possession less than or equal to 0.1 curie.

(3) Persons licensed or authorized to possess or use radioactive material which are not covered by any of the annual license fees described in WAC 246-254-070 through 246-254-100, shall pay fees as follows:

(a) An initial application fee of one thousand dollars;

(b) Billing at the rate of (~~(\$125)~~) \$162 for each hour of direct staff time associated with issuing and maintaining the license and for the inspection of the license; and

(c) Any fees for additional services as described in WAC 246-254-120.

(d) The initial application fee will be considered a credit against billings for direct staff charges but is otherwise non-refundable.

(4) Persons licensed or authorized to possess or use radioactive material in a facility for radioactive waste processing, including resource recovery, volume reduction, decontamination activities, or other waste treatment, but not permitting commercial on-site disposal, shall pay fees as follows:

(a) A nonrefundable initial application fee for a new license of sixteen thousand dollars which shall be credited to the applicant's quarterly billing described in (b) of this subsection; and

(b) Quarterly billings for actual direct and indirect costs incurred by the department including, but not limited to, license renewal, license amendments, compliance inspections, a resident inspector for time spent on the licensee's premises as deemed necessary by the department, laboratory and other support services, and travel costs associated with staff involved in the foregoing.

**AMENDATORY SECTION** (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

**WAC 246-254-080 Fees for medical and veterinary radioactive material (~~licenses~~) use.** (1) (~~(Persons licensed or)~~) Licensees authorized (~~(to possess)~~) possession or use of radioactive material in the following medical or veterinary

categories shall forward annual fees to the department as follows:

(a) ~~((\\$5,960))~~ \$7,748 for operation of a mobile nuclear medicine program from a single base of operation(-);

(b) ~~((\\$4,345))~~ \$5,648 for ~~((a license authorizing groups II and III of WAC 246-235-120 for diagnostic nuclear medicine at a single facility-))~~ the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, at a single facility (diagnostic imaging and localization nuclear medicine):

(c) ~~((\\$3,765))~~ \$4,892 for ~~((a license authorizing groups IV and V of WAC 246-235-120 for medical therapy at a single facility-))~~ the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201 at a single facility (radiopharmaceutical therapy):

(d) ~~((\\$6,000))~~ \$7,800 for ~~((a license authorizing groups II or III and groups IV or V of WAC 246-235-120 for full diagnostic and therapy services at a single facility-))~~ the use of unsealed radioactive material for imaging and localization studies for which a written directive is not required as defined in WAC 246-240-157, the use of unsealed radioactive material for which a written directive is required as defined in WAC 246-240-201, and/or the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (combination diagnostic nuclear medicine and/or radiopharmaceutical therapy), and/or sealed source (manual or machine) therapy:

(e) ~~((\\$3,225))~~ \$4,192 for ~~((a license authorizing group VI of WAC 246-235-120 for brachytherapy at a single facility-))~~ the use of sealed sources for manual brachytherapy as defined in WAC 246-240-251 at a single facility (manual brachytherapy):

(f) ~~((\\$1,995))~~ \$2,592 for ~~((a license authorizing brachytherapy or gamma stereotactic therapy or teletherapy at a single facility-))~~ the use of sealed sources in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit, as defined in WAC 246-240-351, at a single facility (machine brachytherapy):

(g) ~~((\\$3,030))~~ \$3,936 for a license authorizing medical or veterinary possession of greater than two hundred millicuries total possession of radioactive material at a single facility(-);

(h) ~~((\\$2,410))~~ \$3,132 for a license authorizing medical or veterinary possession of greater than thirty millicuries but less than or equal to two hundred millicuries total possession of radioactive material at a single facility(-);

(i) ~~((\\$1,765))~~ \$2,292 for a license authorizing medical or veterinary possession of less than or equal to thirty millicuries total possession of radioactive material at a single facility(-);

(j) ~~((\\$1,555))~~ \$2,020 for ~~((a license authorizing group I as defined in WAC 246-235-120 or in vitro uses of radioactive material at a single facility-))~~ the use of unsealed radioactive material for uptake, dilution and/or excretion studies for which a written directive is not required, as defined in WAC 246-240-151, at a single facility (diagnostic uptake, dilution, and excretion nuclear medicine):

(k) ~~((\\$970))~~ \$1,260 for a license authorizing medical or veterinary possession of a sealed source for diagnostic use at a single facility.

(2) ~~((Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location or base of operation-))~~ The fee for a license authorizing multiple locations shall be increased by fifty percent of the annual fee for each additional location.

**AMENDATORY SECTION** (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

**WAC 246-254-090 Fees for industrial radioactive material licenses.** (1) Persons licensed or authorized to possess or use radioactive material in the following industrial categories shall forward annual fees to the department as follows:

(a) ~~((\\$7,020))~~ \$9,124 for a license authorizing the use of radiographic exposure devices in one or more permanent radiographic vaults in a single facility.

(b) ~~((\\$9,410))~~ \$12,232 for a license authorizing the use of radiographic exposure devices at temporary job sites but operating from a single storage facility.

(c) ~~((\\$4,610))~~ \$5,992 for a license authorizing well-logging activities including the use of radioactive tracers operating from a single storage facility.

(d) ~~((\\$995))~~ \$1,292 for a license authorizing possession of portable sealed sources including moisture/density gauges and excluding radiographic exposure devices operating from a single storage facility.

(e) ~~((\\$1,085))~~ \$1,408 for a license authorizing possession of any nonportable sealed source, including special nuclear material and excluding radioactive material used in a gas chromatograph at a single facility.

(f) ~~((\\$685))~~ \$888 for a license authorizing possession of gas chromatograph units containing radioactive material at a single facility.

(g) ~~((\\$1,895))~~ \$2,460 for a license authorizing possession of any self-shielded or pool type irradiator with sealed source total quantity greater than one hundred curies at a single facility.

(h) ~~((\\$10,060))~~ \$13,076 for a license authorizing possession of sealed sources for a walk-in type irradiator at a single facility.

(i) ~~((\\$8,760))~~ \$11,388 for a license authorizing possession of greater than one gram of unsealed special nuclear material or greater than five hundred kilograms of source material at a single facility.

(j) ~~((\\$2,805))~~ \$3,644 for a license authorizing possession of less than or equal to one gram of unsealed special nuclear material or five hundred kilograms of source material at a single facility.

(k) ~~((\\$445))~~ \$576 for a license authorizing possession of static elimination devices not covered by a general license.

(2) Persons with licenses authorizing multiple locations of permanent storage shall increase the annual fee by fifty percent for each additional location.

(3) Depleted uranium registrants required to file Form RHF-20 shall forward an annual fee of ~~((\\$90))~~ \$116 to the department.

(4) General licensees required to register in accordance with WAC 246-233-020 (3)(k) shall forward an annual fee of (~~(\$265)~~) \$344 to the department.

**AMENDATORY SECTION** (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

**WAC 246-254-100 Fees for laboratory radioactive material licenses.** (1) Persons licensed or authorized to possess or use unsealed radioactive material in the following laboratory categories shall forward annual fees to the department as follows:

(a) (~~(\$4,800)~~) \$6,240 for a license authorizing possession at a single facility of unsealed sources in amounts greater than:

- (i) One millicurie of I-125 or I-131; or
- (ii) One hundred millicuries of H-3 or C-14; or
- (iii) Ten millicuries of any single isotope.

(b) (~~(\$2,370)~~) \$3,080 for a license authorizing possession at a single facility of unsealed sources in amounts:

- (i) Greater than 0.1 millicurie and less than or equal to one millicurie of I-125 or I-131; or
- (ii) Greater than ten millicuries and less than or equal to one hundred millicuries of H-3 or C-14; or
- (iii) Greater than one millicurie and less than or equal to ten millicuries of any single isotope.

(c) (~~(\$1,995)~~) \$2,592 for a license authorizing possession at a single facility of unsealed sources in amounts:

- (i) Greater than 0.01 millicurie and less than or equal to 0.1 millicurie of I-125 or I-131; or
- (ii) Greater than one millicurie and less than or equal to ten millicuries of H-3 or C-14; or
- (iii) Greater than 0.1 millicurie and less than or equal to one millicurie of any other single isotope.

(d) (~~(\$685)~~) \$888 for a license authorizing possession at a single facility of unsealed or sealed sources in amounts:

- (i) Less than or equal to 0.01 millicurie of I-125 or I-131; or
- (ii) Less than or equal to one millicurie of H-3 or C-14; or
- (iii) Less than or equal to 0.1 millicurie of any other single isotope.

(e) (~~(\$920)~~) \$1,196 for a license authorizing possession at a single facility of large quantities of naturally occurring radioactive material in total concentration not exceeding 0.002 microcurie per gram.

(2) Persons with licenses authorizing multiple locations of use shall increase the annual fee by fifty percent for each additional location.

(3) Persons registered to perform in vitro testing pursuant to Form RHF-15 shall forward an annual fee of (~~(\$90)~~) \$116 to the department.

**AMENDATORY SECTION** (Amending WSR 05-24-109, filed 12/7/05, effective 1/7/06)

**WAC 246-254-120 Fees for licensing and compliance actions.** (1) In addition to the fee for each radioactive material license as described under WAC 246-254-070, 246-254-080, 246-254-090, and 246-254-100, a licensee shall pay a

service fee for each additional licensing and compliance action as follows:

(a) For a second follow-up inspection, and each follow-up inspection thereafter, a fee of (~~(\$125)~~) \$162 per hour of direct staff time associated with the follow-up inspection, not to exceed (~~(\$1,250)~~) \$1,625 per follow-up inspection. Hours are calculated in half-hour increments.

(b) For each environmental cleanup monitoring visit, a fee of (~~(\$125)~~) \$162 per hour of direct staff time associated with the environmental cleanup monitoring visit, not to exceed (~~(\$3,125)~~) \$4,063 per visit. Hours are calculated in half-hour increments.

(c) For each new license application, the fee of (~~(\$200)~~) \$260 in addition to the required annual fee.

(d) For each sealed source and device evaluation, a fee of (~~(\$125)~~) \$162 per hour of direct staff time associated with each sealed source and device evaluation, not to exceed (~~(\$3,750)~~) \$4,875 per evaluation.

(e) For review of air emission and environmental programs and data collection and analysis of samples, and review of decommissioning activities by qualified staff in those work units, a fee of (~~(\$125)~~) \$162 per hour of direct staff time associated with the review. The fee does not apply to reviews conducted by the radioactive materials section staff and does not apply unless the review time would result in a special service charge exceeding ten percent of the licensee's annual fee.

(f) For expedited licensing review, a fee of (~~(\$125)~~) \$162 per hour of direct staff time associated with the review. This fee only applies when, by the mutual consent of licensee and affected staff, a licensing request is taken out of date order and processed by staff during nonwork hours and for which staff is paid overtime.

(2) The licensee or applicant shall pay any additional service fees at the time of application for a new license or within thirty days of the date of the billing for all other licensing and compliance actions.

(3) The department shall process an application only upon receipt of the new application fee and the annual fee.

(4) The department may take action to modify, suspend, or terminate the license or sealed source and device registration if the licensee fails to pay the fee for additional licensing and compliance actions billed by the department.

## WSR 08-09-078

### PROPOSED RULES

### DEPARTMENT OF HEALTH

[Filed April 16, 2008, 7:20 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-254-053 Radiation machine facility registration fees.

Hearing Location(s): Department of Health, Town Center 3, Room 224, 243 Israel Road S.E., Tumwater, WA 98501, on May 30, 2008, at 9:30 a.m.

Date of Intended Adoption: May 30, 2008.



Submit Written Comments to: Ellen G. Haars, Ph.D., P.O. Box 47827, Olympia, WA 98504-7827, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by May 30, 2008.

Assistance for Persons with Disabilities: Contact Phyllis Hurtado by May 23, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of health is required under RCW 70.98.080 to regulate sources of ionizing radiation to protect the public health and safety. The X-ray program is a fee-supported regulatory program which registers and inspects approximately 6,000 X-ray facilities in Washington state. The facilities include hospitals, chiropractors, dentists, podiatrists, veterinarian, correctional, and industrial businesses. This proposed rule change increases registration fees for X-ray facilities by approximately 31.2% to meet the anticipated costs of the X-ray program, including the costs of inspections.

Reasons Supporting Proposal: The department of health is authorized under RCW 43.20B.020, 43.70.110, and 43.70.250 to charge registration fees to businesses operating X-ray machines that are sufficient to cover the full cost of administering the program. The fee must be based on the cost to the department of regulating the activity including the costs of inspections. The proposed fees are authorized by the health professions and facility fees addendum DOH 2008 in the conference operating budget as referenced in ESHB 2687.

Statutory Authority for Adoption: RCW 70.98.080, 43.20B.020, 43.70.250, and 43.70.110.

Statute Being Implemented: RCW 70.98.080, 43.20B.020, 43.70.250, and 43.70.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ellen G. Haars, Ph.D., 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3231.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), rules that set or adjust fees pursuant to legislative standards are exempt from the requirement to prepare a small business [economic] impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vi), rules that set or adjust fees pursuant to legislative standards are exempt from the requirement to prepare a cost-benefit analysis.

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

**WAC 246-254-053 Radiation machine facility registration fees.** (1) Radiation machine facility fees apply to each person or facility owning, leasing or using radiation-producing machines. The annual facility fee consists of the base registration fee and a per tube charge, where applicable.

<b>(a) Radiation Machine Facility Fees</b>		
<b>Type of Facility</b>	<b>Facility Base Fee</b>	<b>Added Fee per Tube</b>
(i) Dental, podiatric, veterinary uses	\$ <del>((102))</del> <u>134</u>	See following table
(ii) Hospital, medical, chiropractic uses	\$ <del>((158))</del> <u>207</u>	See following table
(iii) Industrial, research, educational, security, or other facilities	\$ <del>((140))</del> <u>184</u>	See following table
(iv) Mammography only	\$ <del>((68))</del> <u>89</u>	N/A
(v) Bone densitometry only	\$ <del>((68))</del> <u>89</u>	N/A
(vi) Electron microscopes only	\$ <del>((68))</del> <u>89</u>	N/A
(vii) Bomb squad only	\$ <del>((68))</del> <u>89</u>	N/A
(viii) Radiation safety program as specified in subsection (3) of this section	\$ <del>((4,441))</del> <u>5,827</u>	N/A

<b>(b) Radiation Machine Tube Fees</b>	
<b>Type of Tube</b>	<b>Added Fee per Tube</b>
(i) Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	\$ <del>((35))</del> <u>46</u>
(ii) Veterinary (radiographic, fluoroscopic, portable, mobile)	\$ <del>((35))</del> <u>46</u>
(iii) Podiatric uses (radiographic, fluoroscopic)	\$ <del>((35))</del> <u>46</u>
(iv) Mammography	N/A
(v) Bone densitometry	N/A
(vi) Electron microscope	N/A
(vii) Bomb squad	N/A
(viii) Medical radiographic (includes R/F combinations, fixed, portable, mobile)	\$ <del>((100))</del> <u>131</u>
(ix) Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	\$ <del>((100))</del> <u>131</u>
(x) Therapy (Grenz Ray, Orthovoltage, nonaccelerator)	\$ <del>((100))</del> <u>131</u>
(xi) Accelerators (therapy, other medical uses)	\$ <del>((100))</del> <u>131</u>
(xii) Computer tomography (CT, CAT scanner)	\$ <del>((100))</del> <u>131</u>
(xiii) Stereotactic (mammography)	\$ <del>((100))</del> <u>131</u>

<b>(b) Radiation Machine Tube Fees</b>	
<b>Type of Tube</b>	<b>Added Fee per Tube</b>
(xiv) Industrial radiographic	\$ <del>((35))</del> <u>46</u>
(xv) Analytical, X-ray fluorescence	\$ <del>((35))</del> <u>46</u>
(xvi) Industrial accelerators	\$ <del>((35))</del> <u>46</u>
(xvii) Airport baggage	\$ <del>((35))</del> <u>46</u>
(xviii) Cabinet (industrial, security, mail, other)	\$ <del>((35))</del> <u>46</u>
(xiv) Other industrial uses (includes industrial fluoroscopic uses)	\$ <del>((35))</del> <u>46</u>

**(2) X-ray shielding fees.**

(a) Facilities regulated under the shielding plan requirements of WAC 246-225-030 or 246-227-150 are subject to a \$~~((255))~~ 344 X-ray shielding review fee for each X-ray room plan submitted~~(-)~~; or

~~(b)~~ (b) A registrant may request an expedited plan review for ~~(an additional \$500)~~ \$1000 for each X-ray room plan. Expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

~~((b))~~ (c) If a facility regulated under WAC 246-225-030 or 246-227-150 operates without submittal and departmental ~~(approval)~~ review of X-ray shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of \$~~((500))~~ 656.

(3) **Radiation safety fee.** If a facility or group of facilities under one administrative control employs two or more full-time individuals whose positions are entirely devoted to in-house radiation safety, the facility shall pay a flat, annual fee as specified in subsection (1)(a)(viii) of this section.

(4) **Consolidation of registration.** Facilities may consolidate X-ray machine registrations into a single registration after notifying the department in writing and documenting that a single business license applies to all buildings, structures and operations on one contiguous site using or identified by one physical address location designation.

**(5) Inspection fees.**

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under the base fee and tube registration fees as described in subsection (1) of this section.

(b) Facilities requiring follow-up inspections due to uncorrected noncompliances must pay an inspection follow-up fee of \$~~((90))~~ 118 for each reinspection required.

(6) A facility's annual registration fee is valid for a specific geographical location and person only. It is not transferable to another geographical location or owner or user.

**WSR 08-09-081**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed April 16, 2008, 7:25 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-282-990 Sanitary control of shellfish—Fees.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on May 28, 2008, at 10:00 a.m.

Date of Intended Adoption: May 28, 2008.

Submit Written Comments to: Jan Jacobs, Department of Health, Shellfish and Water Protection, P.O. Box 47824, Olympia, WA 98504-7824, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by May 28, 2008.

Assistance for Persons with Disabilities: Contact Jan Jacobs by May 21, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule will increase fees for shellfish licensees by the fiscal growth factor of 5.53%. Shellfish license fees were last increased in 2001 by the fiscal growth factor for that year. This proposed rule will also equitably assess the costs associated with commercial geoduck paralytic shellfish poison (PSP) testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. This testing is essential to public health as it is the only means available to determine if dangerous levels of PSP exist in commercial geoduck, and ensures toxic shellfish do not reach consumers. The 5.53% fee increase does not apply to geoduck PSP cost redistribution.

Reasons Supporting Proposal: The department of health is required under RCW 43.70.250 to charge fees at a level sufficient to defray the cost of administering the program. The proposed fees will help offset the effects of inflation. It will also redistribute geoduck PSP fees based on the 2007 total cost of service for the entities that submitted geoduck tests and the number of tests done for each entity. The 5.53% fee increase does not apply to geoduck PSP cost redistribution. This proposed fee increase is authorized under SHB 2687 consistent with the requirements of Initiative 960.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Washington state department of health, office of shellfish and water protection, governmental.

Name of Agency Personnel Responsible for Drafting: Jan Jacobs, 111 Israel Road S.E., Tumwater, WA, (360) 236-3316; Implementation and Enforcement: Maryanne Guichard, 111 Israel Road S.E., Tumwater, WA, (360) 236-3391.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards. This rule proposes to revise a fee necessary to defray the costs of administering

the commercial shellfish license program. The department is directed under RCW 43.70.250 to set fees so that the cost of a business license program is fully borne by members of that business. During the 2007 legislative session, the legislature authorized the department to increase fees beyond the fiscal growth factor under SHB 1128, Laws of 2007.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

April 16, 2008  
Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 07-17-159, filed 8/21/07, effective 9/21/07)

**WAC 246-282-990 Fees.** (1) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	<del>\$(250)</del> <u>263</u>
Shellstock Shipper	
0 - 49 Acres	<del>\$(282)</del> <u>297</u>
50 or greater Acres	<del>\$(452)</del> <u>476</u>
Scallop Shellstock Shipper	<del>\$(282)</del> <u>297</u>
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	<del>\$(514)</del> <u>542</u>
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	<del>\$(622)</del> <u>656</u>
Plants with floor space > 5000 sq. ft.	<del>\$(1,147)</del> <u>1,210</u>

(2) The fee for each export certificate is \$10.30.

(3) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Harvester	≤ 2	\$173
Harvester	3 or more	\$259
Shellstock Shipper	≤ 2	\$195
0 - 49 acres		
Shellstock Shipper	3 or more	\$292
0 - 49 acres		
Shellstock Shipper	N/A	\$468
50 or greater acres		

Fee Category		
Type of Operation	Number of Harvest Sites	Fee
Shucker-Packer (plants < 2000 ft <sup>2</sup> )	≤ 2	\$354
Shucker-Packer (plants < 2000 ft <sup>2</sup> )	3 or more	\$533
Shucker-Packer (plants 2000 - 5000 ft <sup>2</sup> )	≤ 2	\$429
Shucker-Packer (plants 2000 - 5000 ft <sup>2</sup> )	3 or more	\$644
Shucker-Packer (plants > 5000 ft <sup>2</sup> )	N/A	\$1,189

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(4) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(13,204)</del> <u>12,094</u>
Jamestown S'Klallam Tribe	<del>\$(3,030)</del> <u>4,682</u>
Lower Elwah Klallam Tribe	<del>\$(7,358)</del> <u>2,991</u>
Lummi Nation	<del>\$(216)</del> <u>390</u>
Nisqually Indian Tribe	<del>\$(3,463)</del> <u>3,121</u>
Port Gamble S'Klallam Tribe	<del>\$(4,978)</del> <u>3,121</u>
Puyallup Tribe of Indians	<del>\$(5,194)</del> <u>8,453</u>
Skokomish Indian Tribe	<del>\$(0)</del> <u>260</u>
Squaxin Island Tribe	<del>\$(6,276)</del> <u>4,151</u>
Suquamish Tribe	<del>\$(10,604)</del> <u>13,665</u>
Swinomish Tribe	<del>\$(1,299)</del> <u>390</u>
Tulalip Tribe	<del>\$(1,299)</del> <u>4,552</u>

Harvester	Fee
Discovery Bay Shellfish	\$(( <del>1,082</del> )) 130

(5) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(6) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 08-09-094**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed April 18, 2008, 4:44 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-817-99005 Dental assistants and expanded function auxiliary fees and renewal cycle. The proposed rule establishes fees for credentialing of dental assistants and expanded function dental auxiliaries. In the 2007 legislative session, SHB 1099 (chapter 18.260 RCW) established registration for dental assistants and licensure for expanded function dental auxiliaries.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Town Center 2, Room 158, Tumwater, WA 98501, on May 29, 2008, at 1:30 p.m.

Date of Intended Adoption: June 12, 2008.

Submit Written Comments to: Jennifer Bressi, P.O. Box 47867, Olympia, WA 98501-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Jennifer Bressi by May 27, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to establish credentialing fees for registered dental assistants and licensed expanded function dental auxiliaries. The proposed fees are authorized by the health professions and facility fees addendum DOH 2008 in the conference operating budget as referenced in ESHB 2687.

Reasons Supporting Proposal: The proposed rule details fee amounts for credentialing dental assistants and expanded function dental auxiliaries. Fees are necessary to administer the new credentialing programs as mandated by RCW 43.70.250.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jennifer Bressi, 310 Israel Road, Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

April 18, 2008.

B. White

for Mary C. Selecky  
Secretary

NEW SECTION

**WAC 246-817-99005 Dental assistant and expanded function dental auxiliary fees and renewal cycle.** (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except faculty and resident licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for dental assistant and expanded function dental auxiliary:

Title of Fee - Dental Professionals	Fee
Registered dental assistant application	\$40.00
Registered dental assistant renewal	20.00
Registered dental assistant late	20.00
Registered dental assistant expired reactivation	20.00
Licensed expanded function dental auxiliary application	175.00
Licensed expanded function dental auxiliary renewal	160.00
Licensed expanded function dental auxiliary late	80.00
Licensed expanded function dental auxiliary expired reactivation	50.00
Duplicate	15.00
Verification	25.00

**WSR 08-09-095**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 21, 2008, 8:39 a.m.]

The department of licensing hereby withdraws proposed rule, chapter 308-93 WAC, Vessel registration and certifi-

cates of title, filed with the code reviser's office on April 9, 2008, WSR 08-09-031.

Dale R. Brown  
Rules Coordinator

not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 21, 2008  
Susan Arland  
Rules Coordinator

### WSR 08-09-096

#### PROPOSED RULES

#### GAMBLING COMMISSION

[Filed April 21, 2008, 8:44 a.m.]

##### Original Notice.

Preproposal statement of inquiry was filed as WSR 08-05-038.

Title of Rule and Other Identifying Information: WAC 230-06-030 Restrictions and conditions for gambling promotions, 230-15-141 Additional merchandise or cash prizes for card games.

Hearing Location(s): The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on July 11, 2008, at 9:30 a.m.

Date of Intended Adoption: July 11, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by July 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Reasons Supporting Proposal: Monty Harmon, a gambling service supplier licensee, submitted a petition for rule change requesting to increase the dollar limit for a gambling promotional item from \$500 to \$5,000. Additionally, the petitioner requested that the restriction to combine gambling promotions with promotional contests of chance (RCW 9.46.0356) be removed. At their April meeting, the commissioners filed an alternative to the petition to increase the amount of a gambling promotional item from \$500 to \$5,000. However, they did not file the second part of the petition requesting to combine gambling promotions with promotional contests of change.

Statutory Authority for Adoption: RCW 9.46.070.

Name of Proponent: Monty Harmon, licensed gambling service supplier, private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

**WAC 230-06-030 Restrictions and conditions for gambling promotions.** Licensees may conduct gambling promotions to encourage players to participate in a gambling activity, but you must follow these restrictions and conditions:

(1) Promotional items must not exceed five (~~hundred~~) thousand dollars each; and

(2) You must give all players an equal opportunity to participate; and

(3) You must establish standards to determine how you will give promotional items to players. You must not give the items based on an element of chance, such as a drawing or spinning wheel, unless you are doing so as part of a bingo game; and

(4) You must not give another chance to participate in a gambling activity as a promotional item; and

(5) You must display all rules or restrictions clearly in the gambling area and include them on promotional materials or advertisements; and

(6) You must not combine gambling activities and related gambling promotions in any way with a promotional contest of chance as defined in RCW 9.46.0356.

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

**WAC 230-15-141 Additional merchandise or cash prizes for card games.**

##### Nonproprietary games.

(1) Licensees may add additional merchandise or cash prizes to nonproprietary games like Blackjack or Pai Gow. We consider these additional prizes a gambling promotion and they must(=

(a) ~~Not be greater than five hundred dollars each; and~~

(b)) meet all requirements of WAC 230-06-030.

##### Proprietary games.

(2) Licensees must not add additional merchandise or cash prizes to proprietary games without the approval of the company that owns the rights to the games.

(3) To indicate their approval, the owner of the rights to a proprietary game must:

(a) Submit an alternative pay-table that includes the additional or revised prize payout to us for review and approval; or

(b) Send an authorization letter to us allowing the addition of gambling promotions to their game.

(4) Once we approve the changes, the revised pay-tables are available to all card game licensees. The prizes become a part of the game rules and we consider them prize payouts on

the game. Because of this, we do not consider the prizes a gambling promotion.

**WSR 08-09-097****PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed April 21, 2008, 9:06 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-915-99005 Physical therapist assistant fees and renewal cycle, this proposed rule establishes fees for licensure of physical therapist assistants. In the 2007 legislative session, ESSB 5292 requires licensure for physical therapist assistants.

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road S.E., Room 158, Tumwater, WA 98501, on May 29, 2008, at 2:00 p.m.

Date of Intended Adoption: June 12, 2008.

Submit Written Comments to: Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Kris Waidely by May 27, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes licensure fees for physical therapist assistants. The proposed rule will detail fee amounts for applications, renewals, late renewals, inactive status, expired reactivations, expired inactive status, duplicate licenses, and verifications.

Reasons Supporting Proposal: RCW 43.70.250 requires these fees to be established in rule. In addition, it also requires all fees to cover the costs to administer the program and all costs must be fully borne by the members of that profession, occupation, or businesses.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road, Tumwater, WA 98501, (360) 236-4847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi)

exempts rules that set or adjust fees or rates pursuant to legislative standards.

April 18, 2008

B. White

for Mary C. Selecky

Secretary

**NEW SECTION****WAC 246-915-99005 Physical therapist assistant fees and renewal cycle.**

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged for physical therapist assistant:

<b>Title of Fee</b>	<b>Fee</b>
Application	\$100.00
License renewal	125.00
Late renewal penalty	62.50
Inactive license renewal	50.00
Expired inactive license reissuance	75.00
Expired license reissuance	75.00
Duplicate license	15.00
Certification	25.00

**WSR 08-09-098****PROPOSED RULES****DEPARTMENT OF TRANSPORTATION**

[Filed April 21, 2008, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-133.

Title of Rule and Other Identifying Information: Establishing and amending rules that apply to all owners of rail fixed guideway systems as defined by RCW 81.104.015 which are required by RCW 35.21.228, 35A.21.300, 36.01.-210, 36.57.120, 36.57A.170, or 81.112.180 to comply with the requirements of the Washington state department of transportation's (WSDOT's) development and implementation of a system safety program plan and a security and emergency preparedness plan.

Hearing Location(s): Washington State Department of Transportation, Headquarters Building, 310 Maple Park Avenue S.E., Large Commission Board Room 1D, Olympia, WA 98504, on June 25, 2008, at 10:00 a.m.

Date of Intended Adoption: June 25, 2008.

Submit Written Comments to: Michael Flood, WSDOT Public Transportation Division, Goldsmith Building, 401 2nd Avenue South, Suite 200, e-mail floodm@wsdot.wa.gov, fax (206) 464-1189, by June 24, 2008.

Assistance for Persons with Disabilities: Contact Michael Flood by June 25, 2008, TTY (206) 464-1189 or (360) 705-7770.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 468-550 WAC has been amended to include new and/or revised requirements for operators of rail fixed guideway systems (e.g. City of Seattle, Sound Transit) to submit for review and approval (1) a system safety program plan and (2) a security and emergency preparedness plan to the Washington state department of transportation/public transportation division. A new section, WAC 468-550-090, is added that allows WSDOT to receive reimbursement for administrative costs associated with the management of the rail safety oversight program consistent with RCW 81.104.155(8).

Reasons Supporting Proposal: Align Washington's rail fixed guideway safety and security/emergency preparedness program with the federal government, and provides a mechanism for WSDOT to be reimbursed for the administration of the program.

Statutory Authority for Adoption: RCW 81.104.115.

Statute Being Implemented: RCW 81.104.115.

Rule is necessary because of federal law, 49 C.F.R. 659.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Recommendation - adopt the proposed changes and the new section. The changes are consistent with RCW 81.104.115 and federal requirements and guidance on safety and security for rail fixed guideway systems.

Name of Proponent: WSDOT, public transportation division, governmental.

Name of Agency Personnel Responsible for Drafting: Cathy Silins, WSDOT Public Transportation Division, Olympia, (360) 705-7919; Implementation: Michael Flood, WSDOT Public Transportation Division, Seattle, (206) 464-1291; and Enforcement: Kathryn Taylor, WSDOT Public Transportation Division, Olympia, (360) 705-7920.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This WAC only impacts rail fixed guideway systems which include light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway components of a high-capacity transportation system that is not regulated by the Federal Railroad Administration. It does not include elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule aligns the Washington state rail fixed guideway program with federal requirements from the Federal Transit Administration and implementation of a rail fixed guideway safety and security program is a condition of receipt of federal funds. In addition, the reimbursement section of the proposed WAC is consistent with state

law and does not place a financial burden on the operators of Washington state's rail fixed guideway services.

April 16, 2008

Steven Reinmuth

Chief of Staff

**AMENDATORY SECTION** (Amending WSR 98-19-052, filed 9/15/98, effective 10/16/98)

**WAC 468-550-010 Purpose.** This chapter is adopted to comply with 49 CFR Part 659 and RCW 81.104.115 which requires the state of Washington to oversee the system safety program and the security and emergency preparedness plans of rail fixed guideway systems (RFGS) not regulated by the Federal Railroad Administration. These rules prescribe the system safety and security criteria to be met by RFGS and (is) are intended to improve the safety and security of RFGS in Washington state.

**AMENDATORY SECTION** (Amending WSR 98-19-052, filed 9/15/98, effective 10/16/98)

**WAC 468-550-020 Applicability.** These rules are applicable to all Washington state entities, public or private, which own, operate, or maintain RFGS that are not regulated by the Federal Railroad Administration.

These rules apply to all owners of rail fixed guideway systems as defined by RCW 81.104.015 which are required by RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, or 81.112.180 to comply with the requirements of the Washington state department of transportation for the development and implementation of a system safety program plan and a security and emergency preparedness plan.

**AMENDATORY SECTION** (Amending WSR 02-13-004, filed 6/6/02, effective 7/7/02)

**WAC 468-550-030 Definitions.** For the purposes of this chapter, the following definitions of terms shall apply unless the context clearly indicates otherwise:

(1) Accident, reportable means any event involving the operation of a RFGS along a revenue line segment, if as a result:

- (a) An individual dies; or
- (b) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
- (c) A collision, derailment, or fire causes property damage in excess of ~~\$(50,000)~~ 25,000.

(2) APTA Guidelines means the American Public Transit Association's "Manual for the Development of Rail Transit System Safety Program Plans."

(3) Chief executive officer means, but is not limited to, the mayor, county executive, or chair of the municipality, or corporate president of the public or private entity that owns, operates, or maintains a RFGS.

(4) Contractor means an entity that performs tasks required by this chapter on behalf of the department or a RFGS.

(5) Department means the Washington state department of transportation which has been designated as the state safety oversight agency.

(6) Directional route mile means the mileage in each direction over which public transportation vehicles travel while in revenue service. Directional route miles are a measure of the route path over a facility or roadway and not the service carried on the facility. Directional route miles are computed with regard to direction of service, but without regard to the number of traffic lanes or rail tracks existing in the right of way. Directional route miles do not include staging or storage areas at the beginning or end of a route.

(7) Emergency means a situation which is life threatening to passengers, employees, or others or which causes damage to any rail fixed guideway vehicle or facility or results in a significant theft of services which severely affects the ability of the system to fulfill its mission.

~~((7))~~ (8) FTA means the Federal Transit Administration, or its successors, an agency within the U.S. Department of Transportation.

~~((8))~~ (9) Hazardous condition means a set of circumstances that if not identified and corrected has or will result in personal injury or property damage. It includes unacceptable hazardous conditions.

~~((9))~~ (10) Incident reporting thresholds are criteria established by Federal Transit Administration in CFR 49 Part 659 and further by the Washington state rail safety oversight program standard for determining which accidents/incidents require investigation.

(11) Investigation means a procedure that the department or a RFGS utilizes to determine the cause of a reportable accident, hazardous condition, or security breach.

~~((10))~~ (12) Medical attention means emergency care at a state-licensed general hospital, critical access hospital, or health clinic, or by a religious practitioner.

~~((11))~~ (13) Plan means the system safety ~~((and security))~~ program plan ~~((which is))~~ and the security and emergency preparedness plan of rail fixed guideway systems not regulated by the Federal Railroad Administration adopted by the RFGS detailing its safety and security policies, objectives, responsibilities and procedures.

~~((12))~~ (14) Procedure means an established and documented method to perform a task.

~~((13))~~ (15) Rail fixed guideway system or "RFGS" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high-capacity transportation system that is not regulated by the Federal Railroad Administration or its successor. "RFGS" does not include elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they are an integral component of a station served by a rail fixed guideway system ~~((or operations not available to the general public, acquired by an individual or group of individuals for a common purpose to travel together as a group to a specific destination or for a particular itinerary. A RFGS also shall be within a federally recognized urbanized area)).~~

~~((14))~~ (16) Revenue line segment means that portion of a fixed guideway system upon, under, or through which a RFGS provides service available to the general public. It

includes stations used by the system's passengers to enter or leave the RFGS's conveyance.

~~((15))~~ (17) Risk means the probability that a security breach will occur.

~~((16))~~ (18) Safety means freedom from danger.

~~((17))~~ (19) Security and emergency preparedness plan or "SEPP" is a document developed and implemented for each rail fixed guideway system which describes its security policies, objectives, responsibilities, and procedures. This plan is a requirement of RCW 81.104.115 and meets the standards established by the Federal Transit Administration in CFR 49 Part 659 and the Washington state rail safety oversight program.

(20) Seasonally means the provision of service available to the general public fewer than a total of one hundred eighty days within a twelve-month period. The provision of service any time on a calendar day is a day counted towards the threshold of one hundred eighty days.

~~((18))~~ (21) Security means freedom from intentional danger.

~~((19))~~ (22) Security breach means an unforeseen event or occurrence that endangers life or property and may result in the loss of services or system equipment.

~~((20))~~ (23) Service available to the general public does not include operations for a specific private function when a RFGS accepts hire, such as group charters, weddings, or other private events that are not available to the general public on a walk-in basis.

~~((21))~~ (24) Standard means the system safety and security program standard which is the standard developed and adopted by the department which complies with the ~~((APTA Manual for the Development of Rail Transit System Safety Program Plans, the Federal Transit Administration's Transit System Security Program Planning Guide (FTA MA 90-7001-94-1), The Federal Transit Administration's Implementation Guidelines for State Safety Oversight of Rail Fixed Guideway Systems, and the State Safety Oversight Security Handbook))~~ requirements of CFR 49 Part 659.

~~((22))~~ (25) System means a composite of people, property, environment, and procedures which are integrated to perform a specific operational function in a specific environment.

~~((23))~~ (26) System safety program plan or "SSPP" is a document developed and implemented for each rail fixed guideway system which describes its safety policies, objectives, responsibilities, and procedures. The requirements for this plan are established by the Federal Transit Administration in CFR 49 Part 659 and further by the Washington state rail safety oversight program standard.

(27) Triennial safety and security audit means a formal, comprehensive, on-site examination by the department of a RFGS's safety and security procedures to determine whether it complies with the RFGS's policies and procedures as outlined in the RFGS's plan.

~~((24))~~ (28) Washington state rail safety oversight program is the program administered by the Washington state department of transportation to ensure compliance by rail fixed guideway systems with the Washington state rail safety oversight program standard.



(29) Washington state rail safety oversight program standard is a document developed and adopted by the Washington state department of transportation that describes the policies, objectives, responsibilities, and procedures used to provide safety and security oversight of rail fixed guideway systems. This document is a requirement established by the Federal Transit Administration in CFR 49 Part 659.

(30) Unacceptable hazard is a real or potential condition that may endanger human life or property that after an assessment of its severity and probability cannot remain and must be mitigated.

(31) Unacceptable hazardous condition means a hazardous condition ((of type IA, IB, IC, IIA, IIB, OR IIIA as determined using the "Hazardous Resolution Matrix" in APTA Manual for the Development of Rail Transit System Program Plans)) classified by the rail transit agency as being unacceptable based on a hazardous resolution matrix or other evaluation methodology approved by the department.

AMENDATORY SECTION (Amending WSR 02-13-004, filed 6/6/02, effective 7/7/02)

**WAC 468-550-040 Requirements for system safety program plan and security and emergency preparedness plans.** (1) Each RFGS, except any that operate seasonally, shall prepare a system safety program plan and security ((~~program~~)) and emergency preparedness plans. Such plans shall describe the RFGS's procedures for:

- (a) Reporting and investigating reportable accidents and unacceptable hazardous conditions;
- (b) Submitting corrective action plans and annual safety and security audit reports;
- (c) Facilitating on-site safety and security reviews by the department; and
- (d) Addressing passenger and employee security.

The plans and any revisions thereto shall, at a minimum, conform to the standard set forth in WAC 468-550-050, be approved by the RFGS's chief executive officer and submitted for departmental review ((~~by September 1, 1999~~)), or within three months prior to beginning operations or instituting revisions to the plans. The RFGS shall not transmit the security portions of its ((~~system safety and~~)) security ((~~program~~)) and emergency preparedness plan to the department. The RFGS shall notify the department of the location and availability of the security portions of its ((~~system safety and security program~~)) plan.

(2) Each RFGS shall implement and comply with the provisions of its plans and any revisions thereto. Further, should the RFGS change ownership or operating or maintenance providers, the RFGS shall require its successors, assigns, and contractors to continue to comply with the RFGS's established plans and shall notify the department of any change of ownership or operating or maintenance providers within thirty days of the effective date of transfer or contract.

(3) The security section of the security and emergency preparedness plan is exempt from public disclosure under chapter ((~~42-17~~)) 42.56 RCW. Each RFGS may develop procedures to implement this subsection. Completed reports of reportable accidents and unacceptable hazardous conditions,

corrective action plans, annual safety and security audit reports, published reviews of the department, published RFGS internal safety and security audits, and notifications of reportable accidents and unacceptable hazardous conditions are not subject to this exemption.

(4) Each RFGS that operates seasonally shall submit a system description and organization structure to the department ((~~by September 1, 2002, or~~)) within ninety days of commencing operations((~~, whichever is sooner~~)). Each RFGS shall update this submittal within thirty days after any changes to the system description or organizational structure occur.

(a) The system description shall identify the revenue line segments, revenue equipment, and all locations for embarking or debarking passengers.

(b) The organizational structure shall identify the decision-making structure for the RFGS, including any firm or organization contracted to undertake its seasonal operations.

(c) This submittal shall include safety contact information for the RFGS and any firm or organization contracted to undertake its seasonal operations.

AMENDATORY SECTION (Amending WSR 98-19-052, filed 9/15/98, effective 10/16/98)

**WAC 468-550-050 Department procedures for reviewing, approving, and filing rail fixed guideway system safety program plan and security and emergency preparedness plans and inspections.** (1)(a) The department shall review each RFGS system safety program plans, and all subsequent revisions, for compliance with these rules and the standard, using the ((~~APTA~~)) system safety checklist which includes:

- Policy statement and authority for the plan
- Description of purpose for the plan
- Clearly stated goals for plan
- Identifiable and attainable objectives
- System description and organizational structure
- The plan control and update procedures
- Hazard identification and resolution process
- Accidents, hazardous conditions and reporting and investigation procedures
- Internal safety audit process
- Facilities inspections (includes system equipment and rolling stock)
- Maintenance audits and inspections (all systems and facilities)
- Rules and procedures review
- Training and certification reviews and audits
- Emergency response planning, coordination and training
- System modification review and concurrence process
- Safety data acquisition and analysis
- Interdepartmental and interagency coordination
- Configuration management
- Employee safety program
- Hazardous materials program
- Drug abuse and alcohol misuse programs
- Contractor safety coordination
- Procurement

(b) The department shall provide written concurrence with the RFGS's system safety program plan or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGS of its concurrence with the plans. The plans and the department's concurrence shall be maintained by the department in a permanent file.

(2)(a) The department shall review RFGS's security and emergency preparedness plan, and all subsequent revisions, for compliance with these rules and the standard, using the WSDOT security and emergency preparedness checklist which includes:

- Policy statement for the plan
- Purpose for the plan
- Clearly stated goals and identifiable and attainable objectives
- Scope of plan and system security program
- Security and law enforcement functions that manage and support plan
- Management authority which oversees the operation and management of the agency
- Interface of the plan with local, state and federal authorities
- Security acronyms and definitions
- Background and history of agency's rail transit services
- Organization charts and lines of authority
- Description of passenger and ridership characteristics
- Description of operations and services including operating environment
- Description of how the plan integrates with other plans including the SSPP
- Current security conditions
- Capabilities and practices
- Identification of person(s) responsible for establishing SEPP policy and developing and approving plan
- Identification of person(s) responsible for the management of the SEPP program
- Listings of the SEPP related responsibilities of individuals working within the security function
- Description of equipment used to support implementation of the plan
- Description of training, exercises, and procedures in place to ensure employee proficiency and readiness
- Description of activities to identify threats and vulnerabilities and to assess their likely impacts
- Response strategies for prioritizing vulnerabilities
- Identification and schedule of tasks to be performed for implementing the plan
- Description of methods for evaluating the effectiveness of the plan
- Process for reviewing and revising the plan and for implementing any revisions

(b) The department shall provide written concurrence with the RFGS's security and emergency preparedness plan

or provide written comments to the RFGS specifying required changes. The RFGS shall revise its plan to incorporate the department's review comments, if any, within sixty days after receipt thereof, and resubmit its revised plan for review. After resolving issues arising in the review process, the department shall notify the RFGS of its concurrence with the plan. The plan and the department's concurrence shall be maintained by the department in a permanent file.

AMENDATORY SECTION (Amending WSR 02-13-004, filed 6/6/02, effective 7/7/02)

**WAC 468-550-060 Annual and triennial safety and security audits and reports.** (1)(a) Each RFGS shall perform scheduled internal safety and security audits to evaluate compliance with the standard, identify hazardous and risk conditions, and measure the effectiveness of its plans. The RFGS shall include its internal safety and security audit schedule for the next year with the annual report required in WAC 468-550-070(5). These audits shall include, but are not limited to:

- (i) Observing work practices and employee performance during system operations;
- (ii) Sampling and inspecting selected system components to verify proper maintenance; and
- (iii) Reviewing RFGS records for all phases of system operations, maintenance, and security.

The RFGS shall select a qualified person(s) or contractor to perform its internal audits and shall notify the department not later than ten days prior to performing the internal audits. The notification shall include date(s) of audit, what is to be audited, and the qualifications of those selected to perform the audit, such qualifications are subject to departmental concurrence. The department may assess the effectiveness of each RFGS audit program; however, any departmental review or concurrence shall not substitute for the RFGS's own safety and security inspection audit programs, nor relieve the RFGS from its sole liability for the safety and security of its system.

(b) Each RFGS, as a basis for its audit process, shall prepare, maintain, and make available for departmental review records that document the results of all tests, inspections, and audits conducted by the RFGS or its contractor in compliance with the plans. These records shall include, but are not limited to:

- (i) Start up test records;
- (ii) Drug and alcohol test records;
- (iii) Training and certification records;
- (iv) Operation performance evaluation records;
- (v) Facility inspections;
- (vi) Maintenance audits and inspections (all systems and facilities);
- (vii) Rules and procedures review;
- (viii) Emergency response planning, coordination, and training;
- (ix) System modification review and approval process;
- (x) Safety and security data acquisition and analysis;
- (xi) Interdepartmental and interagency coordination;
- (xii) Employee safety and security program;
- (xiii) Hazardous materials program;

- (xiv) Contractor safety coordination; and
- (xv) Procurement records.

These records shall be maintained by the RFGS for a minimum of three years.

(2) Internal safety and security audits shall be documented in an annual report that includes the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity and the results of each audit in terms of the adequacy and effectiveness of the plan. This annual report for the internal safety and security audits performed during the preceding year shall be included with the annual report required in WAC 468-550-070(5).

(3) The department shall audit each RFGS plan at least once every three years. The RFGS shall be given written notification at least thirty days in advance of the department's audit. The notification shall include a proposed schedule, planned scope, and list of activities to be reviewed for the audit. Each audit shall be preceded by an on-site, preaudit conference attended by the department's audit team, the RFGS's owner, and the RFGS staff in charge of the activities subject to audit. Each audit shall be conducted in accordance with an audit checklist. Checklists shall not restrict the department from performing additional investigations as it deems appropriate. The department shall use as a basis for its checklist the RFGS's plan and records which shall include, but are not limited to:

- (a) The RFGS operating rule book, bulletins, and procedures;
- (b) The RFGS maintenance manuals and procedures for vehicles, track and signals;
- (c) The RFGS procedures for identifying, documenting, evaluating, and correcting hazards;
- (d) The RFGS system design criteria and project engineering procedures for system modifications;
- (e) The RFGS annual internal audit reports for the previous three years;
- (f) The RFGS corrective action plans for reportable accidents and unacceptable hazardous conditions reported to the department during the previous three years;
- (g) APTA audit reports;
- (h) National Transportation Safety Board accident investigation reports, and any other agency peer review reports, if any, prepared during the previous three years and previously prepared department audit reports.

~~((Each RFGS shall reimburse the reasonable expenses of the department in carrying out its responsibilities of this subsection within ninety days after receipt of an invoice. The department shall notify the RFGS of the estimated expenses at least six months in advance of when the department audits the system.))~~

(4) Upon the department's completion of the triennial on-site audit, the audit team leader shall prepare a draft final audit report and submit it to the RFGS. The RFGS shall respond, in writing to the recommendations made in the draft final audit report, with a plan and schedule of corrective actions within thirty days of receipt thereof. An on-site, post audit conference shall be held following each departmental audit to review the results of the audit. Audit results that identify a deficiency that is not corrected before the post audit

conference is held shall be documented in the final audit report. The final audit report shall contain the department audit team's findings and recommendations and the RFGS plan and schedule for corrective action. The final audit report shall also include the department audit team's evaluation of the effectiveness of the RFGS plan and a determination of whether the plan should be updated.

(5) The department shall summarize oversight activities for all RFGS performed during the preceding twelve months in a publicly available annual report and submit it to the FTA before March 15 of each year.

(6) Each RFGS that operates seasonally shall be exempt from the provisions of this section.

AMENDATORY SECTION (Amending WSR 02-13-004, filed 6/6/02, effective 7/7/02)

**WAC 468-550-070 Notifying of, investigating, and reporting accidents and unacceptable hazardous conditions.**

(1) Each RFGS shall notify the department by telephone, electronic mail or facsimile within ~~((four))~~ two hours of the occurrence of any reportable accident, or within twenty-four hours of the identification or discovery of any unacceptable hazardous condition. The department shall notify each RFGS of the person to notify and the telephone, electronic mail and facsimile numbers for notification. The notification shall include all of the following details:

- (a) Name and title of the person making the notification;
- (b) Time and date the notification is transmitted;
- (c) Synopsis of what happened, such as, but not limited to: Collision with another RFGS revenue vehicle, derailment, collision with a motor vehicle, collision with a pedestrian, collision with a bicyclist, fire, bomb threat, or hostage-taking;
- (d) Specific location of the accident or unacceptable hazardous condition;
- (e) Time of the accident or discovery of the unacceptable hazardous condition;
- (f) Identification of RFGS vehicle(s) and/or facility involved;
- (g) Initial number of fatalities and/or individuals who suffered bodily injury and immediately received medical attention away from the scene of the accident; and
- (h) Description of and preliminary value of property damage.

(2) The department has authority to perform separate, independent investigations of reportable accidents or unacceptable hazardous conditions at its own discretion.

(3) Each RFGS shall investigate all reportable accidents and unacceptable hazardous conditions. The RFGS may use its own staff or a contractor to conduct its investigation and shall designate a staff person to be responsible for submitting written investigation reports and findings to the department, on a department form, within forty five calendar days after the reportable accident or unacceptable hazardous condition was discovered. This report shall identify the causal factors contributing to the occurrence and contain a corrective action plan with an implementation schedule to prevent a recurrence of the accident, or to mitigate the unacceptable hazardous condition.

(4) The department shall review the RFGS investigation report, corrective action plan, and accompanying implementation schedule to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident or unacceptable hazardous condition. In the event that the department does not concur with the findings of the RFGS investigation, the department shall confer with the RFGS of its preliminary review findings. The RFGS may amend its report to the department in writing, within ten calendar days after conferring with the department. If, after conferring with the RFGS, the department does not concur with the findings of the RFGS, the department shall notify the RFGS in writing of its review findings. The RFGS shall submit its response to the department's findings within forty-five calendar days of receipt thereof. Should the department and the RFGS disagree, the department will notify the FTA.

(5) Each RFGS shall submit an annual summary report to the department covering all reportable activities. The RFGS shall ensure delivery of the annual report to the department no later than February 1 after the year being reported.

AMENDATORY SECTION (Amending WSR 02-13-004, filed 6/6/02, effective 7/7/02)

**WAC 468-550-080 Notifying of and applying financial penalties.** (1) The due dates for documentation required herein are specified in (a) through (e) of this subsection. The department shall provide a RFGS a written notification of the required due date no later than one month before the applicable due date.

(a) System safety program plan and security ~~((program))~~ and emergency preparedness plan ~~((by September 1, 1999, or))~~ within three months prior to beginning operations;

(b) Internal safety and security audit schedule for the next year by February 1;

(c) Annual report for the internal safety and security audits performed during the preceding year by February 1;

(d) Annual summary report to the department covering all reportable occurrences by February 1;

(e) Written investigation reports and findings within forty-five calendar days after a reportable accident occurred, or unacceptable hazardous condition was discovered.

(2) If any RFGS notified by the department fails to deliver the required documentation by the due date specified in subsection (1) of this section, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress in completing the documentation and the potential consequences of further delay. In scheduling this meeting, the department shall notify the RFGS's chief executive officer of the purpose of the meeting and its time and location. The department shall attempt to schedule the meeting within one week of the specified due date.

(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.

(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.

(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance and the RFGS's chief executive officer within one week of the meeting.

(d) Should the department determine that there is no reasonable cause for any further delay by the RFGS for submission of its required documentation, the department shall notify the RFGS's chief executive officer of the applicable financial penalty, as defined in subsection (5) of this section.

(e) If the department receives no further communication from the RFGS within ten calendar days of the notification made in accord with (d) of this subsection, the department shall proceed to notify FTA of the RFGS's failure to supply the required documentation and to apply the appropriate financial penalty in accord with subsection (5) of this section.

(3) If any RFGS delivers incomplete documentation by the required due date, the department shall notify the RFGS of any deficiency within one week. The RFGS shall supplement its required documentation within one week after receiving the department's notification. If the RFGS fails to supplement its documentation adequately, the department shall proceed to schedule a meeting and follow the procedures in subsection (2) of this section.

(4) If any RFGS fails to implement a corrective action plan, according to the implementation schedule developed pursuant to WAC 468-550-070(4), to prevent a recurrence of an accident or to mitigate an unacceptable hazardous condition, the department shall schedule a meeting with the director responsible for the RFGS's operations and maintenance to discuss the RFGS's progress in completing the corrective action plan and the potential consequences of further delay.

(a) The department may cancel this meeting if the department receives the required documentation prior to the scheduled meeting.

(b) The department may defer scheduling the meeting in the event of a catastrophic event affecting the RFGS and its ability to conduct routine business.

(c) The department shall document the results of the meeting in writing to the director responsible for the RFGS's operations and maintenance within one week of the meeting.

(d) Should the department determine that there is no reasonable cause for a RFGS's failure to implement the corrective action plan, the department shall notify the RFGS's chief executive officer that the department intends to notify FTA of the RFGS's noncompliance.

(e) If the department receives no further communication from the RFGS within ten calendar days of the notification made in accord with (d) of this subsection, the department shall notify FTA of the RFGS's failure to implement a corrective action plan action.

(f) This subsection shall apply also to a corrective action plan upon which the department and the RFGS disagree. In this situation, the department shall use the corrective action plan and implementation schedule proposed by the RFGS.

(5) Any RFGS that fails to comply with the timelines as set forth in this chapter shall be assessed the financial penalties following:

(a) One thousand five hundred dollars for each calendar month ~~((beginning October 1999, or))~~ two months prior to

beginning operations, for failure to deliver to the department an acceptable system safety and security program plan;

(b) Five hundred dollars for each calendar month, beginning with February, for failure to deliver to the department an acceptable:

(i) Internal safety and security audit schedule for the next year;

(ii) Annual report for the internal safety and security audits performed during the preceding year; or

(iii) Annual summary report to the department covering all reportable occurrences; and

(c) One thousand dollars applied each thirty-day period, beginning the 90th day after a reportable accident occurred, or after an unacceptable hazardous condition was discovered for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule.

(6) If FTA notifies the department that it will impose a financial penalty on the state of Washington as a consequence of a RFGS's failure to take appropriate action in a safety or security situation, the department shall:

(a) Notify that RFGS's chief executive officer that the department will impose all FTA financial penalties to that RFGS if the RFGS fails to take adequate action to bring itself into compliance to FTA's satisfaction. Said notice shall include a copy of FTA's written communication and an estimate of FTA's financial penalty.

(b) Recommend steps to the RFGS' chief executive officer that the RFGS should take to bring it into compliance with FTA requirements.

(7) Any RFGS notified by the department of its failure to take appropriate action in a safety or security situation shall take immediate and adequate action to bring itself into compliance to FTA's satisfaction and provide adequate documentation to the department of its corrective measures. The department shall provide that documentation to FTA.

(8) If any RFGS notified by the department of its failure to take appropriate action in a safety or security situation also fails to respond to the department and FTA imposes a financial penalty on the state of Washington as a consequence, the department shall apply the full amount of the financial penalty on the RFGS.

(9) In applying any financial penalty, the department shall take the following steps:

(a) Invoice the RFGS for the amount of financial penalty; the invoice shall identify:

(i) The documentation not received by the specified due date;

(ii) The number of calendar months or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods past the specified due date;

(iii) The applicable financial penalty rate per calendar month or, for failure to deliver to the department an acceptable investigation report, corrective action plan, and accompanying implementation schedule, thirty-day periods; and

(iv) Where payment should be made.

(b) If a RFGS fails to remit the full amount of the imposed financial penalty within sixty days of when due, the department may seek judicial enforcement to recover full

payment. Venue for any action hereunder shall be Thurston County.

#### NEW SECTION

**WAC 468-550-090 Reimbursement for costs associated with the management of the rail safety oversight program.** (1) Owners of rail fixed guideway systems shall reimburse WSDOT for costs incurred for its management of the Washington state rail safety oversight program. These reimbursable costs can be grouped as follows:

(a) Costs for conducting triennial safety and security audits.

(b) Costs for WSDOT staff and/or consultants to conduct investigations of incidents or unacceptable hazards, as necessary.

(c) Labor, administrative, and travel costs incurred by WSDOT for its administration of the Washington state rail safety oversight program. These include but are not limited to:

(i) Staff hours dedicated to the oversight of system safety program plan and security and emergency preparedness plan development and implementation.

(ii) Office support and supplies necessary to carry out this oversight.

(iii) Travel and labor costs associated with WSDOT's administration of the program including for the attendance at federal and state safety, security, and emergency preparedness conferences, workshops, meetings, and trainings which enhance WSDOT oversight of system safety program plan and security and emergency preparedness plan development and implementation.

(2) Triennial safety and security audits. Within ninety days after receipt of an invoice, each RFGS shall reimburse the reasonable expenses of the department in carrying out its responsibilities pursuant to WAC 468-550-060. The department shall notify the RFGS of the estimated expenses at least six months in advance of when the department audits the system.

(3) Investigations of incidents or unacceptable hazards. WSDOT at its discretion may choose to conduct an independent investigation of unacceptable hazards or incidents given that they meet the incident reporting thresholds established in the Washington state safety program standard. Costs associated with these investigations are to be reimbursed in full by the owners of the rail fixed guideway systems being investigated. This includes the cost of hiring consultants to conduct investigations, if determined necessary by WSDOT.

(4) Administrative costs. All other reimbursable costs of the Washington state rail safety oversight program are allocated to each rail fixed guideway system owner based on a formula. This formula allocates the total of all reimbursable costs for the management of the program to each rail fixed guideway system. The owners of the rail fixed guideway systems are responsible for the reimbursement of costs allocated to each rail fixed guideway system for which they own. The allocation of such reimbursable costs is determined as follows:

(a) Fifty percent of all reimbursable costs, except those for investigations of unacceptable hazards or incidents, are

allocated in equal share among rail fixed guideway systems. This allocation of reimbursable costs is equal among rail fixed guideway systems, regardless of the number of passengers they carry or the length of their system. The amount of all such reimbursable costs is arrived at by dividing all such reimbursable costs by the number of RFGS, and then multiplying that result by fifty percent or (reimbursable costs/number of RFGS) x fifty percent.

(b) Fifty percent of all reimbursable costs, excluding those for investigations of unacceptable hazards or incidents, are allocated based on route mileage that is funded, obligated, and/or operational. These reimbursable costs are allocated to rail fixed guideway systems based on their share of the total directional route miles falling under the oversight of the Washington state rail safety oversight program. The owners of the rail fixed guideway systems are responsible for the reimbursement costs allocated to each rail fixed guideway system for which they own. The amount of all such reimbursable costs is arrived at by dividing the RFGS's route miles by total route miles, and then multiplying that result by the product of reimbursable costs multiplied by fifty percent or (RFGS route miles/total route miles) x (reimbursable costs x fifty percent).

(c) The total allocation of reimbursable costs to owners of rail fixed guideway systems is the total of the fifty percent of costs allocated based on an equal share allocation, and the fifty percent allocated based on directional route miles.

(d) WSDOT will provide monthly invoices to owners of rail fixed guideway systems for the reimbursement of costs described above.

**WSR 08-09-101**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed April 21, 2008, 2:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-036.

Title of Rule and Other Identifying Information: New section WAC 246-830-490 Intraoral massage training.

Hearing Location(s): Oxford Suites, 1701 East Yakima Avenue, Yakima, WA 98901, on June 2, 2008, at 9:15 a.m.

Date of Intended Adoption: June 16, 2008.

Submit Written Comments to: Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 664-9077, by May 26, 2008.

Assistance for Persons with Disabilities: Contact Kris Waidely by May 16, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules identify the training requirements for licensed massage practitioners to apply for an intraoral massage endorsement.

Reasons Supporting Proposal: Rules are required by statute. This rule defines the training requirements for licensed massage practitioners to perform intraoral massage. Without the rule, massage practitioners would not be able [to] apply for the endorsement and perform intraoral massage.

Statutory Authority for Adoption: Chapter 18.108 RCW.

Statute Being Implemented: Chapter 18.108 RCW, SHB 1397 (chapter 272, Laws of 2007).

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

Name of Proponent: Department of health (DOH), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kris Waidely, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4847.

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

Small Business Economic Impact Statement

**1. Briefly Describe the Proposed Rule:** The proposed rules identify the training required for a licensed massage practitioner to apply for an endorsement to perform intraoral massage. Only licensed massage practitioners that perform intraoral massage will be required to apply for this endorsement. The cost for the endorsement is \$25.

**2. Is a Small Business Economic Impact Statement (SBEIS) Required for this Rule?** No. DOH has reviewed this proposal and has determined that no SBEIS is required because the rule does not impose more than minor costs on affected businesses. Under the Regulatory Fairness Act (chapter 19.85 RCW), an SBEIS is required whenever a regulation imposes "more than minor" costs on a regulated business. The more than minimum cost threshold from "804 Office of Clinics and Other Healthcare Practitioners" is set at \$110.00. The new cost to implement the proposed rule does not exceed the threshold, therefore, an SBEIS is not required.

A copy of the statement may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail [kris.waidely@doh.wa.gov](mailto:kris.waidely@doh.wa.gov).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kris Waidely, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4847, fax (360) 664-9077, e-mail [kris.waidely@doh.wa.gov](mailto:kris.waidely@doh.wa.gov).

April 18, 2008

Mary C. Selecky

Secretary

and Karin Olsen

Board Chair

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

**WAC 246-830-990 Massage fees and renewal cycle.**

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required pay-

ment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following nonrefundable fees will be charged:

<b>Title of Fee</b>	<b>Fee</b>
Written examination and reexamination	\$65.00
Practical examination and reexamination	50.00
Initial license	( <del>50.00</del> ) <u>90.00</u>
Renewal	( <del>25.00</del> ) <u>65.00</u>
Late renewal penalty	( <del>25.00</del> ) <u>50.00</u>
Expired license reissuance	( <del>25.00</del> ) <u>50.00</u>
Certification of license	10.00
Duplicate license	10.00
<u>Intraoral massage endorsement</u>	<u>25.00</u>
<u>UW library access fee</u>	<u>25.00</u>

**WSR 08-09-102**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

(Board of Pharmacy)

[Filed April 21, 2008, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-103.

Title of Rule and Other Identifying Information: WAC 246-901-030 Technician education and training and 246-901-060 Technician certification.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Tumwater, WA 98501, on May 29, 2008, at 9:15 a.m.

Date of Intended Adoption: May 29, 2008.

Submit Written Comments to: Doreen Beebe, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-4859, by May 23, 2008.

Assistance for Persons with Disabilities: Contact Doreen Beebe by May 26, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule requires pharmacy technician candidates to take a standardized examination to evaluate their knowledge and skill level prior to certification in Washington state. By approving a standardized national examination, the board adopts a reliable tool for assessing a candidate's competencies.

Reasons Supporting Proposal: It is anticipated that the proposed rule will assure a reliable and consistent evaluation of the education and training of pharmacy technician applicants. The examination will help assure that technicians possess the basic skills to assist pharmacists in the practice of pharmacy in all practice setting[s] and will improve the quality of care for patients.

Statutory Authority for Adoption: RCW 18.64A.020.

Statute Being Implemented: RCW 18.64A.020.

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

Name of Proponent: Washington department of health, board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting: Doreen Beebe, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, (360) 236-4834; Implementation and Enforcement: Judy Haenke, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, (360) 236-4828.

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

Small Business Economic Impact Statement

**1. Briefly Describe the Proposed Rule:** The board of pharmacy is proposing to require pharmacy technician candidates to take a standardized examination to evaluate the knowledge and skill level of pharmacy technician candidates prior to certification in Washington state.

In recognition of the disparity in the current examination process, the proposed rule will require applicants for pharmacy technician certification to successfully complete a national standardized pharmacy technicians' examination approved by the board. This change in standards will provide a reliable tool for assessing a candidate's competencies. The proposed rule would also eliminate the need for individual pharmacy technician training programs from having to develop their own exams.

It is anticipated that the proposed rule will assure a reliable and consistent evaluation of the education and training of pharmacy technician applicants. The examination will help assure that technicians possess the basic skills to assist pharmacists in the practice of pharmacy in all practice setting[s] and will improve the quality of care for patients.

The proposed rule will require amending WAC 246-901-030 (3)(b), proof of successful completion of a "certification examination approved by the board" and WAC 246-901-060 Technician certification, to include the requirement for successful completion of a national standardized examination prior to certification in Washington state.

**2. Is a Small Business Economic Impact Statement (SBEIS) Required for this Rule?** The board of pharmacy assessed the impact of the rule on businesses subjected to economic impact analysis. The impacts to the majority of small pharmacy businesses are less than \$66 and thus below the threshold amount defined as "minor costs" in RCW 19.85.020. However, there are a few small businesses for which the economic impact of implementation of this rule would exceed minor costs.

**3. Which Industries are Affected by this Rule?** The proposed rule can be expected to affect businesses identified by the United States North American Industry Classification System (NAICS) code: 44611 for pharmacies and drug stores; 61151 technical and trade schools; 62211 hospitals. Small pharmacy businesses are those businesses with fifty or fewer employees.

**4. What are the Costs of Complying with this Rule for Small Businesses (Those with Fifty or Fewer Employees) and for the Largest 10% of Businesses Affected?** In ana-

lyzing the possible costs, the board conducted a survey of active board-approved technician training programs. At the time of the survey, there were one hundred seventy-nine board-approved on-the-job (OTJ) training programs and twenty-three approved academic courses. The OTJ programs were broken down into practice sites to include: Community/retail pharmacies (fifty employees or less), long-term care pharmacies, hospital pharmacies, other (correctional/public health facilities or specialty pharmacies) and chain store pharmacies (more than fifty employees). Approximately 20% of each category was asked to participate in a survey to determine if the proposed rule would have a disproportionate impact for smaller businesses verses large businesses. Of the forty-five sites solicited sixteen responded.

Random samples of approximately 20% of pharmacies from each category were selected to participate in the survey.

The pharmacies were asked to evaluate their current training program on its ability to prepare an applicant to pass a national standardized examination. Each pharmacy was provided content outlines for examinations administered by the pharmacy technician certification board (PTCE) and of the exam content for the institute for the certification of pharmacy technicians (ExCPT).

Category Headings by Examination

PTCE - Pharmacy Technician Certification Board

Categories Surveyed	# Surveyed	# Responded	Business		# Surveyed Reporting No Costs	Estimated Cost Reported	Average Cost of Compliance Per Employee*
			Large > 50 employees	Small < 50 employees			
Chain Store Pharmacies	5	1	√			\$2200	\$13**
Community/Retail Pharmacies	26	9		√	3	\$5665	\$59
Other Pharmacies	2	0		√		-	
Hospital Pharmacies	3	1	√			\$31,060	\$58
Long-term Care Pharmacies	4	3		√		\$9135	\$190
Academic/Vocational Programs	5	2	√		1	\$200	\$10

\*Average cost per employee calculated based on total costs reported divided by the average number of staff per pharmacy reporting costs (average number of staff based on NAICS data).

\*\*Average cost per employee was calculated based on actual staffing levels reported by the corporation responding to the survey.

Costs were primarily associated with providing the necessary instructions to pharmacy technicians to perform activities related to various pharmacy practice sites.

The content of two national standardized certification exams were reviewed and provided to the survey respondents for consideration when reviewing their current training plans.

**5. Does the Rule Impose a Disproportionate Impact on Small Businesses?** Yes, the cost for small businesses to enhance their technician training programs to prepare applicants to pass a national standardized examination on average is higher than those of larger businesses. However, based on the survey, four of the twelve small pharmacy businesses indicated no changes were needed. In addition, five of the sixteen respondents indicated that proposed rule may result in a cost savings to the program if the program was not required to provide a final examination.

**6. If the Rule Imposes a Disproportionate Impact on Small Businesses, What Efforts Were Taken to Reduce That Impact (or Why is it Not "Legal and Feasible" to Do So) By:**

1. Assisting the Pharmacist in Serving Patients (66% of exam).
2. Maintaining Medication and Inventory Control Systems (22% of exam).
3. Participating in the Administration and Management of Pharmacy Practice (12% of exam).

ExCPT - Institute for the Certification of Pharmacy Technicians

1. Regulations and Technician Duties (~25%of exam).
2. Drugs and Drug Products (~25% of exam).
3. Dispensing Process (~50% of exam).

Survey results: 63% of the pharmacies responding to the survey indicated that they use an examination developed by the program to assess a participant's knowledge and skill level in performing entry level pharmacy technician duties. Others use exams provided by the Michigan Pharmacy Association and the American Society of Health-System Pharmacists. Half of the programs responding to the survey indicated that their programs will need to change to prepare program participants to successfully pass a national standardized certification exam.

Cost estimates were assessed based on need to revise program curriculum and the cost of staff to provide additional didactic and experiential training.

Responses were received in the following categories:

**a) Reducing, Modifying, or Eliminating Substantive Regulatory Requirements?** The proposed rule does not reduce, modify, or eliminate substantive regulatory requirements. Reducing regulatory requirements would not result in reduced costs to the affected small businesses.

**b) Simplifying, Reducing, or Eliminating Record-keeping and Reporting Requirements?** Reducing or eliminating record-keeping requirements were not considered. Performance evaluations of program participants are required to be maintained for two years. This is consistent with all other record keeping required by these businesses. There are currently no reporting requirements related to pharmacy technician training programs.

**c) Reducing the Frequency of Inspections?** The proposed rule does not reduce the need for the board's inspection process. Reducing inspections would not be a viable way of reducing costs to affected small businesses. Conducting regular inspections is necessary to protect public health and safety.



**d) Delaying Compliance Timetables?** The board may consider delaying implementation of the rule to give affected businesses time to find ways they can comply. With the exception to the academic programs, OTJ training programs do not have a set start or completion schedule; therefore, it may be problematic to attempt to coordinate a compliance timetable.

The proposed rule exempts pharmacy technicians who are currently certified in Washington from having to meet the new standard. Although this does not provide a delay in implementation, it will minimize the impact on current pharmacy personnel.

**e) Reducing or Modifying Fine Schedules for Non-compliance?** The board has not considered assessing fines for noncompliance. Technician programs that are unable to meet the new standards for training will not be approved or reapproved.

**f) Any Other Mitigation Techniques?** No other mitigation techniques were considered. However, the board will make any necessary changes to the written guidelines for the implementation of pharmacy technician training programs.

**7. How are Small Businesses Involved in the Development of this Rule?** Small pharmacies were involved in the development of the proposed rule amendments through stakeholder meetings, letters and messages sent to the board and an invitation to participate in a pharmacy cost of rule survey.

A copy of the statement may be obtained by contacting Doreen E. Beebe, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4834, fax (360) 586-4359, e-mail doreen.beebe@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Doreen Beebe, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4834, fax (360) 586-4359, e-mail doreen.beebe@doh.wa.gov.

April 21, 2008  
Doreen E. Beebe  
Program Manager

AMENDATORY SECTION (Amending WSR 00-15-081, filed 7/19/00, effective 8/19/00)

**WAC 246-901-030 Technician education and training.** (1) ~~((Pharmacy technicians))~~ Applicants must obtain education ~~((or))~~ and training from one of the following:

(a) Formal academic ~~((program for))~~ pharmacy technician training approved by the board.

(b) On-the-job pharmacy technician training program approved by the board.

(2) The minimum educational prerequisite for entering a training program shall be high school graduation or G.E.D.

(3) ~~((In order to receive certification as a pharmacy technician, the technician must send the board the following:~~

~~(a) A state application indicating completion of board approved training program;~~

~~(b) Proof of successful completion of a)~~ Applicants must pass a board-approved national standardized pharmacy

technician certification examination ~~((approved by the board))~~.

(4) An out-of-state pharmacy technician applicant must meet the same requirements as a pharmacy technician trained in this state. The board must approve training programs approved in other states.

(5) Applicants whose academic training has been obtained in foreign countries shall meet certification requirements as listed below:

(a) Foreign pharmacy school graduates. Board approval of program completed for the degree.

(b) Foreign medical school graduates. Board approval of program completed for the degree.

(c) All foreign graduates for whom English is not the primary language shall provide proof of receiving a score of at least 173 on the Test of English as a Foreign Language (TOEFL) and a score of 50 on the Test of Spoken English (TSE) prior to certification.

(d) Foreign trained applicants must earn 520 hours of supervised experience in an approved pharmacy technician training program.

(6) Prior to performing specialized functions, pharmacy technicians shall complete specialized training and meet proficiency criteria set forth by the board.

(a) Unit-dose medication checking. The training proficiency criteria requires demonstration of 99% accuracy in medication checking.

(b) Intravenous admixture preparation. The training proficiency criteria requires demonstration of 100% accuracy in intravenous admixture preparation of a representative sample of preparations provided by the facility using aseptic technique.

AMENDATORY SECTION (Amending WSR 00-15-081, filed 7/19/00, effective 8/19/00)

**WAC 246-901-060 Technician certification.** To become certified as a pharmacy technician, an individual must~~((:~~

~~(1) Complete an approved pharmacy technician program;~~

~~(2))~~ apply to the board for certification. The application must include ~~((a notarized))~~:

(1) A statement ~~((of program verification signed by the program director)) signed by the program director verifying the applicant has successfully completed the board-approved pharmacy technician training program.~~

(2) Proof of passing a board-approved national standardized pharmacy technician certification examination.

It is the responsibility of the pharmacy technician to maintain a current mailing address with the board as required by chapter 246-12 WAC. Pharmacy technicians shall notify the board of any change of mailing address within thirty days of the change.

**WSR 08-09-103**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Veterinary Board of Governors)  
 [Filed April 21, 2008, 2:13 p.m.]

Small Business Economic Impact Statement

**Briefly Describe the Proposed Rule.**

- The rule provides for two categories of continuing education.
  - Category one activities represent more cost because they generally require payment of a registration fee and travel to and from the meeting.
  - Category two hours are most often independent and/or unsupervised and often can be accomplished during or after regular work hours at little or no cost to the participant.
    - Of the thirty hours required ten hours can be earned in category two.
    - No more than ten hours can be earned in practice management courses in any three-year reporting period.

RCW 18.93.040 allows the veterinary board of governors to adopt rules implementing continuing education requirements for renewal of the license and relicensing. The purpose of continuing education requirements is to maintain and enhance the professional competence of services provided by licensed veterinary technicians. A successful continuing education program focuses on all aspects of the practice to ensure that the practitioner is competent to provide safe and quality care to patients.

Under the proposed rules, licensed veterinary technicians would be required to accumulate a minimum for thirty continuing education hours every three years. Continuing education falls into two categories:

**Category 1:** Structured activities such as lecture series or education courses sponsored by organizations recognized by the industry as qualified providers. Those organizations include national certifying bodies and associations and accredited schools or colleges.

**Category 2:** Activities which are generally independent and/or unsupervised such as participation in peer review, mentoring, grand rounds, scientific journal review and reporting and practice management. A maximum of ten credit hours may be earned in this category in any three-year reporting period.

**Practice Management:** No more than ten hours can be earned in practice management courses in any three-year reporting period.

**Is a Small Business Economic Impact Statement (SBEIS) Required for this Rule?** Yes.

**Which Industries are Affected by this Rule?** *Affected Industries:* The proposed rules affect practitioners in independent, partnership and clinic settings.

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-138.

Title of Rule and Other Identifying Information: New WAC 246-935-270, 246-935-280, 246-935-290, 246-935-300, and 246-935-310, related to Continuing education for veterinary technicians including purpose, basic requirement—Amount, courses approved by the veterinary board of governors, self-study continuing veterinary technician education activities, and exceptions.

Hearing Location(s): Department of Health, Center Point Corporate Park, 20435 72nd Avenue, Conference Room One, Kent, WA 98032, on June 9, 2008, at 10:00 a.m.

Date of Intended Adoption: June 9, 2008.

Submit Written Comments to: Janette Benham, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 586-4359, by May 29, 2008.

Assistance for Persons with Disabilities: Contact Janette Benham by May 29, 2008, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to implement HB 1331, chapter 235, Laws of 2007, by establishing continuing education requirements. The proposed rules would establish thirty hours of continuing education every three years. The proposed rules designate organizations as providers of continuing education for veterinary technicians. The proposed rules allow up to ten hours every three years of self-study activities including journal reading and courses offered electronically. The proposed rules limit the number of hours that can be obtained through courses on practice management to ten hours in a three-year reporting period.

Reasons Supporting Proposal: HB 1331, chapter 235, Laws of 2007, authorized continuing education for veterinary technicians. The field of veterinary medicine is constantly changing to incorporate new technology and therapies. Continuing education is already required for renewal of licensure for veterinarians. Veterinary technicians must also stay informed of changes in the field through completion of continuing education courses which will result in ensuring patient safety and client confidence.

Statutory Authority for Adoption: RCW 18.92.030 and HB 1331 (chapter 235, Laws of 2007).

Statute Being Implemented: RCW 18.92.030 and HB 1331 (chapter 235, Laws of 2007).

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Janette Benham, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

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

NAICS Code	DESCRIPTION
541940	Vaccination services, veterinary
541940	Veterinarians' office
541940	Veterinarians' practices
541940	Veterinary clinics
541940	Veterinary services
541940	Veterinary services, livestock

NAICS Code	DESCRIPTION
541940	Veterinary services, pets and other animal specialties

**What are the Costs of Complying with this Rule for Small Business (those with Fifty or Fewer Employees) and for the largest 10% of Business Affected?** Licensed veterinary technicians must complete thirty hours of continuing education every three years. Courses may be earned in either Category One (structured activities by approved sponsors) or Category Two (self-study activities including reports, video or CD Rom or courses offered electronically). Licensees may earn all thirty credits in Category One courses, or twenty credits in Category One approved courses and ten credits in Category Two self-study courses.

Based on information provided to the department during the stakeholder process, the minimum cost possible to a licensee is by completing twenty hours of Category One credit by attending evening courses offered quarterly through approved veterinary technician program. These courses are approximately \$8.00 per quarter for three credits, for a total of about \$54.00 for twenty credits. The remaining ten hours can be completed through free courses offered by pharmaceutical companies at the practice location, or relevant courses offered on-line, or provided on CD.

There are also other more expensive options available to licensees which are not documented here.

**Does the Rule Impose a Disproportionate Impact on Small Businesses?** No. All businesses are small businesses in this industry.

**What Cost of Minimizing Features Have Been Included in the Rule?** Licensees may receive Category 2 hours for some activities that occur during regular business hours such as practice management at no additional cost to the licensee. Some on-line courses are free, particularly when sponsored by pharmaceutical companies or by animal product companies.

**Involvement of Small Business in the Rule Making:** Development of continuing education rules has taken place in open public meetings both in Eastern and Western Washington. Notice of meetings have been sent to all persons who have expressed an interest in participating in the rule-making process. The mailing lists consist of 185 individuals.

A copy of the statement may be obtained by contacting Janette Benham, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, phone (360) 236-4947, fax (360) 586-4359, e-mail janette.benham@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Janette Benham, Program Manager, P.O. Box 47868, Olympia, WA 98504-7868, phone (360) 236-4947, fax (360) 586-4359, e-mail janette.benham@doh.wa.gov.

April 21, 2008

Judy Haenke

Acting Executive Director

## CONTINUING EDUCATION REQUIREMENTS

### NEW SECTION

**WAC 246-935-270 Purpose.** The purpose of these rules is to establish standards of continuing education for licensed veterinary technicians. The rules designate approved training methods, identify continuing education providers and set minimum continuing education credit requirements.

### NEW SECTION

**WAC 246-935-280 Basic requirement—Amount.** Continuing education consists of programs of learning which contribute directly to the advancement or enhancement of the skills of licensed veterinary technicians. Beginning with license renewals on or after July 23, 2008, licensed veterinary technicians must complete thirty hours of continuing education every three years. No more than ten hours can be earned in practice management courses in any three-year reporting period. Licensed veterinary technicians must comply with chapter 246-12 WAC relating to continuing education requirements.

### NEW SECTION

**WAC 246-935-290 Qualified organizations approved by the veterinary board of governors.** Courses offered by the following organizations qualify as continuing education courses for veterinary technicians.

- (1) The Washington State Association of Veterinary Technicians.
- (2) National Association of Veterinary Technicians in America.
- (3) All veterinary technician specialty academies recognized by the North American Veterinary Technician Association.
- (4) The American Association of Veterinary State Boards (AAVSB).
- (5) The American Veterinary Medical Association (AVMA).
- (6) The Washington State Veterinary Medical Association.
- (7) Any board approved college or school of veterinary medical technology.
- (8) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.
- (9) The American Animal Hospital Association.
- (10) Veterinary specialty boards recognized by the American Veterinary Medical Association.
- (11) Regional veterinary conferences and allied organizations recognized by AAVSB.
- (12) The Registry of Approved Continuing Education (RACE).
- (13) Other courses as approved by the board.

### NEW SECTION

**WAC 246-935-300 Self-study continuing veterinary technician education activities.** The board may grant con-

tinuing education credit for participation in self-study educational activities. The board may grant a licensee a total of ten credit hours under this section for any three-year reporting period. Self-study educational activities may include:

(1) Credit for reports. The board may grant continuing education credit for reports on professional veterinary literature. Licensees must submit requests for credit to the veterinary board of governors at least sixty days prior to the end of the reporting period. The request must include a copy of the article, including publication source, date and author. The report must be typewritten and include at least ten descriptive statements about the article.

(a) Professional literature approved for these reports are peer reviewed veterinary medical journals.

(b) Each report qualifies for one credit hour. The board may grant a licensee up to five credit hours of continuing veterinary technician education under this subsection if the combined total of ten hours for all types of self-study continuing veterinary medical education is not exceeded.

(2) Credit for preprogrammed educational materials. The board may grant a licensee continuing education credit for viewing and participating in board-approved formal preprogrammed veterinary technician educational materials. The preprogrammed materials must be approved by an organization listed in WAC 246-935-290, and must require successful completion of an examination. Preprogrammed educational materials include, but are not limited to:

(a) Correspondence courses offered through journals or other sources;

(b) Cassettes;

(c) Videotapes;

(d) CD-ROM;

(e) Internet.

#### NEW SECTION

**WAC 246-935-310 Exceptions.** The board may excuse from or grant an extension of continuing education requirements to a licensed veterinary technician due to illness or other extenuating circumstances.

Licensees seeking an extension must petition the board, in writing, at least forty-five days prior to the end of the reporting period.

#### **WSR 08-09-104**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed April 21, 2008, 2:31 p.m.]

Supplemental Notice to WSR 08-05-027.

Preproposal statement of inquiry was filed as WSR 07-22-063.

Title of Rule and Other Identifying Information: The department is amending WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services and 388-513-1380 Determin-

ing a client's financial participation in the cost of care for long-term care (LTC) services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- DSHS is updating the 2008 federal maximum resource standard that increases January 1, 2008. This includes the formula and a link to the long-term care standards.
- DSHS is updating the 2008 federal maximum maintenance standard that increases January 1, 2008. This includes the formula and a link to the long-term care standards.
- Because both standards increase annually, the links to the updated standards will show the updated amounts starting in January 2009 and each year thereafter.

This supplemental CR-102 includes the following change in WAC 388-513-1380:

- DSHS is updating the personal needs allowance for clients in a medical institution that increases July 1, 2008, as directed by the Washington state 2008 Supplemental Operating Budget (ESHB 2687).

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and chapter 329, Laws of 2008 (ESHB 2687).

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and chapter 329, Laws of 2008 (ESHB 2687).

Rule is necessary because of federal law, Public Law 106-554; Section 1924 of the Social Security Act (42 U.S.C.)

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

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

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

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

April 15, 2008  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-19-128, filed 9/19/07, effective 10/20/07)

**WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services.** This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle(s) not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (2), (5) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

(A) Are not subject to third-party payment or reimbursement;

(B) Have not been used to satisfy a previous spend down liability;

(C) Have not previously been used to reduce excess resources;

(D) Have not been used to reduce client responsibility toward cost of care;

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(F) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to nonexcluded income, the combined total is less than the:

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

- (i) The institutionalized spouse; or
- (ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

- (i) Either spouse; or
- (ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. ~~((The maximum allocation amount is ninety nine thousand five hundred forty dollars effective January 1, 2006.))~~ Effective January 1, ~~((2007))~~ 2008, the maximum allocation is one hundred and ~~((one))~~ four thousand ~~((six))~~ four hundred ~~((and forty))~~ dollars. ~~((f))~~ This standard increases annually on January 1st based on the consumer price index. (For the current standard starting January 2008 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-five thousand one hundred four dollars effective July 1, 2007 (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2007 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsection (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

- (i) The first regularly scheduled eligibility review; or
- (ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

**AMENDATORY SECTION** (Amending WSR 07-19-126, filed 9/19/07, effective 10/20/07)

**WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC)**

**services.** This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the Medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy Medicaid program. (Note: For hospice applicants with income over the Medicaid SIL, medically needy Medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives the ninety dollar VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving general assistance.

(iv) Effective July 1, 2007(7) through June 30, 2008 fifty-five dollars and forty-five cents for all other clients in a medical institution. Effective July 1, 2008 this PNA increases to fifty-seven dollars and twenty-eight cents.

(v) Current PNA and long-term care standards can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC ((388-503-0510(1))) 388-475-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) in the following order:

(a) Income garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, ((2007)) 2008, two thousand ((five)) six hundred ((forty-one)) ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, <http://www.bls.gov/cpi/>). Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

- (i) Rent;
- (ii) Mortgage;
- (iii) Taxes and insurance;
- (iv) Any maintenance care for a condominium or cooperative; and
- (v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

- (a) A court enters an order against the client for the support of the community spouse; or
- (b) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

**WSR 08-09-105**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Management Services Administration)  
 [Filed April 21, 2008, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-10-112.

Title of Rule and Other Identifying Information: The department is amending chapter 388-02 WAC, DSHS hearing rules.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on June 10, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 11, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on June 10, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by June 3, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to chapter 388-02 WAC make changes to the

authority of administrative law judges (ALJ) and review judges and clarify, update, and make other changes to chapter 388-02 WAC in order to improve efficiency, accuracy, and consistency in DSHS hearings and the review process. Changes to the authority of the ALJ and review judge in WAC 388-02-0215, 388-02-0217, and 388-02-0600 are necessary to comply with federal rules, including 42 C.F.R. 431.10 (e)(3) and 45 C.F.R. 205.100 (b)(3), that prohibit DSHS from delegating final decision-making authority in Medicaid-funded and TANF-funded cases. The proposed rules permit review of hearing decisions for Medicaid-funded and TANF-funded cases by a DSHS review judge upon request of either party. WAC 388-02-0218 is added for clarification to reflect the authority given to review judges under WAC 388-96-904. Chapter 388-02 WAC applies to DSHS clients, licensees, and vendors.

Reasons Supporting Proposal: The changes promote compliance with federal rules and clarify rule language.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.220.

Statute Being Implemented: Chapter 34.05 RCW, Parts IV and V.

Rule is necessary because of federal law, 45 C.F.R. 205.100 (b)(3); 42 C.F.R. 431.10 (e)(3).

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Brian Lindgren, Manager, DSHS Board of Appeals, P.O. Box 45803, Olympia, WA 98504-5803, (360) 664-6093.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules adopt, amend, or repeal "a procedure, practice or requirement relating to agency hearings" and, under RCW 19.85.025(3) and 34.05.310 (4)(g)(i), a small business economic impact statement is not required.

In addition, WAC 388-02-0215, 388-02-0217, and 388-02-0600 are exempt under RCW 19.85.061 because they are necessary to comply with federal regulations 45 C.F.R. 205.100 (b)(3); 42 C.F.R. 431.10 (e)(3). Noncompliance could result in federal audit findings and jeopardize receipt of funds for federal Medicaid and TANF-funded programs. The other proposed rules are exempt under RCW 19.85.025(3) and 34.05.310 (4)(d) because they clarify rule language.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are "procedural rules" related to agency hearings and do not meet the definition of a "significant legislative rule" under RCW 34.05.328 (5)(c). Under RCW 34.05.328 (5)(a)(i), a cost-benefit analysis is only required for significant legislative rules. A cost-benefit analysis is not required for procedural rules.

April 17, 2008  
 Stephanie E. Schiller  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0010 What definitions apply to this chapter?** The following definitions apply to this chapter:



"**Administrative law judge (ALJ)**" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DSHS employees or DSHS representatives.

"**BOA**" means the DSHS board of appeals.

"**Business days**" means all days except Saturdays, Sundays and legal holidays.

"**Calendar days**" means all days including Saturdays, Sundays and legal holidays.

"**Deliver**" means giving a document to someone in person.

"**Documents**" means papers, letters, writings, or other printed or written items.

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

"**DSHS representative**" means an employee of DSHS, a DSHS contractor, or an assistant attorney general authorized to represent DSHS in an administrative hearing. DSHS representatives include, but are not limited to, claims officers and fair hearing coordinators.

"**Final order**" means an order that is the final DSHS decision.

"**Hearing**" means a proceeding before ~~((OAH))~~ an ALJ or review judge that gives a party an opportunity to be heard in disputes about DSHS programs. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

"**Initial order**" is a hearing decision made by an ALJ that may be reviewed by a BOA review judge ~~((pursuant to WAC 388-02-0215(4)))~~ at either party's request.

"**Judicial review**" means a superior court's review of a final order.

"**Mail**" means placing the document in the mail with the proper postage.

"**OAH**" means the office of administrative hearings, a separate state agency from DSHS.

"**Party**" means ~~((a person or entity))~~:

(1) ~~DSHS;~~ or

(2) A person or entity:

(a) Named in a DSHS action;

~~((2))~~ (b) To whom a DSHS action is directed; or

~~((3))~~ (c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

~~((4) DSHS is also a party.)~~

"**Prehearing conference**" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

"**Prehearing meeting**" means an informal voluntary meeting that may be held before any prehearing conference or hearing.

"**Program**" means a DSHS organizational unit and the services that it provides, including services provided by DSHS staff and through contracts with providers. Organizational units include, but are not limited to, administrations and divisions.

"**Record**" means the official documentation of the hearing process. The record includes ~~((tape))~~ recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"**Review**" means ~~((the act of reviewing))~~ a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

"**Review judge**" means ~~((an attorney employed by the DSHS board of appeals (BOA) who is the reviewing officer in RCW 34.05.464 for cases listed in WAC 388-02-0215(4)))~~ a decision-maker with expertise in DSHS rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In some cases, review judges conduct hearings and enter final orders. In other cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. When reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by DSHS, are located in the DSHS board of appeals (BOA), and are not part of the DSHS program involved in the review.

"**Rule**" means a state regulation. Rules are found in the Washington Administrative Code (WAC).

"**Stay**" means an order temporarily halting the DSHS decision or action.

"**You**" means any individual or entity that has a right to be involved with the DSHS hearing process, which includes a party or a party's representative. "You" does not include DSHS or its representative.

AMENDATORY SECTION (Amending WSR 06-16-008, filed 7/20/06, effective 8/20/06)

**WAC 388-02-0215 What is the authority of the ALJ?**

(1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing.

(2) As needed, the ALJ may:

(a) Determine the order for presenting evidence;

(b) Issue subpoenas or orders directing witnesses to appear or bring documents;

(c) Rule on objections, motions, and other procedural matters;

(d) Rule on an offer of proof made to admit evidence;

(e) Admit relevant evidence;

(f) Impartially question witnesses to develop the record;

(g) Call additional witnesses and request exhibits to complete the record;

(h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;

(i) Keep order during the hearing;

(j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;

(k) Permit others to attend, photograph or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 388-02 WAC, unless another law prevents it;

(m) Decide whether a party has a right to a hearing;

(n) Issue protective orders;

(o) Consider granting a stay if authorized by law or DSHS rule; and

(p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) ~~((The ALJ enters an initial order in those cases where the parties may request review of an initial order by a review judge. Cases where the parties may request review of an initial order by a review judge are those relating to:~~

~~(a) Adult family home licenses under chapter 388-76 WAC;~~

~~(b) Boarding home licenses under chapter 388-78A WAC;~~

~~(c) Resident protection program findings under WAC 388-97-077;~~

~~(d) Nursing home licenses under WAC 388-97-550 through 388-97-695;~~

~~(e) DSHS findings of abandonment, abuse, financial exploitation or neglect under chapters 74.34, 74.39, 74.39A RCW and chapters 388-71 and 388-101 WAC;~~

~~(f) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider for placing clients in imminent jeopardy under RCW 74.39A.095(7) and WAC 388-71-0551;~~

~~(g) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider due to inadequate performance or inability to deliver quality care under RCW 74.39A.095(7) and WAC 388-71-0540 and 388-71-0551;~~

~~(h) Where the client has requested a hearing under WAC 388-71-0560, the denial of a contract to a provider due to inability of the provider to appropriately meet the care needs of clients under RCW 74.39A.095(8) and WAC 388-71-0546;~~

~~(i) Where the client has requested a hearing under WAC 388-71-0560, the denial or termination of a contract and subsequent denial of payment to a provider due to a disqualifying crime or lack of character, competence, or suitability to maintain the health, safety, and well-being of clients under RCW 43.20A.710(5) and WAC 388-71-0540 (3) through (5);~~

~~(j) Social service eligibility under chapter 388-71 WAC, and under chapter 388-106 WAC, except for financial eligibility requirements;~~

~~(k) Domestic violence perpetrator treatment program certification under chapter 388-60 WAC;~~

~~(l) Licensing or certification of homes, programs, facilities, providers, and agencies serving children, juveniles, expectant mothers and developmentally disabled persons under chapter 74.15 RCW and chapters 388-140, 388-145, 388-147, 388-148 and 388-160 WAC;~~

~~(m) Child protective services findings of abuse and neglect under RCW 26.44.125 and chapter 388-15 WAC;~~

~~(n) Adoption support under WAC 388-27-0120 through 388-27-0390, for which a hearing has been held under WAC 388-27-0365;~~

~~(o) Child day care licenses under chapter 74.15 RCW and chapters 388-150, 388-151, 388-155, 388-295 and 388-296 WAC;~~

~~(p) Background checks of protective payees under WAC 388-460-0025, for which a hearing has been held under WAC 388-460-0070;~~

~~(q) Background checks of child care providers and other persons under WAC 388-290-0143, for which a hearing has been held under WAC 388-290-0260 as part of the working connections child care program;~~

~~(r) Background checks of persons acting in the place of a parent under WAC 388-454-0006, for which a hearing has been held under WAC 388-472-0005 (1)(j);~~

~~(s) Claims of good cause for not cooperating with the division of child support under WAC 388-422-0020;~~

~~(t) Parent address disclosure under WAC 388-14A-2114 through 388-14A-2140;~~

~~(u) Chemical dependency treatment provider certification under chapter 388-805 WAC;~~

~~(v) Community residential services and support certification under chapter 388-101 WAC;~~

~~(w) Denial or termination of eligibility for services under WAC 388-825-030 and 388-825-035, for which a hearing has been held under WAC 388-825-120 (1)(a);~~

~~(x) Development or modification of an individual service plan under WAC 388-825-050, for which a hearing has been held under WAC 388-825-120 (1)(b);~~

~~(y) Authorization, denial, reduction, or termination of services under WAC 388-825-055, for which a hearing has been held under WAC 388-825-120 (1)(c);~~

~~(z) Licensed community facilities under RCW 74.15.210 and WAC 388-730-0090;~~

~~(aa) Community mental health and involuntary treatment program licenses under WAC 388-865-0480;~~

~~(bb) Medical, dental, or transportation services, for which a hearing has been held under WAC 388-526-2610;~~

~~(cc) Medical provider overpayments, for which a hearing has been held under WAC 388-502-0230(5) or 388-502-0240(17); or~~

~~(dd) Background checks under WAC 388-06-0110 that result in denial of authorization for unsupervised access to children or to individuals with developmental disabilities, for which a hearing has been held under WAC 388-06-0240(1); or~~

~~(ee) Cases for which a right to a hearing existed, if the request for a hearing was received by OAH or DSHS on or before November 14, 2002, and WAC 388-740-0060 and 388-891-0275 did not apply.~~

~~(5) The ALJ makes the final decision and enters the final order in all cases except those cases set forth in subsection (4) of this section.~~

~~(6) A review judge has the same authority as an ALJ when presiding at a hearing.) The ALJ enters initial or final orders as provided for in WAC 388-02-0217.~~

## NEW SECTION

**WAC 388-02-0217 When do ALJs conduct the hearing and enter the hearing decision as an initial order or a final order?** (1) As provided for in WAC 388-02-0218, ALJs do not conduct hearings involving cases brought by contractors for the delivery of nursing facility services under WAC 388-96-904(5).

(2) ALJs conduct the hearing and enter the hearing decision as a final order only in cases pertaining to:

(a) Eligibility for the following programs:

- (i) Food assistance;
- (ii) General assistance, except for general assistance expedited Medicaid (GAX);
- (iii) Refugee assistance; or
- (iv) Telephone assistance.

(b) Child support under chapter 388-14A WAC, except for cases relating to parent address disclosure under WAC 388-14A-2114 through 388-14A-2140 or claims of good cause for not cooperating with the division of child support under WAC 388-14A-2040 through 388-14A-2075 and WAC 388-422-0020;

(c) Juvenile parole revocation under chapter 388-740 WAC;

(d) Juvenile rehabilitation cost reimbursement under chapter 388-720 WAC;

(e) Vocational rehabilitation services under chapter 388-891 WAC; or

(f) Vendor overpayments, except for provider overpayment cases where the hearing is requested by a provider under chapter 388-502 or 388-502A WAC.

(3) ALJs conduct the hearing and enter the hearing decision as an initial order in all other cases.

#### NEW SECTION

**WAC 388-02-0218 When do review judges conduct the hearing and enter final orders?** (1) Review judges conduct the hearing and enter the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5). Any party dissatisfied with a decision or an order of dismissal of a review judge may request reconsideration from the review judge as provided by this chapter and WAC 388-96-904(12). Following a review judge's decision, you, but not DSHS, may file a petition for judicial review as provided by this chapter and WAC 388-96-904(13).

(2) A review judge has the same authority as an ALJ, as described in WAC 388-02-0215, when conducting a hearing.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0530 What if a party disagrees with the ALJ's decision?** (1) If a party disagrees with an ALJ's initial or final order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 388-02-0540 through 388-02-0555.

(2) If a party disagrees with an initial order (~~for a case listed in WAC 388-02-0215(4)~~) and wants it changed, the party must request review by ~~((BOA))~~ a review judge as provided in WAC 388-02-0560 through 388-02-0595.

If a party wants to stay the DSHS action until review of the initial order is completed, the party must request a stay from a review judge.

(3) Final orders entered by ALJs may not be reviewed by ~~((BOA))~~ a review judge.

(4) If a party disagrees with an ALJ's final order, the party may request reconsideration as provided in WAC 388-

02-0605 through 388-02-0635. You may also petition for judicial review of the final order as stated in WAC 388-02-0640 through 388-02-0650. You do not need to file a request for reconsideration of the final order before petitioning for judicial review. DSHS may not request judicial review of an ALJ's or review judge's final order.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0550 How much time do the parties have to ask for a corrected ALJ decision?** (1) The parties must ask ~~((OAH))~~ the ALJ for a corrected decision on or before the tenth calendar day after the order was mailed.

(2) The time period provided by this section for requesting a corrected decision of an initial order, and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline, if any, for a review judge to enter a final order.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0555 What happens when a party requests a corrected ALJ decision?** (1) When a party requests a corrected initial or final order, the ALJ must either:

- (a) Send all parties a corrected order; or
- (b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(3) If the ALJ denies a request for a corrected initial order (~~for a case listed in WAC 388-02-0215(4)~~) and the party still wants the hearing decision changed, the party must request review ~~((from BOA))~~ by a review judge.

(4) Requesting an ALJ to ~~((corrected))~~ correct the initial order (~~for a case listed in WAC 388-02-0215(4)~~) does not automatically extend the deadline to request review of the initial order by ~~((BOA))~~ a review judge. ~~((A))~~ When a party needs more time to request review of an initial order, the party ((may)) must ask for more time to request review ((when needed)) as permitted by WAC 388-02-0580(2).

(5) If the ALJ denies a request for a corrected final order and you still want the hearing decision changed, you must request judicial review.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0560 What is review of an initial order by a review judge?** (1) ~~((Review occurs when a party disagrees or wants a change in an initial order, other than correcting a clerical error))~~ Review by a review judge is available to a party who disagrees with the ALJ's initial order.

(2) ~~((A party must request review of an initial order for a case listed in WAC 388-02-0215(4) from the BOA))~~ If a party wants the initial order changed, the party must request that a review judge review the initial order.

(3) ~~((The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed))~~ If a request is made for a review judge to review an initial order, it does not mean there is another hearing conducted by a review judge.

(4) ~~((Review does not include another hearing by the BOA))~~ The review judge considers the request, the initial order, and the record, and may hear oral argument, before deciding if the initial order should be changed.

(5) ~~((BOA))~~ Review judges may not review ALJ final orders.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0565 What evidence does the review judge consider ~~((in a decision))~~ in reviewing an initial order?** (1) The review judge, in most cases, only considers evidence given at the original hearing before the ALJ.

(2) The review judge may allow the parties to make oral argument ~~((on review))~~ when reviewing initial orders.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0570 Who may request review of an initial order?** (1) Any party may request ~~((BOA))~~ a review judge to review ~~((an))~~ the initial order ~~((for a case listed in WAC 388-02-0215(4))).~~

(2) If more than one party requests review, each request must meet the deadlines in WAC 388-02-0580.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0575 ~~((What must))~~ How does a party ~~((include in the))~~ request review ~~((request))~~?** A party must make the review request in writing, send it to BOA, and clearly identify the:

(1) Parts of the initial order with which the party disagrees; and

(2) Evidence supporting the party's position.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0580 What is the deadline for requesting review ~~((of cases listed in WAC 388-02-0215(4)))~~ by a review judge?** (1) BOA must receive the written review request on or before the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good reason for missing the deadline.

(4) The time period provided by this section for requesting review of an initial order, including any extensions, does

not count against any deadline, if any, for a review judge to enter the final order.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0585 Where does a party send ~~((a))~~ the request ~~((to))~~ for review ~~((a case listed in WAC 388-02-0215(4)))~~ by a review judge?** (1) A party must send ~~((a))~~ the request ~~((to review a case listed in WAC 388-02-0215(4)))~~ for review of the initial order to BOA at the address given in WAC 388-02-0030. A party should also send a copy of the review request to the other parties.

(2) After receiving a party's review request, BOA sends a copy to the other parties, their representatives, and OAH ~~((and representatives giving them time to respond)).~~ The other parties and their representatives may respond as described in WAC 388-02-0590.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

**WAC 388-02-0590 How does ~~((a))~~ the party that is not requesting review respond to the review request?** (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond ~~((s))~~, that party must send the response so that BOA receives it on or before the seventh business day after the date the other party's review request was mailed to the party by BOA.

(3) The party must send a copy of the response to ~~((any))~~ all other ~~((party))~~ parties or their representatives.

(4) ~~((If a party needs more time to respond, the party must contact BOA by))~~ A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) The time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

(6) A review judge may accept and consider a party's response even if it is received after the deadline.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0595 What happens after the response deadline?** (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to ~~((the))~~ review the initial order after the record is closed. To find out which judge is assigned, call BOA.

(3) After the record is closed, the assigned review judge:

(a) Reviews the ~~((case))~~ initial order; and

(b) Enters a final order that affirms, changes, dismisses or reverses the initial order; or

(c) ~~((Remands (returns)))~~ Returns the case to OAH for further action.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

**WAC 388-02-0600 What is the authority of the review judge?** (1) ~~((A review judge may only review the cases listed in WAC 388-02-0215(4)))~~ Review judges review initial orders and enter final orders. Review judges may return cases to OAH for further action. ~~((A))~~

(2) The review judge has the same decision-making authority as ~~((an))~~ the ALJ when reviewing initial orders in the following cases, but must consider the ALJ's opportunity to observe the witnesses:

- (a) Licensing, certification and related civil fines;
- (b) Rate-making proceedings; ~~((and))~~
- (c) Parent address disclosure;
- (d) Temporary assistance to needy families (TANF);
- (e) Working connections child care (WCCC);
- (f) Medical assistance eligibility;
- (g) Medical or dental services funded by Title XIX of the Social Security Act;

(h) Adoption support services; and

(i) Eligibility for client services funded by Title XIX of the Social Security Act and provided by the aging and disability services administration.

~~((2))~~ (3) In all other cases, ~~((a))~~ the review judge may only change the ~~((hearing decision))~~ initial order if:

- (a) There are irregularities, including misconduct of a party or misconduct of the ALJ or abuse of discretion by the ALJ, that affected the fairness of the hearing;
- (b) The findings of fact are not supported by substantial evidence based on the entire record;
- (c) The decision includes errors of law;
- (d) The decision needs to be clarified before the parties can implement it; or
- (e) Findings of fact must be added because the ALJ failed to make an essential factual finding. The additional findings must be supported by substantial evidence in view of the entire record and must be consistent with the ALJ's findings that are supported by substantial evidence based on the entire record.

~~((3))~~ (4) Review judges ~~((have the authority to enter final orders for the cases listed in WAC 388-02-0215(4)))~~ may not review ALJ final orders. See WAC 388-02-0217 for cases in which the ALJ enters a final order.

~~((4))~~ Review judges may remand cases listed in WAC 388-02-0215(4) to the ALJ for further action) (5) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-02-0218.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |  |
|-----------------|--|
| WAC 388-02-0524 | In what cases does the ALJ enter the hearing decision as an initial order? |
| WAC 388-02-0527 | In what cases does the ALJ enter the hearing decision as a final order?    |

**WSR 08-09-110**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed April 21, 2008, 2:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-082 and 07-10-125.

Title of Rule and Other Identifying Information: The department is amending chapter 388-544 WAC, Vision care services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on June 10, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 9, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on June 10, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by June 3, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is reestablishing WAC 388-544-0575, addressing noncovered services, eyeglasses, and contact lenses. This section had previously been repealed due to a lack of sufficient notice to stakeholders when originally adopted. In addition, the department is relocating sections, updating cross references, adding the children's health program back in under eligibility, clarifying authorization requirements, including orthoptics and vision training therapy under covered services, requiring that all eyeglass lenses be placed into frames purchased by the department, and limiting frequency of incidental repairs to eyeglass frames, lowering the spherical requirement for high index lenses.

Reasons Supporting Proposal: The department is reestablishing the noncovered services, eyeglasses, and contact lenses section allowing for sufficient notice to stakeholders as required by the APA. The revision also provides a better organization, specified clarity, adds rule consistency, and updates cross references.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Marlene Black, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1577.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and concludes that they do not impose a disproportionate cost impact on small businesses. As a result, the preparation of a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Marlene Black, P.O. Box 45506, Health and Recovery Services Administration, Olympia, WA 98504-5506, phone (360) 725-1577, fax (360) 586-9727, e-mail blackml@dshs.wa.gov.

April 15, 2008  
Stephanie E. Schiller  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-10 issue of the Register.

**WSR 08-09-111**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)  
[Filed April 21, 2008, 2:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-03-093.

Title of Rule and Other Identifying Information: The department is amending WAC 388-475-0300 SSI-Related medical—Resources eligibility.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is updating this WAC to comply with federal rules which govern how the department considers retroactive lump sum payments from any Title II or Title XVI payment, and to clarify that these resources are now excluded for nine months, not six. DSHS is also correcting WAC references which are no longer correct.

Reasons Supporting Proposal: The department of social and health services (DSHS) is authorized to comply with the

federal requirements for the medical assistance program provided in the Social Security Act and particularly Title XIX of Public Law (89-97) in order to secure federal matching funds for such program.

Statutory Authority for Adoption: RCW 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.09.-500.

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

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

Name of Agency Personnel Responsible for Drafting: Jonell O. Blatt, 626 8th Avenue, Olympia, WA 98504-5504, (360) 725-1571; Implementation and Enforcement: Catherine Fisher, P.O. Box 45502, Olympia, WA 98504-98501 [98504-5502], (360) 725-1357.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), the department is not required to prepare a small business economic impact statement (SBEIS) for rules adopting or incorporating, by reference without material change, federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vii), a cost-benefit analysis is not required for DSHS rules that relate only to client medical or financial eligibility.

April 11, 2008  
Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-09-002, filed 4/7/04, effective 6/1/04)

**WAC 388-475-0300 SSI-related medical—Resources eligibility.** (1) ~~(A client must be resourcee eligible on the first moment of the first day of the month, and is then eligible for the entire month))~~ At 12:00 a.m. on the first day of the month a client's countable resources must be at or below the resource standard to be eligible for noninstitutional medical benefits for that month. If the total of the client's countable resources is above the resource standard at 12:00 a.m. on the first ~~((moment of the first))~~ day of the month, the client is ineligible for noninstitutional medical benefits for that entire month regardless of resource status at the time of application during that month. For resource eligibility relating to long-term care eligibility see chapter 388-513 WAC.

(2) An excluded resource converted to another excluded resource remains excluded.

(3) Cash received from the sale of an excluded resource becomes a countable resource the first of the month following conversion unless the cash is;

(a) Used to replace the excluded resource; or

(b) Invested in another excluded resource in the same month or within the longer time allowed for home sales under WAC 388-475-0350; or

(c) Spent.

(4) The unspent portion of a nonrecurring lump sum payment is counted as a resource on the first of the month follow-

ing its receipt with the following exception: The unspent portion of any Title II (SSA) or Title XVI (SSI) retroactive payment is excluded as a resource for ((~~six~~)) nine months following the month of receipt. These exclusions apply to lump sums received by the client, client's spouse or other any other person who is financially responsible for the client.

(5) Clients applying for SSI-related medical coverage for long-term care (LTC) services must meet different resource rules. See chapter 388-513 WAC for LTC resource rules.

(6) The transfer of a resource without adequate consideration does not affect medical program eligibility except for LTC and home and community based waiver services programs. In those programs, the transfer may make a client ineligible for medical benefits for a period of time. See WAC 388-513-1364 through 388-513-1366 for LTC rules.

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

### WSR 08-09-116

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed April 22, 2008, 8:04 a.m.]

Supplemental Notice to WSR 08-03-106.

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

Title of Rule and Other Identifying Information: Hops, chapter 16-532 WAC.

Hearing Location(s): Washington Hop Commission Office, 301 West Prospect Place, Moxee, WA 98936, on May 27, 2008, at 1:00 p.m.

Date of Intended Adoption: July 10, 2008.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail [kfrost@agr.wa.gov](mailto:kfrost@agr.wa.gov), fax (360) 902-2092, by 5:00 p.m., May 27, 2008.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by May 15, 2008, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 16-532-035 Inspection required, require that growers provide a bale count when hops are submitted for inspection. A formula is provided for growers to use in estimating the number of bales for nonbaled hops. Growers are assessed based upon the number of pounds of hops produced (200 pounds = one bale). An accurate accounting is important for commission budgeting and planning activities.

WAC 16-532-040 Assessment and collections, increase the assessment rate per "affected unit" from \$1.80 up to \$2.50. The increase is necessary to support specific programs that benefit the hop industry, including \$0.20 per bale for pesticide registration and international harmonization of pesticide regulatory standards; \$0.15 per bale for trade education programs; and \$0.35 per bale to provide additional funding for research and administrative functions. Growers will have the opportunity to approve or reject the proposed increases on an individual basis through referendum. The increases are in response to inflationary factors and the loss

of certain grant funds that have been used in the past to support these activities.

Reasons Supporting Proposal: Growers are assessed per "affected unit" (200 pounds, which is equivalent to a bale). An accurate count supports sound programming decisions and budgeting activities. The information is currently requested by the WSDA hop inspection laboratory for hops that utilized the submitted sample inspection option. However, the information is not always provided. The assessment increase is necessary to continue funding the programs and services listed above. These changes will implement the petition received from the hop commission in accordance with RCW 15.65.050.

Statutory Authority for Adoption: RCW 15.65.047 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Any rule proposal that results from this rule-making process will not be adopted unless the proposed rules are also approved in a referendum of affected hop producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington state hop commission, governmental.

Name of Agency Personnel Responsible for Drafting: Kelly Frost, P.O. Box 42560, Olympia, WA 98504, (360) 902-1802; Implementation and Enforcement: Ann George, P.O. Box 1207, Moxee, WA 98936, (509) 453-4749.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In accordance with RCW 15.65.570, the adoption of the final amendments to chapter 16-532 WAC will be determined by a referendum vote of affected parties.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington hop commission are not named agencies in RCW 34.05.-328 (5)(a)(i).

April 22, 2008

Kelly Frost

Commodity Commission Coordinator

AMENDATORY SECTION (Amending WSR 06-15-105, filed 7/17/06, effective 8/17/06)

**WAC 16-532-035 Inspection required.** (1) Before marketing or processing, all varieties of hops produced in the state of Washington must be inspected and certified by the Federal/State Hop Inspection Service for quality and condition of seed, leaf and stem according to the standards established by the Federal Grain Inspection Service of the United States Department of Agriculture. All lots of hops submitted for inspection shall include a bale count or, in the case of non-baled hops, an estimated bale count based on total weight divided by two hundred pounds.

(2) Any hops that are baled on a producer's farm must be officially sampled by a Washington state department of agriculture inspector.

AMENDATORY SECTION (Amending WSR 05-15-098, filed 7/15/05, effective 8/15/05)

**WAC 16-532-040 Assessments and collections. (1) Assessments.**

(a) The annual assessment on all varieties of hops shall be ~~((one))~~ up to two dollars and ~~((eighty))~~ fifty cents per affected unit, as approved by referendum vote of affected producers, the results of which shall be retained on file in the board's administrative office.

(b) For the purpose of collecting assessments the board may:

(i) Require handlers to collect producer assessments from producers whose production they handle, and remit the same to the board; or

(ii) Require the person subject to the assessment to give adequate assurance or security for its payment; or

(iii) Require the person subject to the assessment to remit assessments for any hops which are processed prior to the first sale; or

(iv) Require the person subject to the assessment to remit an inventory report for any hops which are not processed or sold prior to December 31 of the year in which they are produced.

(c) Subsequent to the first sale or processing, no affected units shall be transported, carried, shipped, sold, marketed, or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued. The foregoing shall include all affected units shipped or sold, both inside and outside the state.

(2) **Collections.** Any moneys collected or received by the board pursuant to the provisions of the order during or with respect to any season or year may be refunded on a pro rata basis at the close of such season or year or at the close of such longer period as the board determines to be reasonably adapted to effectuate the declared policies of this act and the purposes of such marketing agreement or order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding season, year or period whenever the board finds that the same will tend to effectuate such policies and purposes.

(3) **Penalties.** Any due and payable assessment herein levied in such specified amount as may be determined by the board pursuant to the provisions of the act and the order, shall constitute a personal debt of every person so assessed or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of such assessment or such other sum on or before the date due, the board may, and is hereby authorized to add to such unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the same. In the event of failure of such person or persons to pay any such due and payable assessment or other such sum, the board may bring a civil action against such person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

**WSR 08-09-122**

**PROPOSED RULES**

**FOREST PRACTICES BOARD**

[Filed April 22, 2008, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-21-072 and 06-17-127.

Title of Rule and Other Identifying Information: Amend WAC 222-16-010, related to forest land conversion activities, and historic sites.

Also amend WAC 222-16-050, related to classifications of forest practices applications for lands that contain historic sites and/or cultural resources.

Hearing Location(s): Kittitas Valley Events Center, Naneum Room, 512 North Poplar Street, Ellensburg, on June 17, 2008, at 6 p.m.; at the Foster Public Library, 4060 South 144th Street, Tukwila, on June 24, 2008, at 6 p.m.; and at the Spokane Valley Library, 12004 East Main Avenue, Spokane, on June 26, 2008, at 6 p.m.

Date of Intended Adoption: August 13, 2008.

Submit Written Comments to: Patricia Anderson, Forest Practices Board, DNR, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practices-board@dnr.wa.gov, fax (360) 902-1428, by 5 p.m. on June 27, 2008.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by June 2, 2008, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends the forest practices rules in WAC 222-16-010, definitions, and 222-16-050 Classes of forest practices, to:

- Adds a definition of "conversion activities" to help field staff recognize activities common to converting land use from forestry to nonforestry;
- Clarifies that operations on certain historic sites require a Class IV-special application and State Environmental Policy Act (SEPA) review;
- Addresses ambiguities in and consistency between Class IV-special and Class III applications involving cultural resources; and
- Ensures that certain cultural resources management plans are recognized as protection tools that are exempt from this Class IV-special designation.

Reasons Supporting Proposal: Adding a definition of "conversion activities" supports implementation of SSSB [2SSB] 5883, 2007 legislation. Rule changes related to historic sites and cultural resources are intended to clarify the rules and protect certain historic sites and cultural resources.

Statutory Authority for Adoption: RCW 76.09.040.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Engel/Sherri Felix, 1111 Washington Street S.E., Olympia, (360) 902-1390/902-1446; Implementation: Gary Graves, 1111 Washington Street S.E., Olympia, (360) 902-



1483; and Enforcement: Leonard Young, 1111 Washington Street S.E., Olympia, (360)902-1744.

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

#### Small Business Economic Impact Statement

**OBJECTIVES:** The forest practices board (board) is proposing changes to WAC 222-16-010 and 222-16-050 that will affect timber harvests, the construction of roads, landings, rock or gravel pits, spoil disposal areas, site preparation, and the aerial application of pesticides that involve certain cultural resources. In some instances, landowners will need to apply for a "Class IV-special" forest practices permit, which requires compliance with SEPA. The objectives of this economic analysis are to determine whether the benefits of the proposed rules exceed the costs, and whether the compliance costs of the proposed rules will disproportionately affect the state's small businesses.

Prior to rule adoption, the Administrative Procedure Act (chapter 34.05 RCW)<sup>1</sup> requires completion of a cost-benefit analysis (CBA) that demonstrates that probable benefits of the proposal exceed its probable costs and that it is the most cost-effective means of achieving the goal of the rule change. A small business economic impact statement (SBEIS) is required by the Regulatory Fairness Act (chapter 19.85 RCW)<sup>2</sup> to consider the impacts of state administrative rules on "small businesses," defined as those with fifty or fewer employees. This economic analysis combines the SBEIS and the CBA, as allowed by RCW 19.85.025, as part of the rule-making process.

**PROPOSED RULES SUMMARY:** The proposed rule changes to chapter 222-16 WAC are focused on creating greater consistency between the board's forest practices rules and the Washington state department of archaeology and historic preservation (DAHP) authority with regard to how certain cultural resources, specifically archaeological sites, historic archaeological resources, and historic sites, are defined, reviewed, and protected in the context of forest practices activities. The specific rule changes are as follows:

(1) Strike the board's definition of "historic site" from WAC 222-16-010, thereby deferring to DAHP's definitions in RCW 27.53.030.

(2) In WAC 222-16-050 (1)(f), replace "archaeological and historic sites registered with DAHP," with two subsections: "(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030" and "(ii) historic sites eligible for listing on the Washington Heritage Register or National Register of Historic Places as determined by DAHP." This separately defines archaeological versus other historic resources, reinstates register-eligible historic sites as Class IV-special, and uses the DAHP definitions.

(3) Add a new subsection, (iv), to WAC 222-16-050 (1)(f), which creates two exemptions for forest practices activities meeting the criteria in WAC 222-16-050 (1)(f) from a cultural resources Class IV-special forest practices. The exemptions are for those proposed applications that have been designed in compliance with (a) cultural resource management strategies from an approved watershed analysis, or (b) a management plan agreed upon by the landowner, the affected Indian tribe, and the DAHP.

(4) The final rule change strikes the wording "On or are eligible for listing on the National Register of Historic Places" from subsection (i) of Class III WAC 222-16-050 (5)(k), in deference to the national register language in subsection (ii) in Class IV-special WAC 222-16-050 (1)(f).

**INVOLVEMENT OF CONCERNED STAKEHOLDERS:** The timber, fish, and wildlife cultural resources committee (committee) is the stakeholder group that collaboratively developed the proposed rule language. The committee is a multi-caucus group with representatives of the inter-tribal cultural resources advisory group and individual tribes (especially Puyallup, Yakama, Suquamish, Quinault, and Lummi), large and small forest landowners from the Washington forest protection association and Washington farm forestry association, and state agency staff from the DAHP and the department of natural resources' (DNR) forest practices and land management programs. The forest practices board recognizes the committee as the group of expertise on this issue.

**Affected Industries:** The rule-complying community affected by the proposal is businesses or individuals that own or control the cutting rights on private or state managed forestland or those with the right to dispose of the timber, and intend to conduct a forest practices activity sometime in the future.

Based on a review of forest practices applications (FPAs) processed by the DNR since 2003, there has been an average of approximately 6,250 FPAs submitted each year, with just over 0.7% (45) of these FPAs having a cultural resource issue. FPAs from eastern Washington are nearly five times more likely to have a cultural resource issue than FPAs from western Washington. In addition, this review of FPAs indicated that small landowners (small businesses) make up approximately 26% of those applying for FPAs and were no more likely to have a cultural resource issue on their land than the overall population of landowners submitting FPAs. Thus, on average, out of the 45 FPAs annually that have a cultural resource issue, only twelve permits belong to small landowners.

**ECONOMIC ANALYSIS:** To comply with the Administrative Procedure Act and Regulatory Fairness Act, this analysis identifies potentially affected industries, addresses small and large businesses and determines if there is a disproportionate economic impact on small businesses. It also estimates the annual cost of compliance with the proposed rule changes.

**Small Businesses versus Large Businesses:** The Regulatory Fairness Act defines a "small business" as one with fifty or fewer employees. This definition does not lend itself to commercial forestry, because a growing proportion of Washington's commercial forest acreage is owned by investment-oriented firms that employ few people and contract out forest management services. Forest ownership acreage and the volume of timber harvested on an annual basis are generally more appropriate metrics for characterizing small businesses in the timber industry. In order to better portray the effects of proposed rule changes on small business, this economic analysis addresses small businesses as those meeting the state's eligibility criteria for small forest landowner status in the forestry riparian easement program; generally those who harvest an average of less than two million board feet per year from their own land. All other private landowners

are categorized as "large businesses" for purposes of this analysis.

**Costs of Proposed Rule Changes:** The cultural resources covered by this rule change are already protected by current board and DAHP rules and laws and the proposed rules have no prescription requirements. Thus, there are no changes to buffer widths, leave tree requirements, equipment limitation zones or other operational restrictions as a result of this rule change. Landowners will still need to complete a DNR FPA and pay the associated fee, but under the proposed rules more landowners will need to complete an approximately ten-page environmental checklist (WAC 197-11-960) in compliance with SEPA and SEPA guidelines. The main impact to landowners will be the additional time to complete the SEPA checklist (compared to just completing the FPA), although some landowners may opt to hire a consultant to complete the SEPA checklist. By completing the SEPA checklist, there is a risk the application will be flagged for an environmental impact statement (EIS) by one of the reviewing agencies. If this happens, most landowners will redesign the project so as to avoid the EIS process.

In talking with DNR employees and forestry consultants who are familiar with the SEPA checklist and who work with small landowners, the average estimate for completing a ten-page SEPA checklist is two hours, assuming there are no other environmental resource issues, such as potentially unstable slopes and landforms, critical habitat of threatened or endangered species, etc. For landowners who are not comfortable completing the SEPA checklist and do not wish to hire a private consultant, free help is available through the DNR's small forest landowner office.

Some aspects of the proposed rule change reduce the number of FPAs that would be classified as Class IV-special and require the SEPA checklist, while other parts of the rule change would increase the number of FPAs that would be classified as Class IV-special and require the SEPA checklist. Thus, it is difficult to say with certainty how the mixed impacts of the individual rule changes will balance out in terms of the final impact on landowners.

The table below lists the individual rule changes and how they will impact landowners.

	<b>Proposed Rule Change</b>	<b>Effect</b>	<b>Time Cost/Benefit</b>
1	Strike historic site definition in WAC 222-16-010, use DAHP's definition.	DAHP eligibility standards are stricter, limits number of Class IV-special permits.	Benefit to applicants
2a	Replace "registered with DAHP" criteria with definition of archaeological site in RCW 27.53.030(3) as Class IV-special WAC 222-16-050 (1)(f)(i).	Encompasses more archaeological sites, not just those already "registered with DAHP."	More Class IV-specials: <b>Cost to applicants</b>
2b	Add Historic Archaeological Resources as defined in RCW 27.53.030(11) to Class IV-special WAC 222-16-050 (1)(f)(i).	Historic archaeological resources are a subset of archaeological sites.	Neutral to applicants
2c	Replace "registered with DAHP" criteria with "eligible" historic sites as Class IV-special WAC 222-16-050 (1)(f)(ii).	Encompasses more historic sites as current rule structure precludes nonarchaeological historic sites from Class IV-special.	<b>Cost to applicants</b>
3	Add two exemptions as Class IV-special subsections (f)(iv)(a) and (b) based on having cultural resources management plan/strategy.	Does not trigger a cultural resources Class IV-special .	Benefit to applicants
4	Strike National Register sites from Class III (5)(k)(i).	Shifts some Class III FPAs to Class IV-special, also allows site preparation and aerial pesticide spraying as Class II.	<b>Both cost and benefit to applicants</b>

It is generally believed, based on the identified effects in the table above, that the net affect of the proposed rule changes will cause more FPAs with cultural resources to fall into the Class IV-special category, but determining the exact number is not possible. In the FPAs reviewed, Class IV-special FPAs only make up 8% of all the FPAs with cultural resource issues (annually, on average, this would be four out of forty-five permits), so if we assume the remaining 92% of the FPAs with cultural resources would now be Class IV-specials, the number of Class IV-special FPAs would increase by forty-one in an average year. Assuming the SEPA checklist takes an average of two hours to complete, an additional eighty-two hours will be spent annually on paperwork by all affected businesses and landowners statewide.

It is also possible that, because the proposed rules clarify which cultural resources trigger Class IV-special or Class III, more FPAs will now be flagged for containing a cultural resource, but as above, the exact number is difficult to determine. If we assume there will be a 30% increase in FPAs that get flagged for cultural resources and all those FPAs are Class IV-special, this will add on average 13.5 more Class IV-special FPAs each year, meaning an additional twenty-seven hours spent completing the SEPA checklist by all affected businesses and landowners statewide. Combined with the previous estimate of eighty-two hours, it would total one hundred nine hours of additional paperwork annually to all affected businesses and landowners statewide. If we assume a consultant would charge a rate of \$100 per hour to complete the SEPA checklist, this would amount to a cost of

\$10,900 dollars annually to all affected businesses and landowners statewide.

However, these 13.5 "new" FPAs each year that would not have been flagged for cultural resource issues under the current rules may require some additional costs such as operational restrictions imposed upon the forest practice activity. If this is the case, this could impose an even greater impact on the business or landowner. Discussions with DNR Region Forest Practices staff indicate that, on the majority of FPAs with cultural resources, the landowner and the tribe work out an agreement for safeguarding the resource. Typical restrictions can range from not driving equipment over the site to leaving buffer trees around the site. However, because these arrangements are often made solely between the landowner and the tribe, it is difficult to determine the "average" or probable restriction requirement on forestlands, so it is also difficult to determine the resulting "average" or probable impact to landowners.

If we assume that all 13.5 "new" FPAs with cultural resources would require the more costly typical restrictions noted by the DNR region staff, buffer trees would be required on these FPAs. If we further assume that ten buffer trees were left for each FPA, this would total one hundred thirty-five trees annually. Assuming an average tree is one hundred ten feet tall with a fourteen inch diameter at breast height, this would yield two hundred board feet (Scribner) per tree, or a total of 27 MBF (thousand board feet) for all the trees. Applying a stumpage price of \$326<sup>3</sup> per MBF, the additional costs for operational restrictions on the 13.5 FPAs would total \$8,800 per year.

**Small Business Impacts:** As discussed earlier, small businesses (small landowners) do not appear to be any more likely to have cultural resources on their land than large landowners. Given that on average, small landowners make up approximately 26% of the FPA applicants, twenty-nine of the one hundred nine hours of additional paperwork required annually statewide due to the SEPA checklist would fall on small landowners. Using the estimate of \$100 per hour for hiring a consultant, this would cost all affected small landowners \$2,900 annually statewide. Unlike large land businesses (industrial timberland owners), small landowners may not be as familiar with the SEPA checklist and it may therefore take more time to complete. To mitigate this potential added time for small landowners unfamiliar with the SEPA checklist, the DNR's small forest landowner office offers free assistance with the completion of both SEPA checklists and FPAs.

As discussed in the previous section, it is estimated that 13.5 additional FPAs statewide would be subject to more costly restrictions due to leave tree buffers around cultural resources. On average, 3.5 of these FPAs would belong to small landowners (since they make up 26% of those applying for FPAs), so this would add approximately \$2,290 annually to the impact on small landowners.

**QUALITATIVE BENEFITS:** The primary benefit of the proposed rules would be to increase protection of the cultural heritage of Washington by identifying and protecting cultural resources that could otherwise be degraded or destroyed by normal forest practices activities. In the Archaeological Sites and Resources Act (chapter 27.53 RCW) and the Indian

Graves and Records Act (chapter 27.44 RCW), the legislature declares the "conservation, preservation, protection, and scientific study of the state's archaeological resources" to be in the public interest and declares these resources "finite, irreplaceable, and nonrenewable." These legislative proclamations reflect the value to the citizens of the state in identifying and protecting Washington's cultural resources, including when these resources are in a forest practices setting.

The proposed rules improve the identification and protection of cultural resources by clarifying the currently ambiguous language that determines the review and conditioning of forest practices application involving cultural resources. Additionally, rule clarity in itself leads to better statewide implementation of the forest practices rules, more efficient DNR processing of applications, and smoother and more predictable application processing for forest landowners. It may also lead to increased landowner understanding of, and so compliance with, the forest practices rules.

**SPECIFIC DIRECTIVES OF THE STATUTES BEING IMPLEMENTED:** The statutes being implemented are the FPA and SEPA. In the Forest Practices Act, chapter 76.09 RCW, the legislature declares that it is in the public interest to coordinate and cooperate with the tribes and foster compliance with state and federal laws protecting cultural resources. See RCW 76.09.010(2). Additionally, in RCW 76.09.370, the legislature strongly encourages the board to adopt the 1999 Forest and Fish Report which contains two commitments specific to cultural resources: (1) Create a cultural resources plan to address landowner-tribes relationships and resolution of cultural resources concerns that arise due to forest practices (Appendix O.3) and (2) complete a cultural resources module to add to the watershed analysis process Appendix (G.1). The board's rules now require annual updates on the cultural resources protection and management plan (WAC 222-08-160) and completion of the cultural resources module as part of a watershed analysis (chapter 222-22 WAC and board manual section 11).

The FPA also directs the forest practices board to adopt forest practices rules that identify which forest practices require SEPA review because of their potential for a substantial impact on the environment. See RCW 76.09.050(1) and WAC 222-16-050(1). The SEPA rules (chapter 197-11 WAC) include historic and cultural preservation as an element of the environment which must be addressed in the SEPA checklist required for all Class IV forest practices.

**CONCLUSION:** The total cost of this rule change is estimated at \$19,700 per year statewide over all businesses.

The costs of the proposed rule changes are measured as the annual statewide increase in time spent completing additional paperwork and additional operating costs in the form of leave trees. An assumed consultant's rate of \$100 per hour is applied to the hourly estimates and a value of \$65 is applied to each tree to arrive at a dollar value.

Only 0.7% of all FPAs reviewed contain a cultural resource issue, and the rule change would increase the number of Class IV-special FPAs making it necessary to complete an additional two hours of paperwork in the form of the SEPA checklist. This adds up to a total of one hundred nine hours annually of time spent on additional paperwork statewide, estimated at a cost of \$10,900 annually statewide,

assuming landowners hire a consultant at a rate of \$100 per hour. The SEPA checklist affects both large and small businesses alike, although large businesses may have staff trained at completing this type of paperwork. The impact on small businesses of hiring a consultant to complete the SEPA checklist will be mitigated by utilizing the free assistance available through the DNR's small forest landowner office.

There will also be an estimated 13.5 more FPAs per year subject to operational constraints due to the presence of cultural resources. Assuming each FPA will be required to leave an average of ten buffer trees to prevent damage to the cultural resources, the total value of the buffer trees for all FPAs is estimated at \$8,800 per year. While small landowners will bear a portion of this cost, there is no indication they will be disproportionately impacted by the operational constraints.

Taking into account both the qualitative and quantitative benefits and costs, and the specific directives of the FPA and SEPA, the probable benefits of the rule amendments are greater than the probable costs. Also, the proposed amendments represent the least burdensome alternative that will achieve the general goals and specific objectives of the FPA and SEPA.

<sup>1</sup> For CBA requirements, see RCW 34.05.328 - The Washington State Legislature.

<sup>2</sup> For SBEIS requirements, see RCW 19.85.040 - The Washington State Legislature.

<sup>3</sup> This stumpage value is the average year-to-date price paid on DNR timber sales statewide for FY 2008.

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

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

April 21, 2008  
Victoria Christiansen  
Chair

**AMENDATORY SECTION** (Amending WSR 08-06-039, filed 2/27/08, effective 3/29/08)

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

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

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

**"Alluvial fan"** see "sensitive sites" definition.

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

**"Aquatic resources"** means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olym-

pic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

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

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

**"Bankfull width"** means:

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

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

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

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

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

**"Bedrock hollows"** (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

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

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

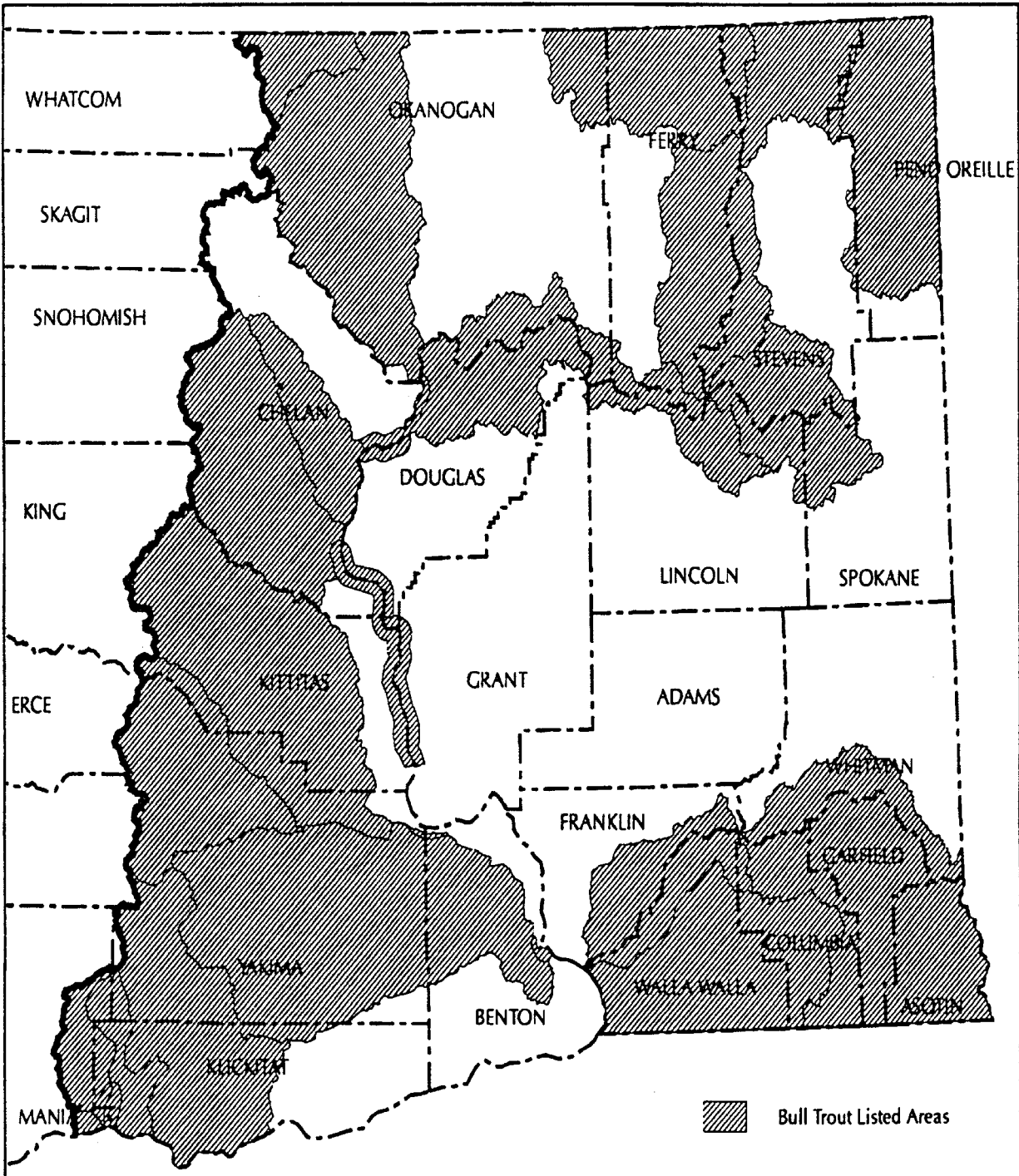
**"Borrow pit"** means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

**"Bull trout habitat overlay"** means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consulta-

tion with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no

longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



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

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

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

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

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

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

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

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

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

**"Completion of harvest"** means the latest of:

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

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

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

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a

result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

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

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

**"Conversion activities"** means activities associated with conversions of forest land to a land use other than commercial timber operation. These activities may be occurring concurrently or after timber harvest on forest land and may include but are not limited to the following:

- Preparation for, or installation of, utilities, except on easements providing utilities to other ownerships.

- Grading and filling.

- Preparation for, or construction of, any structure for which a landowner would be required to obtain local government approval.

- Construction of, or improvement of, roads to local governmental entity standards.

- Clearing for, or expansion of, a borrow pit for nonforest practices uses or to make a surface mine.

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

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

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

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

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

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

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

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

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

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities

which would reasonably be expected to cause significant damage to a public resource.

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

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

**"Department"** means the department of natural resources.

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

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

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

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

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

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

Eastern Washington Definition Map



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

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

**Timber Habitat Types**  
high elevation

**Elevation Ranges**  
above 5000 feet

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

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

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

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

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

Clearcuts;

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

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

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

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

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

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

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

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

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

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

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

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

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

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

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

Flow information from gauging stations;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

~~("Historic site" includes:~~

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

~~Places associated with a personality important in history;~~

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

**"Horizontal distance"** means the distance between two points measured at a zero percent slope.

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

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

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

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

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

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

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

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

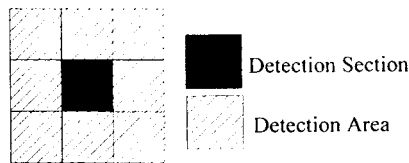
**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

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

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process.

The department shall determine such equipment, methods or systems in consultation with the department of ecology.

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



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

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

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

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

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

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

**"Northern spotted owl site center"** means:

(1) Until December 31, 2008, the location of northern spotted owls:

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

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

(2) After December 31, 2008, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

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

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

Status 3: Resident territorial single - the presence or response of a single owl within the same

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

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

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

**"Occupied marbled murrelet site"** means:

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

(a) A nest is located; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

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

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

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

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

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

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

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

<b>Ponderosa pine habitat type</b>	<b>Mixed conifer habitat type</b>
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

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

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

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

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

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

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

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

**"Riparian management zone (RMZ)"** means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bank-

full width or the outer edge of the CMZ, whichever is greater (see table below); and

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

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

**(2) For Eastern Washington**

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

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

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

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

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

**"RMZ core zone"** means:

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

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

**"RMZ inner zone"** means:

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

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

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

**"Road construction"** means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

**"Road maintenance"** means either of the following:

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

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) For Western Washington

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

(2) For Eastern Washington

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

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

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

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

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

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

See also section 7 of the board manual.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Within 50 miles of marine waters;

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

(c) Two or more nesting platforms per acre;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Yarding corridor"** means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or sus-

pended or partially suspended logs to be transported through these areas by cable logging methods.

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

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

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

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

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

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

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than five MBF within any developed park recreation area and park managed salvage of merchantable forest products.

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

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

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

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

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

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

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

(ii) The department will base its classification of the application or notification on professional knowledge of the area, information such as soils, geologic or hazard zonation

maps and reports or other information provided by the applicant.

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

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

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

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

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

(f) Timber harvest ~~(-)~~ or construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on the following except in (f)(iv) of this subsection:

(i) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030; or

(ii) Historic sites (~~(registered with)~~) eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation (~~(- or -)~~); or

(iii) Sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department of archaeology and historic preservation shall consult with affected Indian tribes in identifying such sites.

(iv) A forest practice would not be classified as Class IV-special under this subsection if:

(A) Cultural resources management strategies from an approved watershed analysis conducted under chapter 222-22 WAC are part of the proposed forest practices, and the landowner states this in the application; or

(B) A management plan agreed to by the landowner, the affected Indian tribe, and the department of archaeology and historic preservation is part of the proposed application, and the landowner states this in the application.

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

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

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

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

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

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

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

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

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

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

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

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

\*(b) Road maintenance except: Replacement of bridges and culverts across Type S, F or flowing Type Np Waters; or movement of material that has a direct potential for entering Type S, F or flowing Type Np Waters or Type A or B Wetlands.

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

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

of a Type Np Water, a wetland management zone, a wetland, or the CRGNSA special management area.

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

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

(g) Rocking an existing road.

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

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

(j) Tree planting and seeding.

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

(l) Emergency fire control and suppression.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(i) Construction of advance fire trails.

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

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

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

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

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

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

(iv) Any harvest on less than forty acres.

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

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

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

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

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

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

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

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

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

\*(h) Road maintenance involving:

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

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

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

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

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

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

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

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

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

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

\*(o) Multiyear permits.

\*(p) Small forest landowner long-term applications that are not classified Class IV-special or Class IV-general, or renewals of previously approved Class III or IV long-term applications.

**WSR 08-09-123  
PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed April 22, 2008, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-154.

Title of Rule and Other Identifying Information: The department is proposing a fee increase for the following rules: Factory assembled structures (chapters 296-150C, 296-150F, 296-150M, 296-150T, and 296-150V WAC) and plumber certification (chapter 296-400A WAC).

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA, on May 27, 2008, at 9:00 a.m.

Date of Intended Adoption: May 30, 2008.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov), fax (360) 902-5292, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Sally Elliott by May 1, 2008, at (360) 902-6411 or [yous235@lni.wa.gov](mailto:yous235@lni.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to increase fees by 5.53%, which is the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2008. We evaluated the program's budgets and projected revenue and determined fee increases are necessary to help cover the cost of ongoing services of the factory assembled structures and plumber certifi-

cation programs. The programs received legislative authorization this past legislative session for the fee increases.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapters 18.106 and 43.22 RCW, chapter 285, Laws of 2008 (EHB 3381), and chapter 329, Laws of 2008 (ESHB 2687).

Statute Being Implemented: Chapters 18.106 and 43.22 RCW, chapter 285, Laws of 2008 (EHB 3381), and chapter 329, Laws of 2008 (ESHB 2687).

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Sally Elliott, Tumwater, Washington, (360) 902-6411; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is exempt from preparing a small business economic impact statement under RCW 19.85.025 referencing RCW 34.05.-310(4), since the purpose of this rule making is to set and adjust fees based upon the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2008.

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) because the rule making is setting and adjusting fees based upon the office of financial management's maximum allowable fiscal growth rate factor for fiscal year 2008.

April 22, 2008  
Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 07-19-086, filed 9/18/07, effective 10/19/07)

**WAC 296-150C-3000 Commercial coach fees.**

<b>INITIAL FILING FEE</b>	\$((34.30)) <u>36.10</u>
<b>DESIGN PLAN FEES:</b>	
INITIAL FEE - MASTER DESIGN	\$((236.70)) <u>249.70</u>
INITIAL FEE - ONE YEAR DESIGN	\$((96.80)) <u>102.10</u>
RENEWAL FEE	\$((40.90)) <u>43.10</u>
RESUBMIT FEE	\$((69.10)) <u>72.90</u>
ADDENDUM (Approval expires on same date as original plan)	\$((69.10)) <u>72.90</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.00)) <u>5.20</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>ELECTRICAL PLAN REVIEW</b> (Plan review for educational, institutional or health care facilities and other buildings)	
Electrical Plan submission fee	\$((69.10)) <u>72.90</u>
Service/feeder Ampacity:	
0 - 100	\$((30.60)) <u>32.20</u>
101 - 200	\$((38.10)) <u>40.20</u>
201 - 400	\$((71.60)) <u>75.50</u>
401 - 600	\$((84.40)) <u>89.00</u>
601 - 800	\$((108.80)) <u>114.80</u>

801 - 1000	\$((133.20)) <u>140.50</u>
Over 1000	\$((144.60)) <u>152.50</u>
Over 600 volts surcharge	\$((22.80)) <u>24.00</u>
Thermostats:	
First	\$((13.40)) <u>14.10</u>
Each additional	\$((3.10)) <u>3.20</u>
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$((12.30)) <u>12.90</u>
Each additional circuit or zone	\$((2.00)) <u>2.10</u>
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((81.80)) <u>86.30</u>
<b>ELECTRICAL COMMERCIAL/INDUSTRIAL</b>	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	\$((201.60)) <u>212.70</u>
Additional Feeder	\$((38.20)) <u>40.30</u>
<b>ELECTRICAL MULTIFAMILY RESIDENTIAL</b>	
Electrical Service/feeders 200 Amperage plus	
Service/feeder	\$((106.90)) <u>112.80</u>
Additional Feeder	\$((27.20)) <u>28.70</u>
<b>MEDICAL GAS PLAN REVIEW:</b>	
SUBMISSION FEE	\$((66.20)) <u>69.80</u>
FIRST STATION	\$((66.20)) <u>69.80</u>
EACH ADDITIONAL STATION	\$((24.10)) <u>25.40</u>
<b>RECIPROCAL PLAN REVIEW:</b>	
INITIAL FEE - MASTER DESIGN	\$((105.50)) <u>111.30</u>
INITIAL FEE - ONE YEAR DESIGN	\$((63.70)) <u>67.20</u>
RENEWAL FEE	\$((63.70)) <u>67.20</u>
ADDENDUM	\$((63.70)) <u>67.20</u>
<b>PLANS APPROVED BY PROFESSIONALS</b>	
	\$((48.00)) <u>50.60</u>
<b>APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS</b>	
	\$((12.90)) <u>13.60</u>
<b>DEPARTMENT INSPECTION FEES</b>	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((69.10)) <u>72.90</u>
TRAVEL (Per hour)	\$((69.10)) <u>72.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (Per hour*)	\$((69.10)) <u>72.90</u>

TRAVEL (Per hour*)	\$((69.10)) <u>72.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((103.40)) <u>109.10</u>
<b>INSIGNIA FEES:</b>	
FIRST SECTION/ALTERATION	\$((20.80)) <u>21.90</u>
EACH ADDITIONAL SECTION	\$((12.90)) <u>13.60</u>
REISSUED-LOST/DAMAGED	\$((12.90)) <u>13.60</u>
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((69.10)) <u>72.90</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((12.90)) <u>13.60</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

**AMENDATORY SECTION** (Amending WSR 07-11-128, filed 5/22/07, effective 6/30/07)

**WAC 296-150F-3000 Factory-built housing and commercial structure fees.**

<b>INITIAL FILING FEE</b>	\$((60.80)) <u>64.10</u>
<b>DESIGN PLAN FEES:</b>	
INITIAL FEE - MASTER DESIGN (CODE CYCLE)	\$((300.50)) <u>317.10</u>
INITIAL FEE - ONE YEAR DESIGN	\$((176.00)) <u>185.70</u>
RENEWAL FEE	\$((60.80)) <u>64.10</u>
RESUBMIT FEE	\$((87.90)) <u>92.70</u>
ADDENDUM (Approval expires on same date as original plan.)	\$((87.90)) <u>92.70</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((4.90)) <u>5.10</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>ELECTRICAL PLAN REVIEW</b> (Plan review for educational, institutional or health care facilities and other buildings):	
Electrical Plan submission fee	\$((66.90)) <u>70.50</u>
Service/feeder Ampacity:	
0 - 100	\$((29.60)) <u>31.20</u>
101 - 200	\$((37.00)) <u>39.00</u>
201 - 400	\$((69.30)) <u>73.10</u>
401 - 600	\$((81.80)) <u>86.30</u>
601 - 800	\$((105.50)) <u>111.30</u>
801 - 1000	\$((129.10)) <u>136.20</u>
Over 1000	\$((140.00)) <u>147.70</u>
Over 600 volts surcharge	\$((22.10)) <u>23.30</u>
Thermostats:	
First	\$((13.10)) <u>13.80</u>
Each additional	\$((3.10)) <u>3.20</u>
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$((11.90)) <u>12.50</u>
Each additional circuit or zone	\$((2.00)) <u>2.10</u>
Generators, refer to appropriate service/feeder ampacity fees	

<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) will be charged per hour or fraction of an hour*	\$((79.20)) <u>83.50</u>
<b>ELECTRICAL COMMERCIAL/INDUSTRIAL</b>	
Electrical Service /feeders 200 Ampacity plus	
Service/feeder	\$((201.60)) <u>212.70</u>
Additional Feeder	\$((38.20)) <u>40.30</u>
<b>ELECTRICAL MULTIFAMILY RESIDENTIAL</b>	
Electrical Service/feeders 200 Ampacity plus	
Service/feeder	\$((106.90)) <u>112.80</u>
Additional Feeder	\$((27.20)) <u>28.70</u>
<b>MEDICAL GAS PLAN REVIEW:</b>	
SUBMISSION FEE	\$((83.50)) <u>88.10</u>
FIRST STATION	\$((83.50)) <u>88.10</u>
EACH ADDITIONAL STATION	\$((30.30)) <u>31.90</u>
<b>RECIPROCAL PLAN REVIEW:</b>	
INITIAL FEE-MASTER DESIGN	\$((134.30)) <u>141.70</u>
INITIAL FEE-ONE YEAR DESIGN	\$((81.20)) <u>85.60</u>
RENEWAL FEE	\$((81.20)) <u>85.60</u>
ADDENDUM	\$((81.20)) <u>85.60</u>
<b>PLANS APPROVED BY DESIGN PROFESSIONALS</b>	\$((60.80)) <u>64.10</u>
<b>APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS</b>	\$((15.70)) <u>16.50</u>
<b>DEPARTMENT INSPECTION FEES</b>	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((77.80)) <u>82.10</u>
TRAVEL (Per hour*)	\$((77.80)) <u>82.10</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (Per hour*)	\$((77.80)) <u>82.10</u>
TRAVEL (Per hour*)	\$((77.80)) <u>82.10</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
FIRST SECTION	\$((248.40)) <u>262.10</u>
EACH ADDITIONAL SECTION	\$((22.40)) <u>23.60</u>
REISSUED-LOST/DAMAGED	\$((60.80)) <u>64.10</u>
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((77.80)) <u>82.10</u>

NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	\$((33.70)) <u>35.50</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)	\$((12.60)) <u>13.20</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

**AMENDATORY SECTION** (Amending WSR 07-11-128, filed 5/22/07, effective 6/30/07)

**WAC 296-150T-3000 Factory-built temporary worker housing fees.**

<b>INITIAL FILING FEE</b>	\$((48.00)) <u>50.60</u>
<b>DESIGN PLAN FEES:</b>	
INITIAL ONE YEAR DESIGN	\$((138.80)) <u>146.40</u>
RENEWAL FEE	\$((48.00)) <u>50.60</u>
RESUBMIT FEE	\$((69.10)) <u>72.90</u>
ADDENDUM (Approval expires on same date as original plan)	\$((69.10)) <u>72.90</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((4.90)) <u>5.10</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((81.90)) <u>86.40</u>
<b>APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS</b>	\$((12.90)) <u>13.60</u>
<b>DEPARTMENT INSPECTION FEES</b>	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((69.10)) <u>72.90</u>
TRAVEL (Per hour)*	\$((69.10)) <u>72.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>DEPARTMENT AUDIT FEES:</b>	
AUDIT (Per hour*)	\$((69.10)) <u>72.90</u>
TRAVEL (Per hour*)	\$((69.10)) <u>72.90</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
<b>INSIGNIA FEES:</b>	
FIRST SECTION	\$((194.60)) <u>205.30</u>
EACH ADDITIONAL SECTION	\$((18.90)) <u>19.90</u>
REISSUED-LOST/DAMAGED	\$((48.00)) <u>50.60</u>
<b>ELECTRICAL COMMERCIAL/INDUSTRIAL</b>	
Electrical Service/feeders 200 Amperage plus Service/feeder	\$((201.60)) <u>212.70</u>
Additional Feeder	\$((38.20)) <u>40.30</u>
<b>ELECTRICAL MULTIFAMILY RESIDENTIAL</b>	
Electrical Service/feeders 200 Amperage plus Service/feeder	\$((106.90)) <u>112.80</u>

Additional Feeder	\$((27.20)) <u>28.70</u>
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((69.10)) <u>72.90</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free per year)	\$((12.90)) <u>13.60</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

**AMENDATORY SECTION** (Amending WSR 07-11-128, filed 5/22/07, effective 6/30/07)**WAC 296-150V-3000 Conversion vendor units and medical units—Fees.**

<b>INITIAL FILING FEE</b>	\$((34.30)) <u>36.10</u>
<b>DESIGN PLAN FEES:</b>	
INITIAL FEE - MASTER DESIGN	\$((236.70)) <u>249.70</u>
INITIAL FEE - ONE YEAR DESIGN	\$((96.80)) <u>102.10</u>
RENEWAL FEE	\$((41.20)) <u>43.40</u>
RESUBMIT FEE	\$((69.10)) <u>72.90</u>
ADDENDUM (Approval expires on same date as original plan)	\$((69.10)) <u>72.90</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((4.90)) <u>5.10</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>ELECTRICAL PLAN REVIEW</b> (Plan review for educational, institutional or health care facilities and other buildings)	
Electrical plan submission fee	\$((69.10)) <u>72.90</u>
Service/feeder ampacity:	
0 - 100	\$((30.60)) <u>32.20</u>
101 - 200	\$((38.10)) <u>40.20</u>
201 - 400	\$((71.60)) <u>75.50</u>
401 - 600	\$((84.40)) <u>89.00</u>
601 - 800	\$((108.80)) <u>114.80</u>
801 - 1000	\$((133.20)) <u>140.50</u>
Over 1000	\$((144.60)) <u>152.50</u>
Over 600 volts surcharge	\$((22.80)) <u>24.00</u>
Thermostats:	
First	\$((13.40)) <u>14.10</u>
Each additional	\$((3.10)) <u>3.20</u>
Low voltage fire alarm and burglar alarm:	
Each control panel and up to four circuits or zones	\$((12.30)) <u>12.90</u>
Each additional circuit or zone	\$((2.00)) <u>2.10</u>
Generators, refer to appropriate service/feeder ampacity fees	
<i>Note: Altered services or feeders shall be charged the above rate per the service/feeder ampacity fees.</i>	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((81.80)) <u>86.30</u>
<b>RECIPROCAL PLAN REVIEW:</b>	
INITIAL FEE - MASTER DESIGN	\$((105.50)) <u>111.30</u>
INITIAL FEE - ONE YEAR DESIGN	\$((63.70)) <u>67.20</u>
RENEWAL FEE	\$((63.70)) <u>67.20</u>

ADDENDUM		\$((63.70)) <u>67.20</u>
<b>APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS</b>		\$((12.90)) <u>13.60</u>
<b>DEPARTMENT INSPECTION FEES:</b>		
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)		\$((69.10)) <u>72.90</u>
TRAVEL (Per hour)*		\$((69.10)) <u>72.90</u>
PER DIEM**		
HOTEL***		
MILEAGE**		
RENTAL CAR***		
PARKING***		
AIRFARE***		
ALTERATION INSPECTION (One hour plus insignia alteration fee)		\$((103.40)) <u>109.10</u>
<b>DEPARTMENT AUDIT FEES:</b>		
AUDIT (Per hour*)		\$((69.10)) <u>72.90</u>
TRAVEL (Per hour*)		\$((69.10)) <u>72.90</u>
PER DIEM**		
HOTEL***		
MILEAGE**		
RENTAL CAR***		
PARKING***		
AIRFARE***		
<b>INSIGNIA FEES:</b>		
FIRST SECTION/ALTERATION		\$((49.90)) <u>21.00</u>
REISSUED-LOST/DAMAGED		\$((12.90)) <u>13.60</u>
EXEMPT		\$((34.30)) <u>36.10</u>
<b>ELECTRICAL COMMERCIAL/INDUSTRIAL</b>		
Electrical Service/feeders 200 Amperage plus		
Service/feeder		\$((201.60)) <u>212.70</u>
Additional Feeder		\$((38.20)) <u>40.30</u>
<b>ELECTRICAL MULTIFAMILY RESIDENTIAL</b>		
Electrical Service/feeders 200 Amperage plus		
Service/feeder		\$((106.90)) <u>112.80</u>
Additional Feeder		\$((27.20)) <u>28.70</u>
<b>OTHER FEES:</b>		
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)		\$((69.10)) <u>72.90</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCW'S AND WAC'S (One free copy per year upon request)		\$((12.90)) <u>13.60</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.		
** Per state guidelines.		
*** Actual charges incurred.		

**AMENDATORY SECTION** (Amending WSR 07-11-128, filed 5/22/07, effective 6/30/07)

**WAC 296-400A-045 What fees will I have to pay?** The following are the department's plumbers fees:

(1) Fees related to journeyman and specialty plumber certification:

<b>Type of Fee</b>	<b>Period Covered by Fee</b>	<b>Dollar Amount of Fee</b>
Examination application	Per examination	\$((126.10)) <u>133.00</u>
Domestic pump specialty application fee*****	Per application	\$((126.10)) <u>133.00</u>
Reciprocity application*	Per application	\$((126.10)) <u>133.00</u>



<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Trainee certificate**	One year	\$(( <del>37.70</del> )) <u>39.70</u>
<del>((Domestic pump specialty trainee certificate**</del>	<del>Two years</del>	<del>\$75.40))</del>
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	90 days	\$(( <del>62.70</del> )) <u>66.10</u>
Journeyman or residential specialty certificate***	Two years (fee may be prorated based on months)	\$(( <del>101.00</del> )) <u>106.50</u>
Domestic pump specialty plumber certificate***	Three years (fee may be prorated based on months)	\$(( <del>151.50</del> )) <u>159.80</u>
Backflow assembly maintenance and repair specialty certificate	Two years (fee may be prorated based on months)	\$(( <del>69.70</del> )) <u>73.50</u>
Medical gas endorsement application	Per application	\$(( <del>46.50</del> )) <u>49.00</u>
Medical gas endorsement***	One year	\$(( <del>34.70</del> )) <u>36.60</u>
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and journeyman certificates		\$(( <del>202.40</del> )) <u>213.50</u>
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$(( <del>116.50</del> )) <u>122.90</u>
Reinstatement fee for domestic pump		\$(( <del>303.00</del> )) <u>319.70</u>
Replacement fee for all certificates		\$(( <del>17.10</del> )) <u>18.00</u>
Refund processing fee		\$(( <del>27.20</del> )) <u>28.70</u>
Unsupervised trainee endorsement		\$(( <del>27.20</del> )) <u>28.70</u>
Inactive status fee		\$(( <del>27.20</del> )) <u>28.70</u>
Honorary plumbing certification		\$(( <del>101.00</del> )) <u>106.50</u>
Certified letter fee		\$(( <del>27.20</del> )) <u>28.70</u>
Continuing education new course fee*****		\$(( <del>164.10</del> )) <u>173.00</u>
Continuing education renewal course fee*****		\$(( <del>81.90</del> )) <u>86.40</u>
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

- \* Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.
- \*\* The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration. The domestic pump specialty trainee certificate shall expire two years from the date of issuance and must be renewed on or before the date of expiration.
- \*\*\* This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.  
The annual renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed biannually.
- \*\*\*\* This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement. **This fee is not paid to the department.**
- \*\*\*\*\* This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**
- \*\*\*\*\* This fee is for a three-year period or code cycle.
- \*\*\*\*\* The domestic pump specialty application is valid for one year.

(2) If your birth year is:

- (a) In an even-numbered year, your certificate will expire on your birth date in the next even-numbered year.
- (b) In an odd-numbered year, your certificate will expire on your birth date in the next odd-numbered year.

AMENDATORY SECTION (Amending WSR 07-11-128, filed 5/22/07, effective 6/30/07)

**WAC 296-150M-3000 Manufactured/mobile home fees.**

<b>INITIAL FILING FEE</b>	\$((33.20)) <u>35.00</u>
<b>DESIGN PLAN FEES:</b>	
STRUCTURAL ALTERATION - MASTER DESIGN (CODE CYCLE)	\$((134.40)) <u>141.80</u>
STRUCTURAL ALTERATION - ONE YEAR DESIGN	\$((90.10)) <u>95.00</u>
RENEWAL FEE	\$((40.10)) <u>42.30</u>
RESUBMITTAL FEE	\$((66.90)) <u>70.50</u>
ADDENDUM (Approval expires on the same date as original plan.)	\$((66.90)) <u>70.50</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.00)) <u>5.10</u> per page for the first set of plans and \$0.30 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
<b>DEPARTMENT INSPECTION FEES:</b>	
INSPECTION	
<b>MECHANICAL</b>	
Heat Pump	\$((32.80)) <u>34.60</u>
Combination Heat Pump (new) and Furnace (replacement)	\$((43.80)) <u>46.20</u>
Air Conditioning	\$((32.80)) <u>34.60</u>
Combination Air Conditioning (new) and Furnace (replacement)	\$((43.80)) <u>46.20</u>
Furnace Installation (gas*** or electric)	\$((32.80)) <u>34.60</u>
Gas*** Piping	\$((32.80)) <u>34.60</u>
Wood Stove	\$((32.80)) <u>34.60</u>
Pellet Stove	\$((32.80)) <u>34.60</u>
Gas*** Room Heater	\$((32.80)) <u>34.60</u>
Gas*** Decorative Appliance	\$((32.80)) <u>34.60</u>
Range: Changing from electric to gas***	\$((32.80)) <u>34.60</u>
Gas*** Water Heater Replacement	\$((21.90)) <u>23.10</u>
Water Heater: Changing from electric to gas***	\$((21.90)) <u>23.10</u>
Any combination of Furnace, Range, and Water Heater changing from electric to gas*** and includes Gas Piping charge	\$((65.80)) <u>69.40</u>
<b>ELECTRICAL</b>	
Heat Pump	\$((43.80)) <u>46.20</u>
Heat Pump (when home is prewired for a heat pump)	\$((10.90)) <u>11.50</u>
Combination Heat Pump (new) and Furnace (replacement)	\$((54.80)) <u>57.80</u>
Air Conditioner	\$((43.80)) <u>46.20</u>
Air Conditioner (when home is prewired for an air conditioner)	\$((10.90)) <u>11.50</u>
Combination Air Conditioner (new) and Furnace (replacement)	\$((54.80)) <u>57.80</u>
Furnace Installation (gas or electric)	\$((43.80)) <u>46.20</u>
Wood Stove (if applicable)	\$((43.80)) <u>46.20</u>
Pellet Stove (if applicable)	\$((43.80)) <u>46.20</u>
Gas*** Room Heater (if applicable)	\$((43.80)) <u>46.20</u>
Gas*** Decorative Appliance (if applicable)	\$((43.80)) <u>46.20</u>
Range: Changing from gas*** to electric	\$((43.80)) <u>46.20</u>
Electric Water Heater Replacement	\$((43.80)) <u>46.20</u>
Electric Water Heater replacing Gas*** Water Heater	\$((43.80)) <u>46.20</u>
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$((43.80)) <u>46.20</u>
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	\$((43.80)) <u>46.20</u>
Hot Tub or Spa (power from home electrical panel)	\$((43.80)) <u>46.20</u>
Replace main electrical panel/permanently installed transfer equipment	\$((43.80)) <u>46.20</u>
Low voltage fire/intrusion alarm	\$((43.80)) <u>46.20</u>
Fire Safety	\$((43.80)) <u>46.20</u>
Any combination of Furnace, Range and Water Heater changing from electric to gas***	\$((43.80)) <u>46.20</u>

<b>PLUMBING</b>	
Fire sprinkler system (also requires a plan review)	\$( <del>21.90</del> ) <u>23.10</u>
Each added fixture	\$( <del>21.90</del> ) <u>23.10</u>
Replacement of water piping system (this includes two inspections)	\$( <del>98.80</del> ) <u>104.20</u>
<b>STRUCTURAL</b>	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	\$( <del>43.80</del> ) <u>46.20</u>
Reroofs (may require a plan review)	\$( <del>76.80</del> ) <u>81.00</u>
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	\$( <del>76.80</del> ) <u>81.00</u>
Other structural changes (may require a plan review)	\$( <del>76.80</del> ) <u>81.00</u>
Fire Safety (may also require an electrical fire safety inspection)	\$( <del>43.80</del> ) <u>46.20</u>
<b>MISCELLANEOUS</b>	
OTHER REQUIRED INSPECTIONS (Per hour*)	\$( <del>60.30</del> ) <u>63.60</u>
ALL REINSPECTIONS (Per hour*)	\$( <del>60.30</del> ) <u>63.60</u>
Refund	\$( <del>10.90</del> ) <u>11.50</u>
<b>INSIGNIA FEES:</b>	
ALTERATION	\$( <del>10.90</del> ) <u>11.50</u>
FIRE SAFETY CERTIFICATE	\$( <del>10.90</del> ) <u>11.50</u>
REISSUED - LOST/DAMAGED	\$( <del>10.90</del> ) <u>11.50</u>
<b>IPIA</b>	
<b>DEPARTMENT AUDIT FEES</b>	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	\$( <del>30.40</del> ) <u>32.00</u>
Second and succeeding inspections of unlabeled sections (Per hour*)	\$( <del>66.90</del> ) <u>70.50</u>
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	\$( <del>66.90</del> ) <u>70.50</u>
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Attendance at manufacturers training classes (Per hour* only)	\$( <del>66.90</del> ) <u>70.50</u>
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	\$( <del>66.90</del> ) <u>70.50</u>
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	\$( <del>66.90</del> ) <u>70.50</u>
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	\$( <del>66.90</del> ) <u>70.50</u>
State Administrative Agency (SAA) dispute resolution filing fee	<u>70.50</u>
State Administrative Agency (SAA) dispute resolution (Per hour*)	<u>70.50</u>
<b>OTHER FEES:</b>	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	\$( <del>62.00</del> ) <u>65.40</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$( <del>12.30</del> ) <u>12.90</u>
VARIANCE INSPECTION FEE	\$( <del>87.70</del> ) <u>92.50</u>
HOMEOWNER REQUESTED INSPECTION	\$( <del>87.70</del> ) <u>92.50</u>
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	\$( <del>87.70</del> ) <u>92.50</u>
DEMOLITION OF A MOBILE/MANUFACTURED HOME	\$( <del>87.70</del> ) <u>92.50</u>
ENERGY CONSERVATION PERMIT	\$( <del>15.00</del> ) <u>15.80</u>

<b>NOTE: Local jurisdictions may have other fees that apply.</b>	
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Gas means all gases; natural, propane, etc.	

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

**WSR 08-09-126  
PROPOSED RULES  
DEPARTMENT OF  
FINANCIAL INSTITUTIONS**

(Securities Division)  
[Filed April 22, 2008, 1:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-011.

**Title of Rule and Other Identifying Information:** The securities division proposes to amend its rules to provide further clarification of when a person holds himself or herself out as a "financial planner" or "investment counselor." The rules the division proposes to amend are set forth in WAC 460-24A-040 and 460-24A-045.

**Hearing Location(s):** Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on May 27, 2008, at 2:00 p.m.

**Date of Intended Adoption:** May 28, 2008.

**Submit Written Comments to:** Faith L. Anderson, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail fander-son@dfi.wa.gov, fax (360) 704-6480, by May 27, 2008.

**Assistance for Persons with Disabilities:** Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by May 20, 2008, TTY (360) 664-8126 or (360) 902-8774.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The securities division proposes to amend its rules to clarify that a person who uses a term or abbreviation thereof, or engages in any conduct, that would lead a reasonable person to believe that the person is holding himself or herself out as a "financial planner" or "investment counselor" and is therefore subject to registration as an investment adviser under RCW 21.20.0040 unless that person falls within the exception set forth in WAC 460-24A-045 for those that would not otherwise be considered an investment adviser. In order to achieve this goal, the division proposes amendments to WAC 460-24A-040 to provide that a person not only holds himself or herself out as a "financial planner" or "investment counselor" when the person uses any of the terms already listed in that section, but also when the person "uses any other term or abbreviation thereof, or engages in any conduct, that would lead a reasonable person to believe that the person is holding himself or herself out as a "financial planner" or "investment counselor." The division also proposes amendments to the exception for persons that would otherwise be considered investment advisers set forth in WAC 460-24A-045 to make minor changes to accommodate the proposed amendments to WAC

460-24A-040. Text of the proposed amendments to the division's rules is shown below.

**Reasons Supporting Proposal:** The amendments proposed by the division should be adopted to provide greater clarity regarding when a person holds himself or herself out as an investment adviser, particularly given the growing use of professional designations that state or imply that a person has special expertise, certification, or training in financial planning, including the growing use of senior designations and certifications. The division has concerns that these types of designations are being used by persons that are not registered as investment advisers.

**Statutory Authority for Adoption:** RCW 21.20.450, 21.20.005(6), 21.20.040(4).

**Statute Being Implemented:** Chapter 21.20 RCW.

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

**Name of Proponent:** Department of financial institutions, securities division, governmental.

**Name of Agency Personnel Responsible for Drafting:** Faith L. Anderson, 150 Israel Road S.W., Olympia, WA 98501, (360) 725-7825; **Implementation:** Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and **Enforcement:** Michael E. Stevenson, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8824.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Securities Act of Washington, chapter 21.20 RCW, and the existing rules adopted thereunder already subject persons who hold themselves out as "financial planners" or "investment counselors" to registration as investment advisers. Therefore, the adoption of the amendments to existing rules proposed in this notice will not add any additional compliance burdens for those subject to the rules but will provide greater clarity to those subject to these rules. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

April 22, 2008  
Scott Jarvis  
Director

AMENDATORY SECTION (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

**WAC 460-24A-040 Use of certain terms.** ~~((+))~~ For the purposes of RCW 21.20.040~~((3))~~ (4), ~~((use of any term, or abbreviation for a term, including the word))~~ a person holds himself or herself out as a "financial planner" or ~~((the word))~~ "investment counselor" ~~((is considered the same as the use of either of those terms alone.~~

(2) For the purposes of RCW 21.20.040(3), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to:)) when the person:

(1) Uses any of the following terms or abbreviations thereof:

- (a) Financial consultant;
- (b) Investment consultant;
- (c) Money manager;
- (d) Investment manager;
- (e) Investment planner;
- (f) Chartered financial consultant ~~((or its abbreviation))~~

(ChFC); or

(g) ~~((The abbreviation CFP.))~~ Chartered financial planner (CFP); or

(2) Uses any other term or abbreviation thereof, or engages in any conduct, that would lead a reasonable person to believe that the person is holding himself or herself out as a "financial planner" or "investment counselor."

AMENDATORY SECTION (Amending WSR 97-16-050, filed 7/31/97, effective 8/31/97)

**WAC 460-24A-045 Holding out as a financial planner or investment counselor—Exception.** A person ~~((using a term deemed similar to "financial planner" or "investment counselor"))~~ who would otherwise be deemed an investment adviser under WAC 460-24A-040~~((2))~~ will not be considered ~~((to be holding himself out as a financial planner for purposes of))~~ an investment adviser under RCW 21.20.005(6) and 21.20.040(4) under the following circumstances:

(1) The person is not in the business of providing advice relating to the purchase or sale of securities, and would not, but for ~~((his))~~ the use of ~~((such a))~~ certain terms or abbreviations thereof as set forth in WAC 460-24A-040(1) or engaging in certain conduct set forth in WAC 460-24A-040(2), be an investment adviser required to register pursuant to RCW 21.20.040; and

(2) The person does not directly or indirectly receive a fee for providing investment advice. Receipt of any portion of a "wrap fee," that is, a fee for some combination of brokerage and investment advisory services, constitutes receipt of a fee for providing investment advice for the purpose of this section; and

(3) The person delivers to every customer, at least forty-eight hours before accepting any compensation, including commissions from the sale of any investment product, a written disclosure including the following information:

(a) The person is not registered as an investment adviser or investment adviser ~~((salesperson))~~ representative in the state of Washington;

(b) The person is not authorized to provide financial planning or investment advisory services and does not provide such services; and

(c) A brief description of the person's business which description should include a statement of the kind of products offered or services provided (e.g., the person is in the business of selling securities and insurance products) and of the basis on which the person is compensated for the products sold or services provided; and

(4) The person has each customer to whom a disclosure described in subsection (3) of this section is given sign a written dated acknowledgment of receipt of the disclosure; and

(5) The person shall retain the executed acknowledgments of receipt required by subsection (4) of this section and of the disclosure given for so long as the person continues to receive compensation from such customers, but in no case for less than three years from the date of execution of the acknowledgment;

(6) If the person received compensation from the customer on more than one occasion, the person need give the customer the disclosure described in subsection (3) of this section only on the first occasion unless the information in the disclosure becomes inaccurate, in which case the person must give the customer updated disclosure before receiving further compensation from the customer.

## WSR 08-09-127

### PROPOSED RULES

### DEPARTMENT OF

### FINANCIAL INSTITUTIONS

(Securities Division)

[Filed April 22, 2008, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-15-012.

Title of Rule and Other Identifying Information: The securities division proposes to promulgate a new chapter in its rules to regulate the use of senior designations and certifications that is based on the model rule on the use of senior-specific certifications and professional designations adopted by the North American Securities Administrators Association, Inc. on March 20, 2008. The division also proposes to amend current rules that list dishonest and unethical business practices for investment advisers, broker-dealers and their representatives to include a provision clarifying that it is a dishonest or unethical business practice to use a term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including the misleading use of a senior certification or designation. Text of the proposed new chapter and of the amendments to the division's existing rules is attached to this notice.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA 98501, on May 27, 2008, at 1:00 p.m.

Date of Intended Adoption: May 28, 2008.

Submit Written Comments to: Faith L. Anderson, Department of Financial Institutions, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail fander-son@dfi.wa.gov, fax (360) 704-6480, by May 27, 2008.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507-9033, by May 20, 2008, TTY (360) 664-8126 or (360) 902-8774.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to adopt new rules and amend its existing rules to address the misleading use of professional designations that state or imply that a person has special expertise, certification, or training in financial planning by investment advisers, broker-dealers and their representatives who do not possess special expertise, certification or training. The securities division proposes to adopt, as a new chapter in its regulations, rules regulating the use of senior designations and certifications that are based on the model rule on the use of senior-specific certifications and professional designations adopted by the North American Securities Administrators Association, Inc. ("NASAA") on March 20, 2008. The proposed rules contain the following provisions:

- A purpose statement;
- A provision making it a dishonest or unethical practice within the meaning of RCW 21.20.020 (1)(c) or 21.20.110 (1)(g) to use senior designations or certifications in a misleading manner;
- Examples of misleading uses;
- A presumptive exception for designations awarded by recognized designating or certifying organizations;
- Factors to determine whether a term is a senior designation or certification;
- A presumptive exception for certain job titles; and
- A nonexclusivity provision.

In addition, the division has proposed to amend the list of dishonest and unethical practices provisions applicable to investment advisers, broker-dealers and their representatives set forth in WAC 460-24A-220, 460-21B-060, and 460-22B-090 to clarify that the use of any term or abbreviation thereof in a manner that misleading[ly] states or implies that a person has special expertise, certification, or training in financial planning is prohibited, including the misleading use of senior designations or certifications.

Reasons Supporting Proposal: These proposals should be adopted to clarify that the misleading use of designations that state or imply that a person has special expertise, certification, or training in financial planning by investment advisers, broker-dealers and their representatives is prohibited and to maintain uniformity in this area with other states that adopt the NASAA model rule.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.020 (1)(c), 21.20.110 (1)(g).

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: Department of financial institutions, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Faith L. Anderson, 150 Israel Road S.W., Olympia, WA

98501, (360) 725-7825; Implementation: Scott Jarvis, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8700; and Enforcement: Michael E. Stevenson, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8824.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Securities Act of Washington, chapter 21.20 RCW, and the existing rules adopted thereunder already effectively prohibit the use of any term or abbreviation thereof in a manner that misleading[ly] states or implies that a person has special expertise, certification, or training in financial planning, including the misleading use of a senior designation or certification. Therefore, the adoption of the new rules and amendments to existing rules proposed in this notice will not add any additional compliance burdens for those subject to the rules but will provide greater clarity that may reduce compliance costs for those subject to these rules. If any costs are borne by businesses in connection with the proposed rules, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328.

April 22, 2008

Scott Jarvis

Director

## Chapter 460-25A WAC

### USE OF SENIOR DESIGNATIONS

#### NEW SECTION

**WAC 460-25A-010 Purpose of chapter.** The rules in this chapter apply to the use of senior certifications and designations.

#### NEW SECTION

**WAC 460-25A-020 Use of Senior-Specific Certifications and Professional Designations.** (1) Consistent with the Model Rule on the Use of Senior-Specific Certifications and Professional Designations adopted by the North American Securities Administrators Association, Inc. on March 20, 2008, the use of a senior-specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice within the meaning of RCW 21.20.020 (1)(c) and 21.20.110 (1)(g).

(2) The prohibited use of such certifications or professional designations includes, but is not limited to, the following:

(a) Use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) Is primarily engaged in the business of instruction in sales and/or marketing;

(ii) Does not have reasonable standards or procedures for assessing the competency of its designees or certificants;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

#### NEW SECTION

**WAC 460-25A-030 Designations awarded by recognized designating or certifying organizations.** There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of WAC 460-25A-020 (2)(d) when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The National Commission for Certifying Agencies;

or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

#### NEW SECTION

**WAC 460-25A-040 Factors considered to determine whether a term is a senior-specific certification or professional designation.** In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

#### NEW SECTION

##### **WAC 460-25A-050 Exception for certain job titles.**

(1) There is a rebuttable presumption that a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(a) Indicates seniority or standing within the organization; or

(b) Specifies an individual's area of specialization within the organization.

(2) For purposes of this section, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

#### NEW SECTION

**WAC 460-25A-060 Application of chapter not exclusive.** Nothing in this chapter shall limit the director's authority to enforce existing provisions of law.

AMENDATORY SECTION (Amending WSR 02-19-093, filed 9/17/02, effective 10/18/02)

**WAC 460-21B-060 Dishonest or unethical business practices—Broker-dealers.** The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(g) as applied to broker-dealers is hereby defined to include any of the following:

(1) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;

(2) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(3) Recommending to a customer to purchase, sell or exchange any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(4) Executing a transaction on behalf of a customer without authorization to do so;

(5) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(6) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(7) Failing to segregate customers' free securities or securities held in safekeeping;

(8) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the cus-

tomers a properly executed written consent promptly after the initial transaction, except as permitted by rules of the securities and exchange commission;

(9) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(10) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(11) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

(12) Offering to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;

(13) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he/she is acting or with whom he/she is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

(14) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customer;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(15) Guaranteeing a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(16) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind

which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

(17) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(18) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

(19) Failing to make bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member;

(20) Failure or refusal to furnish a customer, upon reasonable request, information to which he is entitled, or to respond to a formal written request or complaint;

(21) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(22) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(23) For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each such security based on the closing market bid on a date certain: Provided, That this subsection shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued;

(24) Failing to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; ((e))

(25) Any acts or practices enumerated in WAC 460-21B-010; or

(26) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.



The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

AMENDATORY SECTION (Amending WSR 02-19-093, filed 9/17/02, effective 10/18/02)

**WAC 460-22B-090 Dishonest and unethical business practices-salespersons.** The phrase "dishonest or unethical practices" as used in RCW 21.20.110 (1)(g) as applied to salespersons, is hereby defined to include any of the following:

(1) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

(2) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction;

(3) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited;

(4) Sharing directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

(5) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also registered for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

(6) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

(7) Recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

(8) Executing a transaction on behalf of a customer without authorization to do so;

(9) Exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;

(10) Executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;

(11) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit;

(12) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, a final or preliminary prospectus, and if the latter, failing to furnish a final prospectus within a reasonable period after the effective date of the offering;

(13) Effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but is not ~~((be))~~ limited to:

(a) Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(b) Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(c) Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;

(14) Guaranteeing a customer against loss in any securities account for such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;

(15) Publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation presents a bona fide bid for, or offer of, such security;

(16) Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions ~~((of))~~ in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

(17) In connection with the solicitation of a sale or purchase of an OTC non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act, when requested to do so by a customer;

(18) Marking any order ticket or confirmation as unsolicited when in fact the transaction is solicited;

(19) Failing to comply with any applicable provision of the Conduct Rules of the National Association of Securities Dealers or any applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission; ~~((of))~~

(20) Any act or practice enumerated in WAC 460-21B-010; or

(21) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

The conduct set forth above is not inclusive. Engaging in other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall also be grounds for denial, suspension or revocation of registration.

**AMENDATORY SECTION** (Amending WSR 99-03-051, filed 1/15/99, effective 2/15/99)

**WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers.** A person who is an investment adviser or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship (~~between an investment adviser and its~~) with the client(s) and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) an investment adviser or a federal covered adviser shall not engage in dishonest or unethical business practices, including the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without

first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employees of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the con-

tract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of the Securities Act of Washington, chapter 21.20 RCW, or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative ((#)) contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder.

(22) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

**WSR 08-09-129**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 22, 2008, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-05-102.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system for Washington workers' compensation insurance and chapter 296-17A WAC, Classifications for worker's compensation insurance.

Hearing Location(s): Department of Labor and Industries, Room S117-118, 7273 Linderson Way S.W., Tumwater, WA 98501, on May 27, 2008, at 1:00 p.m.

Date of Intended Adoption: July 15, 2008.

Submit Written Comments to: Ronald Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail MOOA235@lni.wa.gov, fax (360) 902-4729, by 5 p.m., May 27, 2008.

Assistance for Persons with Disabilities: Contact by May 22, 2008, TTY (360) 902-5797 or (360) 902-4774.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries establishes and maintains a workers' compensation classification plan that classifies all occupations or industries within the state and sets basic rates of premium for the classifications that are distributed fairly (RCW 51.16.035). The department has conducted a review of various classifications and determined that certain classifications are in need of revisions. See below for a list of the classifications being modified and short summary of the changes.

WAC 296-17-31013, add 0112 (sand and gravel operations) to list of construction activities entitled to 5206 (shop classification); 296-17A-4801, repeal geoduck diving class effective January 1, 2009; 296-17A-0202, create new subclassification for geoduck diving under construction divers classification. With removal of tenders the rate will move from \$3.33 to \$5.32; 296-17A-0607, added home staging to class for merchandise display; 296-17A-2004, changes a reference to 3402 to 5209; 296-17A-2102, changes reference to drivers to specify all driving outside the yard is to be reported in 1102 for trucking; 296-17A-3402-11, repeal this subcode which was temporary holding sub; 296-17A-3304, removes reference to harvesting shellfish in this classification; 296-17A-3404, added metal boat manufacturing to a metal goods class; 296-17A-4109, added special note regarding 4904; 296-17A-4906, added sales to class for institutions of higher learning; 296-17A-6602, included defogging for multi-paned windows to window washing class; 296-17A-6603, added internet auctions to regular auction class; and 296-17A-7202, added special note to real estate class regarding definition of worker and independent contractor.

Statutory Authority for Adoption: RCW 51.16.035 and 51.16.100.

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Bill Moomau, Tumwater, Washington, (360) 902-4774; Implementation and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is exempt from preparing a small business economic impact

statement under RCW 19.85.025 referencing RCW 34.05.-310(4).

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv), (v), and (vi).

April 22, 2008  
Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 07-12-045, filed 5/31/07, effective 7/1/07)

**WAC 296-17-31013 Building construction. (1) Does this same classification approach apply to building and construction contractors?**

Yes, but it may not appear that way without further explanation. We classify contractors by phase and type of construction since it is common for each contract to vary in scope.

*Example: A contractor who builds and remodels private residences may frame the structure and work on no other phases of the project. On another job the same contractor may do only the interior finish carpentry. On still another job the contractor may install a wood deck or build a garden arbor. Each of these carpentry activities is covered by a different classification code. To ensure that contractor businesses receive the same treatment as other businesses, we assign classifications according to the phases and types of construction they contract to perform. Since some contractors specialize in one area of construction, such as plumbing, roofing, insulation, or electrical services, this classification approach mirrors that of nonbuilding contractor businesses. The policy of assigning several basic classifications to contractors engaged in multiple phases of construction may seem to be in conflict with the classification approach used for nonbuilding contractor businesses, but we have simply used the **multiple business classification approach**.*

If we have assigned multiple classifications to your construction business you should take special care in maintaining the records required in the auditing and recordkeeping section of this manual. If we discover that you have failed to keep the required records we will assign all worker hours for which the records were not maintained to the highest rated classification applicable to the work that was performed.

**(2) Who does this rule apply to?**

If you are a building, construction or erection contractor and we have assigned one or more of the following classifications to your business, this rule applies to you: 0101, 0103, 0104, 0105, 0107, 0108, 0112, 0201, 0202, 0210, 0212, 0214, 0217, 0219, 0301, 0302, 0303, 0306, 0307, 0403, 0502, 0504, 0507, 0508, 0509, 0510, 0511, 0512, 0513, 0514, 0516, 0517, 0518, 0519, 0521, 0540, 0541, 0550, 0551, 0601, 0602, 0603, 0607, 0608, and 0701.

**(3) Can I have a single classification assigned to my business to cover a specific construction project?**

Yes, to simplify recordkeeping and reporting requirements we will assign a single classification to cover an entire project.

**(4) How do I request the single classification for one of my construction projects?**

You should send your request to the attention of your account manager at the address below:

Department of Labor and Industries  
P.O. Box 44144  
Olympia, Washington 98504-4144

**(5) If I have asked for a single classification on one of my construction projects, how do you determine which classification will apply?**

You must supply us with a description of the project and a break down of the total number of hours of exposure by phase of construction that you are responsible for.

*Example: You notify us that your company will be responsible for all plumbing and iron erection work on a commercial building site. You have requested a single classification for this project. In your request you tell us that you estimate that it will take one thousand work hours to perform all the plumbing work and five hundred work hours to do the steel erection work.*

With this information we will estimate the premiums by classification.

*Example: We determine that the plumbing work is covered under classification 0306 and the steel erection work is covered under classification 0518. Assume that classification 0306 has an hourly premium rate of \$1.50 and classification 0518 has an hourly premium rate of \$2.55. We estimate the total premium on this job to be \$2,775 (1,000 hours x \$1.50 = \$1,500 + 500 hours x \$2.55 = \$1,275).*

Our next step in this process is to develop an average hourly rate for the project. We will use this information to select the single classification which will apply to this project.

*Example: We will take the estimated premium (\$2,775) and divide this number by the estimated hours (1,500) and arrive at an average hourly rate of \$1.85.*

To select the single classification that will apply to a construction project, we will compare the average hourly rate that we have computed to the rates of the classifications applicable to the project. We will select the classification whose hourly rate is the closest to the average hourly rate that we computed from the information you supplied us with.

*Example: From the information you supplied, we have determined that the average hourly rate for this project is \$1.85. We also know that the rate for the plumbing classification (0306) is \$1.50 per hour and the rate for steel erection is \$2.55 per hour. We would assign classification 0306 as the single classification applicable to this project.*

**(6) How will I know what classification will apply to my construction project?**

We will send you a written notice which will specify the basic classification and premium rate that will apply to this project.

**(7) If I have asked for a single classification to cover one of my construction projects, am I required to use the single classification which you gave me?**

No, but you should call your account manager to verify what other classifications would apply to the project. The name and phone number of your account manager can be

found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

**(8) I am a general construction or erection contractor, I subcontract all my work and have no employees of my own. Do I have to report to the department of labor and industries?**

No, since you do not have employees, you do not need to report to the department of labor and industries. You should be aware that the workers' compensation insurance laws of Washington include certain independent contractors as workers. If we determine that an independent contractor that you used qualifies as a covered worker, you will be responsible for the premium due for their work time. You can also be held responsible for premiums due to labor and industries if you subcontract with an unregistered contractor and they fail to pay premiums on behalf of their employees. It is in your best interest to make sure that your subcontractors are registered contractors in good standing by confirming their status on the department's web site or contacting your account manager.

**(9) Am I required to keep any special records of subcontractors that I use?**

Yes, you are required to keep certain information about the subcontractors that you use. The information required is:

- Subcontractor's legal name;
- Contractor registration number and expiration date;
- UBI number (or labor and industries account ID number).

If you supply materials to a subcontractor, also keep a record of the:

- Amount of material supplied;
- Project name or location;
- Date material was supplied; and
- Completion date of contracted work.

Failure to maintain these records may result in the subcontractor being considered a covered worker for whom you must report hours.

**(10) What classification should I use to report construction site cleanup by my employees?** You should report the cleanup of construction debris in the same classification that applied to the work which generated the debris unless another classification treatment is provided for in other rules. For example, if you are a roofing contractor and you have an employee pick up roofing debris at the construction (project) site, you would report the employee involved in the site cleanup in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report site cleanup in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report construction site cleanup by your employees in classification 0510 "wood frame building construction."

**(11) I am a construction site clean-up contractor, my employees only pick up construction debris, we do no construction work, what classification do I report site**

**cleanup in?** If your employees are collecting and/or removing construction site debris, you would report in classification 4305-22. If your employees are collecting and/or removing nonconstruction debris such as household junk, garden waste, basement debris, furniture and appliances, you would also report in classification 4305-22. If you have contracts to clean up construction debris and also provide preoccupancy clean up work and are not a construction contractor, then you can divide hours between the two risk classifications 4305-22 and 6602-03 providing accurate accounting records are kept for both activities.

**(12) What classification should I use to report the work time of my employees when they are involved in the set up of scaffolding, hoists, cranes, towers or elevators at a construction site?** We use the same classification treatment for this type of work as we do with construction site cleanup. For example, if you are a roofing contractor and you have an employee set up scaffolding at the construction (project) site, you would report the employee involved in the set up of scaffolding in the roofing classification (0507). If you are the general contractor at a construction site and have either classification 0510 "wood frame building construction" or classification 0518 "nonwood frame building construction" assigned to your business, you would report the set up of scaffolding at the construction in the classification applicable to the type of building you are constructing. For example, if you are a general contractor and you are engaged in building a single-family wood frame dwelling, you would report scaffolding set up by your employees in classification 0510 "wood frame building construction." Helicopter services that are engaged to assist in lifting beams, air conditioning units, statues and other objects onto buildings or structures are to be reported separately in classification 6803.

**(13) Is preoccupancy cleanup of a building by my employees classified the same as debris cleanup at a construction site?** Since your understanding of what preoccupancy clean-up work is may be different from ours, we need to share with you our understanding before we can answer this question. Our understanding in this area is that preoccupancy cleanup occurs after the building is finished. The clean-up work consists of washing paint and overspray from windows, vacuuming carpets, washing floors and fixtures, and dusting woodwork, doors and cabinets. If you have employees whose duties are limited to this type of cleaning, we will allow you to report their work time in classification 6602 "janitors."

**(14) If I have an employee who does some construction work, construction site cleanup and preoccupancy cleanup, can I divide their work time between the janitor and a construction classification?** No, we will not permit you to divide the work time of an employee between the janitor classification and a construction classification. If you have an employee who does preoccupancy clean-up work for you, and that employee also performs other nonpreoccupancy clean-up work for you such as construction work, shop work or construction site debris clean-up work, then you must report all of their work time in the applicable construction or nonshop classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0202 Classification 0202.**

**0202-02 Pile driving - wood or concrete piling construction**

Applies to contractors engaged in pile driving and piling construction. Pile driving involves long sturdy posts or columns of timber, steel, or concrete being driven into the earth as a foundation or support for a structure such as a building, pier or wharf. This type of activity usually occurs when a portion of the structure is going to be under water, in mud, at a site where the ground is soft or unstable, or when the structure is expected to be of extraordinary weight. Work contemplated by this classification includes driving wood or steel beams, driving concrete columns, shaft sinking or caisson work, stacking of concrete piles, erection of a cofferdam, and includes all cross beaming, decking, and similar carpentry incidental to, and connected with, pile driving operations as part of the foundation construction project. Shaft sinking is removal of earth from a hole with a relatively small diameter and usually at a considerable depth. The cofferdam is a temporary structure from which water can be pumped or sucked to provide a dry work area during construction of the foundation or substructure. Once the foundation support is complete, the cofferdam is taken apart and removed.

This classification excludes diving operations or activities which are to be reported separately in classification 0202-04.

**Special note:** Pile driving projects could occur on or adjacent to navigable waters (harbors, rivers, canals) which is defined as those which form a continuous highway for interstate or international commerce. Workers who perform the work activities from on board a vessel could be subject to the Admiralty Law which recognizes such work crews and workers as a master or member of a vessel, and subject to federal law known as the Jones Act. Every person on board a vessel is deemed a seaman if connected with the operation while on navigable water. The term vessel has been interpreted by the courts to include any type of man-made floating object such as a floating derrick, pile driver or dredge, a barge, or a pontoon (which is a flat bottom boat) or portable float. Workers who perform the work activities from the shoreline or from adjacent areas such as an existing dock, pier, or bridge may or may not be subject to federal law covered under the U.S. Longshore and Harbor Workers Act. Usually, pile driving projects involve a variety of types of work crews such as those working from a floating derrick or pile driver, a barge, a pontoon, a shoreline pile crew, workers inside the cofferdam, as well as the maintenance and repair of the construction material or equipment. Care should be exercised prior to assignment of this classification as the workers could be subject to either or both of these acts. The criteria used in determining federal law and coverage is based on the most current federal court decisions and case law.

**0202-03 Wharf, pier, dock and marine railway: Construction, maintenance and repair**

Applies to contractors engaged in the construction, maintenance or repair of piers, wharves, docks and marine railways. A pier or wharf is a platform extending from a shore

over water and supported by piles or pillars. A dock is the area between two piers or alongside a pier or wharf. These types of platforms are for vessels to tie up and provide an area for loading, unloading, or repairing vessels. Most often, the construction of such platforms will include the foundation or substructure being under water or mud, and the remainder of the platform being exposed above the water or mud. Work contemplated by this classification includes, but is not limited to, construction of the foundation or substructure which consists of shaft sinking, pile driving, stacking of piles and/or erection of a cofferdam, and includes all concrete, steel or carpentry work after the foundation or substructure is built to completion of the project. Shaft sinking involves the removal of earth from a hole with a relatively small diameter and usually at a considerable depth. Pile driving involves long sturdy posts or columns of timber, steel, or concrete being driven into the earth as a foundation or support for the structure. The cofferdam is a temporary structure from which water can be pumped or sucked to provide a dry work area during construction of the foundation or substructure. Once the foundation support is complete, the cofferdam is taken apart and removed. This classification also includes caisson work as part of the construction for the foundation or substructure support.

This classification excludes diving operations or activities which are to be reported separately in classification 0202-04.

**Special note:** The construction of piers, wharves, docks and marine railways could occur on or adjacent to navigable waters (harbors, rivers, canals) which is defined as those which form a continuous highway for interstate or international commerce. Workers who perform the work activities from on board a vessel could be subject to the Admiralty Law which recognizes such work crews and workers as a master or member of a vessel, and subject to federal law known as the Jones Act. Every person on board a vessel is deemed a seaman if connected with the operation while on navigable water. The term vessel has been interpreted by the courts to include any type of man-made floating object such as a floating derrick, floating barge, a pontoon (which is a flat bottom boat) or portable float. Workers who perform the work activities from the shoreline or from adjacent areas such as an existing dock, pier, or bridge may or may not be subject to federal law covered under the U.S. Longshore and Harbor Workers Act. Usually, these types of projects involve a variety of work crews such as those working from a floating derrick or barge, a pontoon, a shoreline pile crew, workers inside the cofferdam, as well as the maintenance and repair of the construction material or equipment. Care should be exercised prior to assignment of this classification as the workers could be subject to either or both of these acts. The criteria used in determining federal law and coverage is based on the most current federal court decisions and case law.

**0202-04 Diving operations and subaqueous work, N.O.C.**

Applies to establishments engaged in diving operations not covered by another classification (N.O.C.). Diving operations such as underwater diving, skin diving or scuba diving are performed in numerous types of uncontrolled environments such as the ocean, harbors, bays, dams, lakes, as well as controlled environments such as swimming pools or

aquarium tanks. Work contemplated by this classification includes, but is not limited to, marine salvage and wreckage, underwater mining and sweeping, underwater construction or demolition, installation, repair and/or inspection of wharves, piers, and docks, inspection of ships, barges, and other vessels, ((subaqueous harvesting of geoduck, sea cucumbers, or similar marine life-)) underwater exploration, as well as diving instruction. Classification 0202 includes all diving activities with the following exception: Diving instructors who provide instructional lessons in a controlled environment such as a swimming pool may be reported separately in classification 6209 provided accurate time records are maintained for the instructional lesson hours. Failure to maintain accurate time records will result in the hours in question being assigned to classification 0202 without a division of hours between the two classifications.

**Special note:** Many diving operations and activities occur on or adjacent to navigable waters (a harbor, river, canal, dam, lake) which is defined as those which form a continuous highway for interstate or international commerce. Workers who perform diving activities (to include divers, deck hands, or "diving tenders" who are support personnel such as line handlers and pump persons) from on board a vessel could be subject to the Admiralty Law which recognizes such work crews and workers as a master or member of a vessel, and subject to federal law known as the Jones Act. Every person on board a vessel is deemed a seaman if connected with the operation while on navigable water. The term vessel has been interpreted by the courts to include any type of man-made floating object such as a floating derrick or dredge, a boat or ship, a barge, or type of pontoon (which is a flat bottom boat) or portable float. Workers who perform diving activities (to include divers, deck hands, or "diving tenders" who are support personnel such as line handlers and pump persons) from the shoreline or from adjacent areas such as an existing dock, pier or bridge may or may not be subject to federal law covered under the U.S. Longshore and Harbor Workers Act. Care should be exercised prior to assignment of this classification as the workers could be subject to either or both of these acts. The criteria used in determining federal law and coverage is based on the most current federal court decisions and case law.

**0202-05 Geoduck harvesting by divers (to be assigned only by the maritime specialist)**

Applies to establishments engaged in diving operations to harvest wild geoduck clams from natural areas. Work contemplated by this classification includes subaqueous harvesting of geoduck clams, sea cucumbers or similar marine life. This classification includes workers tending to such divers. The employees of the divers and tenders shall be subject to this classification whether or not such work is performed from a vessel.

**Special note:** Many diving operations and activities occur on or adjacent to navigable waters (a harbor, river, canal, dam, lake) which is defined as those which form a continuous highway for interstate or international commerce. Workers who perform diving activities (to include divers, deck hands, or "diving tenders" who are support personnel such as line handlers and pump persons) from on board a vessel could be subject to the Jones Act or Admiralty Law which

recognize such work crews and workers as masters or members of a vessel, and subject to federal law known as the Jones Act. Every person on board a vessel is deemed a seaman if connected with the operation while on navigable water. The term vessel has been interpreted by the courts to include any type of man-made floating object such as a floating derrick or dredge, a boat or ship, a barge, or type of pontoon (which is a flat bottom boat) or portable float. Workers who perform diving activities (to include divers, deck hands, or "diving tenders" or other support personnel such as line handlers and pump persons) from the shoreline or from adjacent areas such as an existing dock, pier or bridge may or may not be subject to federal law covered under the U.S. Longshore and Harbor Workers Compensation Act (LHWCA). Care should be exercised prior to assignment of this classification as the workers could be subject to either or both state fund or federal jurisdiction. The criteria used in determining federal law and coverage is based on the most current federal court decisions and case law.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-2004 Classification 2004.**

**2004-21 Iron or steel merchants; wire rope and cable dealers**

Applies to establishments engaged as iron or steel merchants or as dealers of wire rope, cable, or metal conduit. This classification includes the merchandising of nonferrous metals such as, but not limited to, copper, brass, or aluminum. This classification is distinguished from scrap metal dealers in classification 0604 who deal primarily in used metal as opposed to merchants in classification 2004 who sell new goods. Iron or steel merchants receive metal in the form of beams, sheets, plates, bars, rods, pipe, rounds, channels, angles, tubes, or coils from the mills which they unload with overhead cranes, and store them in their shop or yard. Using power equipment such as shearers, hacksaws, drills, benders, and cutting torches, they are cut, sheared, and formed to customer specifications. Wire rope and cable dealers use coilers to wind the wire rope or cable from large spools onto smaller spools, and use saws or other cutting tools to cut it to length and large hydraulic presses to attach sockets, pulleys and other hardware to wire rope to form rigging used by the fishing, logging, and construction industry.

This classification excludes scrap metal and junk dealers which are to be reported separately in classification 0604, and rebar fabricators which are to be reported separately in classification ((3402)) 5209.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-2102 Classification 2102.**

**2102-00 Warehouses - general merchandise**

Applies to establishments operating as warehouses for general merchandise. This merchandise belongs to a customer and is usually stored for long periods of time. Products typically involved are bulk, nonperishable materials which

might include, but not be limited to, rice, coffee, potatoes, or dry cement. Work contemplated by this classification includes, but is not limited to, unloading deliveries, moving merchandise within the facility, recordkeeping, security, and maintaining the facility. Equipment and machinery used includes pallet jacks, forklifts, routine maintenance, cleaning and recordkeeping supplies, and shop vehicles.

This classification excludes delivery drivers who are to be reported separately in classification 1102; wholesale dealers who operate a warehouse for storage of their own product which is to be reported separately in the classification applicable to the product being sold; warehousing of household furnishings by a moving and storage company which is to be reported separately in classification 6907; cold storage plants which are to be reported separately in classification 4401; ministorage warehousing which is to be reported separately in classification 4910; field bonded warehouses which are to be reported separately in classification 2008; and the warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

**Special note:** Even though this type of operation may handle some "grocery" products, it differs from 2102-11 in that the products being handled in 2102-00 are in bulk packaging (not cases of consumer-size packages), do not belong to the business that is warehousing them, and are not intended for sale to a wholesaler/retailer.

#### **2102-04 Recycle, collection and receiving stations; rags, bottles, paper and metal container dealers, N.O.C.**

Applies to establishments engaged in the collection of used paper, aluminum, tin, glass, and plastic for the purpose of selling the material to another business that will recycle/remanufacture it into new products. These facilities normally acquire material by placing collection bins at various remote locations, operating a drop-off center (this phase of the business is known in the trade as a "buy back center")(~~and employing drivers to pick up from businesses~~). Work contemplated by this classification includes, but is not limited to, sorting material, operating various pieces of equipment used to crush, reduce, wash, and bale material, weighing containers, paying customers for receipt of items that have a redemption value by the pound or piece ("buying back"), and operating shop or yard vehicles. Machinery and equipment includes, but is not limited to, shredders, balers, can crushers, weigh scales, forklifts, collection bins, shop or yard vehicles, and rolloff trucks to handle the collection bins. This classification includes dealers of rags, bottles, paper and metal containers not covered by another classification (N.O.C.)

This classification excludes (~~drivers who are~~) all trucking outside of the yard which is to be reported separately in classification 1102 and establishments engaged in collecting, sorting and reducing scrap metal such as junk dealers, scrap metal dealers or processors, which also receives glass, paper, plastic, etc., which are to be reported separately in classification 0604.

**Special note:** Classification 2102-04 should not be assigned to an employer who also operates a business subject to classification 4305-18 (Garbage, refuse or ashes collecting) without careful review and an on-site survey. Most gar-

bage collecting businesses have some type of "recycle" program as part of their normal operations in an effort to sort and reduce the amount of waste that goes to landfills and this is considered an inclusion.

#### **2102-11 Grocery, fruit or produce distributors - wholesale or combined wholesale and retail**

Applies to establishments engaged in the wholesale, or wholesale/retail, distribution of a variety of grocery items, fruit and produce. A business in this classification buys products from the manufacturer and sells to retail grocery stores, restaurants, and similar businesses. Grocery items may include, but not be limited to, packaged foods, frozen foods, household cleaning supplies, paper products, personal care items, beer, soda, and dairy products. Work contemplated by this classification includes, but is not limited to, unloading deliveries, moving merchandise within the facility, incidental repackaging, breakdown of merchandise into smaller lots, recordkeeping, security, and maintaining the facility. Equipment and machinery includes, but is not limited to, pallet jacks, forklifts, strapping and shrink wrapping equipment, and vehicles.

This classification excludes delivery drivers who are to be reported separately in classification 1101; any general merchandise warehouse operations in which the operator of the warehouse does not own the merchandise being handled and it is in bulk quantities, which is to be reported separately in classification 2102-00; cold storage plants handling food products which are to be reported separately in classification 4401; operations specializing in vegetable/fruit packing for wholesale distribution which are to be reported separately in classification 2104; operations specializing in wholesale distribution of beer, wine, ale or soft drinks which is to be reported separately in classification 2105; field bonded warehouses which are to be reported separately in classification 2008; and the warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.

#### **2102-28 Wool or cotton merchants**

Applies to establishments operating as wool or cotton merchants. Merchants subject to this classification buy raw wool or cotton from others, do incidental sorting, grading and repackaging, and sell the product to another business for use as a raw material to make products such as yarn, thread or fabric. Work contemplated by this classification includes, but is not limited to, unloading deliveries, moving merchandise within the facility, hand sorting the product by grade (quality), repackaging, recordkeeping, security, and maintaining the facility. Equipment and machinery includes, but is not limited to, pallet jacks, forklifts, repackaging equipment and vehicles.

This classification excludes drivers who are to be reported separately in classification 1102; wholesale dealers of a finished wool or cotton product which are to be reported separately in the classification applicable to the product; and the warehousing of a manufacturer's own product which is to be reported separately in the manufacturing classification applicable to the work being performed.



AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-3304 Classification 3304.**

**3304-00 Fish processors, packers and repackagers - wholesale or combined wholesale/retail**

Applies to establishments engaged in processing, packing, and repackaging fish such as salmon, cod, whitefish, halibut, tuna, and/or shellfish when conducted by a wholesale or combined wholesale/retail operation. Typically, fish will arrive at a port via a commercial fishing vessel. Before the load of fish is accepted the wholesaler will inspect the commercial fishing vessel's records to ensure that the fish were caught, handled and stored in accordance with all applicable laws. The fish is then unloaded, identified, inspected for quality, weighed and stored in a refrigerated area or a freezer to await further disposition. Fish are processed, packed and repackaged as requested by the customers. Processing may include, but is not limited to, cutting, filleting, cooking, and/or canning. The fish may be sold to fish and meat markets, supermarkets, grocery stores, restaurants, or other wholesale dealers. ~~((This classification includes fishing activities that are not covered by another classification (N.O.C.) and the harvesting, planting or packaging of aquatic plants or shellfish obtained from natural areas where the husbandry of the resource is not an integral part of the operation.))~~

This classification excludes establishments engaged in the cold storage or locker operations of products owned by others which are to be reported separately in classifications 4401 or 4404 as applicable; establishments engaged in the raising, harvesting and subsequent processing and packing of shellfish which are to be reported separately in the appropriate classifications; and establishments engaged exclusively in retail fish activities, or the packaging of whole minnow, herring, or anchovy (not processed), which are to be reported separately in classification 3303.

**3304-01 Meat and/or poultry dealers - wholesale or combined wholesale/retail**

Applies to establishments engaged in the wholesale or combined wholesale/retail distribution of fresh, frozen, cured, or smoked meat or poultry. Wholesale dealers generally purchase meat (whole, half, or quarter carcasses) from slaughterhouses, and poultry from poultry processing plants. The meat or poultry is cut into steaks, chops, roasts, fillets or poultry parts, for sale to commercial or institutional customers such as restaurants, hotels, grocery stores, meat and poultry markets, hospitals, and prisons. Wholesale dealers typically do not have display cases for the meat or poultry and receive orders by telephone or by mail. This classification includes the processing and butchering of poultry.

This classification excludes meat products manufacturing, canning or dehydrating, and packing house or slaughterhouse operations, which are to be reported separately in classification 4301; custom meat cutting operations, including farm kill, which are to be reported separately in classification 4302; cold storage or locker operations which are to be reported separately in classifications 4401 or 4404 as applicable, when conducted as a separate and distinct business; establishments engaged in processing, packaging, and

repackaging fish which are to be reported separately in classification 3304-00; and retail meat, fish and poultry dealers who are to be reported separately in classification 3303.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

**WAC 296-17A-3402 Classification 3402.**

**3402-00 Air compressor: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of air compressors. This includes air or gas compressors used for paint sprayers, air tools, tire inflation, and general industrial purposes. Operations contemplated include, but are not limited to, welding, machining, general mechanical and electrical work. Machinery and equipment includes, but is not limited to, hand and air tools, welders, punches, shears, and compression equipment. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3402-01 Printing or bookbinding machinery: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of printing or bookbinding machinery. The outside casings of the machines may be made of plate metal that varies between 1" to 2 1/2" in thickness. The machines used to make the presses and binding machinery may include both Computer Numeric Controlled (CNC) and manual mills and lathes. Other machinery used in the manufacturing process includes, but is not limited to, welders or cutters, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; and the set up, installation and repair of printing or bookbinding machinery which is to be reported separately in classification 0603.

**3402-02 Pump, safe, scale, auto jack, and water meter: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of pumps, safes, scales, auto jacks, and water meters. Materials range from brass screws and rubber washers used to rebuild water meters to plate metal and steel castings used for safe and pump manufacturing. Machinery includes, but is not limited to, hand tools used for repairs, lathes, welders, and pressure testers. This classification includes the repair of items being manufactured or assembled

when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; the installation and repair of safes which is to be reported separately in classification 0607; and the installation of pumps which is to be reported separately in the applicable classification.

**3402-03 Shoe or textile machinery: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of shoe machinery or textile machinery. Metal materials used vary in size, shape and dimension. Machinery includes, but is not limited to, drills, mills, lathes, saws, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation and repair of shoe or textile machinery which is to be reported separately in classification 0603.

**3402-04 Confectioners or food processing machinery: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of food processing or confectioners machinery. Metal materials used vary in size, shape and weight. These establishments often have an assembly line operation and a separate electronic assembly area. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation and repair of confectioners and food processing machinery which is to be reported separately in classification 0603.

**3402-05 Machine shops, N.O.C.**

Applies to establishments engaged in general machine shop operations not covered by another classification (N.O.C.), tool sharpening, and mobile welding shops. Many of the establishments in this classification are "job shops." Size and shape of materials vary with steel and aluminum being the most common. Plastics, light weight aluminum, and alloyed metals are becoming increasingly popular in the manufacture of equipment for some industries. These establishments often have welding shops along with machine

shops. Machinery and equipment includes, but is not limited to, mills, lathes, grinders, saws, welding equipment, inspection equipment, and material handling equipment. Machinery is both manual and Computer Numeric Controlled (CNC). This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, however, sometimes the broken part is removed and taken back to the shop for repair.

This classification excludes repairs to buildings and structures which are to be reported separately in the appropriate construction classification, and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

*Special note:* The term "job shop" is an industry term that means the shop will produce products to customer specifications.

**3402-06 Power saw, lawn and garden equipment, small motor, N.O.C.: Repair**

Applies to establishments engaged in repairing small power tools, small motors powered by gas or diesel, outboard marine engines, and lawn and garden equipment not covered by another classification (N.O.C.). The largest piece of equipment repaired in this classification is generally a riding lawn mower. Classification 3402-06 is assigned in conjunction with a store classification for establishments that have a store operation and also repair the type of items they sell. Classification 3402-06 may also be assigned to a manufacturer representative who performs warranty repairs. Tools used in this type of repair are mainly hand and air tools. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the repair of electrical motors which is to be reported separately in classification 5201.

**3402-07 Gear: Manufacturing or grinding**

Applies to establishments engaged in the manufacture or grinding of gears. Establishments in this classification may also cut key slots and broaches. Establishments that cut stock to manufacture the gear are often not the same ones that perform the final grinding process. Gears may go through two, three, or four different grinding, slotting, and/or keying establishments and then go to another establishment for electroplating or galvanizing before they are ready for sale or use. Precision machine shops may grind gears to the ten thousandths of an inch. Materials used are usually stainless steel, aluminum, or plastic. Machinery includes, but is not limited to, gear shapers, drill presses, mill, hobbers, grinders, some of which might be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an

adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

### **3402-08 Elevator: Manufacturing**

Applies to establishments engaged in the manufacture of elevators and associated electronic components. Machinery includes, but is not limited to, mills, drills, lathes, saws, and grinders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and the installation, service, and repair of elevators which is to be reported separately in classification 0602.

### ~~(3402-11 Metal goods: Manufacturing and shop services (temporary classification))~~

~~Applies temporarily to all establishments assigned any classification within WAC 296-17-580. When the metal goods study is complete, the establishments within this classification will be assigned to the appropriate classifications. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation.~~

~~This classification excludes all activities away from the shop or plant.)~~

### **3402-12 Multimedia blasting**

Applies to establishments engaged in multimedia (such as, but not limited to, glass, plastic and sand) blasting operations which strip paint or other coatings from metal or fiberglass. Most of the blasting operations in this classification are done on automobiles, but it also applies to establishments that perform blasting on items such as, but not limited to, barbecue grills, and cast iron pieces. Multimedia blasting processes in this classification are performed in a shop, use less air pressure and media with softer finishes than other blasting operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and sandblasting of buildings or structures which is to be reported separately in classification 0504.

### **3402-14 Furnace, heater, radiator, wood, propane, or pellet stoves: Manufacturing**

Applies to establishments engaged in the manufacture of furnaces, radiators, wood, propane, or pellet burning stoves or similar heating fixtures. Materials include, but are not limited to, metal cast parts, sheet metal, plate metal, aluminum, or stainless steel. Machinery includes, but is not limited to, hand tools, solder guns, punches, lathes, and saws. Establishments in this classification may have separate areas for electronic assembly and/or painting. This classification includes

the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of radiators for automobiles or trucks which are to be reported separately in classification 3402-48; and establishments engaged in the manufacture of baseboard heaters which are to be reported separately in classification 3404.

### **3402-16 Die casting**

Applies to establishments engaged in the manufacture of products by die casting. Die casting is a manufacturing process for producing accurately-dimensioned, sharply-defined metal products which are referred to as "die castings." "Dies" are the steel molds used to mass produce the product. The process begins when ingots of various metal alloys are melted in die casting machines. The machine forces the metal into the die under hydraulic or pneumatic pressure. The casting quickly solidifies in the die, and is automatically ejected by the machine, and the cycle starts again. The castings are cleaned by grinding or sanding, which also removes any excess metal "flash." Many die casting manufacturers maintain their own machine shop for making the dies. Die making, when done as a part of die casting operations, is included within the scope of this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; and establishments engaged in making dies for others which are to be reported separately in classification 3402-74.

### **3402-26 Saw blade: Manufacturing, assembly, or sharpening**

Applies to establishments engaged in the manufacture, assembly, or sharpening of saw blades such as, but not limited to, those used in circular saws, band saws, rip saws, key-hole saws, and handsaws such as hacksaws or meat saws. This classification also includes sharpening services for items such as, but not limited to, tools, scissors, and knives. Materials include, but are not limited to, high tensile steel and carbide tipped blades. Machinery includes, but is not limited to, saws, mills, drills, and hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the repair or sharpening of chain saws which are to be reported separately in classification 3402-06; and establishments engaged in the manufacture or repair of electrical saws which are to be reported separately in classification 5201.

### **3402-28 Heat treating metal**

Applies to establishments engaged in heat treating metal. The heat treating process may use computer numeric controlled ovens or furnaces. The oven may heat up to 1200 degrees Fahrenheit and a furnace may heat up to 2000 degrees Fahrenheit. The metal(s) is placed on a platform; the platform is hydraulically moved into the first chamber and the door is automatically closed. At this time, the oxygen is burned from the chamber. Then the second chamber door is opened and the metal enters the oven/furnace. Depending upon the specifications, the heat treating process usually takes six to sixteen hours. When the metal is finished in the heating chamber it returns automatically to the first chamber. Then the platform lowers and the metals are dipped into a cooling agent. Once the metals are cooled to room temperature the platform rises, the door opens, and the materials are removed. The process is essentially the same using noncomputer numeric controlled heat treating equipment except that, rather than being hydraulically operated, the machine operators move the metals through the system. Many establishments do not produce a product, but heat treat a variety of products to customer specifications. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

### **3402-29 Nut, bolt, screw, nail, tack, rivet, eyelet spike, needle, N.O.C.: Manufacturing**

#### **Sprinkler head, speedometer, carburetor: Manufacturing or assembly**

Applies to establishments engaged in the manufacture of nuts, bolts, screws, nails, tacks, rivets, eyelets, spikes, and needles not covered by another classification (N.O.C.). This classification also applies to establishments engaged in the manufacture or assembly of sprinkler heads, speedometers, or carburetors. Materials include, but are not limited to, steel or iron rods which may be pressed or formed, and small component parts. Machinery includes, but is not limited to, saws, shears, presses, chucks, threading and tapping machines, some of which may be Computer Numeric Controlled (CNC). Establishments may have separate areas for deburring, inspecting, packing and shipping. The carburetor rebuilding may be performed on vehicles that are driven or towed into the shop, or on carburetors that have been already removed from the vehicles. In either case the repairs are made exclusively with hand and air tools and sometimes a diagnostic scope and a drill press. A speedometer is usually embodied with a mileage recording mechanism. The central feature of the device is a permanent magnet. There are gears, spindles, and a drive shaft present in most speedometers. There is also a unit counting disc and a spiral spring calibrator. Hand tools are used almost exclusively in the repair of

this kind of speedometer. Today many speedometers are computer controlled. Basically, if this kind of speedometer is in need of repair, a computer chip(s) is replaced, using hand tools. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of hardware that is not covered under another classification, such as handles, latches, and hinges which are to be reported separately in classification 3404, and the repair of speedometers or carburetors in a vehicle which is to be reported separately in the appropriate vehicle repair classification.

### **3402-32 Abrasive wheel: Manufacturing**

Applies to establishments engaged in the manufacture of abrasive wheels. Manufacturing operations often include a laboratory where carbon and other materials are mixed together to form the abrasive edge of the mainly high tensile steel wheels. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

### **3402-40 Welding or cutting, N.O.C. (*mobile operations limited to repair of equipment and machinery*)**

Applies to establishments engaged in welding or cutting operations not covered by another classification (N.O.C.) either in the shop or at the customer's site. Steel is the predominant material along with some aluminum alloys. Machinery is predominantly welding equipment, but may include tools such as, but not limited to, grinders, saws, drills, and material handling equipment. This classification also includes "mobile shops" which are used *exclusively* to repair machinery or equipment. A "mobile shop" in this classification usually means a van or pick up pulling a utility trailer equipped with hand tools, specialty tools, air tools, a compressor, and a portable welding unit. The machinery or equipment is usually repaired at the customer's location, sometimes with the use of the customer's equipment; however, broken parts may be removed and taken back to the shop for repair.

This classification excludes welding construction and repairs to buildings or structures which are to be reported separately in the appropriate construction classification and mechanical repairs which are to be reported separately in the classification applicable to the work being performed.

**3402-48 Automobile or truck, radiator and heater core: Manufacturing and repair shops**

Applies to establishments engaged in the manufacture and/or repair of automobile or truck radiator and heater cores. Manufacturers in this classification may have a die casting area and a separate electronic assembly area. Tools and equipment include, but are not limited to, hand tools, solder guns, and punches. Shops that repair radiators may work on the radiators in the vehicles, but usually the radiators have been removed from the vehicle. The radiator is examined and the core may be removed. Next the radiator is cleaned, air pressurized, and dipped in a water tank to check it for leaks. Once the leaks are found they can generally be repaired by welding the holes shut. The radiator is dipped again to ensure the repair has been made properly. Cleaning the radiator may be done by sandblasting, ultra sound baths or by "rodding" the radiator to remove corrosion. Repair equipment includes, but is not limited to, welders, air and hand tools, dipping tanks, hoists, and forklifts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3402-60 Office machinery, N.O.C.: Manufacturing or assembly; Cash register or sewing machines: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of cash registers, sewing machines and office machinery not covered by another classification (N.O.C.) such as, but not limited to, copiers, collators, mail/postage machines, calculators and automatic letter openers. Component parts may be metal, plastic, or wood. Operations include, but are not limited to, cutting, shaping, forming, drilling, riveting, clamping, and bolting; there may be a separate electronic assembly area. Machinery and tools vary within this classification; some establishments use hand and air tools only, others use additional equipment such as, but not limited to, saws, lathes, mills, drills, or water jets, some of which may be Computer Numeric Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3402-61 Small arms: Manufacturing, assembly, or rebuild**

Applies to establishments engaged in the manufacture, assembly, or rebuild of small arms. For the purpose of this classification, small arms means .50 caliber or less, such as

pistols, rifles, shotguns, and light machine guns. Operations include, but are not limited to, metal stamping of casings, machining, assembling, and a high proportion of inspecting. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of ammunition which is to be reported separately in classification 4601; the manufacture or repair of heavy arms which is to be reported separately in classification 5109; and gun stores which are to be reported separately in classification 6309.

**3402-74 Tool: Manufacturing, not hot forming or stamping; Die: Manufacturing - ferrous**

Applies to establishments engaged in tool manufacturing or die manufacturing, for others, from ferrous materials. Tools manufactured in this classification are usually cutting tools used in lathes, mills, rotors, and saws. Machinery includes, but is not limited to, sharpeners, grinders, lathes and mills, which are both manual or Computer Numeric Controlled (CNC). The die manufacturing included in this classification includes those made exclusively of ferrous materials including, but not limited to, jigs, fixtures, and dies for metal work in general. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of machine-finished tools which are to be reported separately in classification 3402-83.

**3402-77 Auto, truck, semi-trailer and bus body: Manufacturing;****Travel trailer body: Manufacturing or repair**

Applies to establishments engaged in the manufacture of auto, truck, and bus bodies, and in the manufacture or repair of travel trailer bodies or cargo containers. Repairs are usually made with the use of welders or cutting torches and air or hand tools. These establishments will also repair or replace hydraulic units. Material used in the manufacture of goods in this classification is usually steel and aluminum, varying in thickness from 16 gauge to plate metal up to one inch thick. Shapes include, but are not limited to, sheet metal, tubes, solid rod or I-beams. Equipment includes, but is not limited to, shears, breaks, hydraulic presses, iron workers, drill presses, grinders, welders, hoist, cranes, and forklifts. Shops may have a finish sanding area as well as a paint area where the vehicle bodies are sprayed with primer, a body bonding material, or a finish coat of paint. This classification includes

the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

### **3402-83 Tool: Manufacturing and machine finishing**

Applies to establishments engaged in manufacturing and machine finishing tools. Tools manufactured in this classification are usually hand held instruments such as, but not limited to, wrenches, screw drivers, hammers, torque wrenches, pliers, and sockets. Machinery includes, but is not limited to, air and hand tools, polishers, grinders, inspection equipment, mills, lathes, shapers, and drill presses, some of which may be Computer Numeric Control (CNC). Establishments may have a galvanizing and/or electroplating area for the finish work which is included when performed by employees of employers subject to this classification. Other establishments in this classification send the finish work out. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of tools from ferrous materials which are to be reported separately in classification 3402-74; and establishments engaged in tool forging which are to be reported separately in classification 5106.

### **3402-85 Auto or truck parts: Machining or rebuild not in vehicle**

Applies to establishments engaged in machining or rebuilding auto or truck parts such as, but not limited to, water pumps, fuel pumps, transmissions, heads, brake drums, ball joints, and rear ends, which are not in the vehicle. Work contemplated in this classification may also include manufacturing sockets, pulleys, shafts, fittings, flywheels, and/or bearings. Machinery includes, but is not limited to, mills, lathes, grinders, sanders, presses, welders, and balancing equipment. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in manufacturing or rebuilding auto, truck, or aircraft engines which are to be reported separately in classification 3402-86.

### **3402-86 Auto, truck or aircraft engine, N.O.C.: Manufacturing or rebuilding**

Applies to establishments engaged in manufacturing or rebuilding auto, truck, or aircraft engines not covered by another classification (N.O.C.), including manufacturing the

component parts. Establishments in this classification often specialize in the type of engines they make or rebuild. The basic difference between automobile, truck, and aircraft engines is the size and weight of the parts being worked on. Engine rebuild shops use many specialized machines and air tools to tear the core down to an engine block; then rebuild the engine. After the engine is stripped down to the engine block, it is placed in a machine called a baker which heats to approximately 600 degrees and bakes away the grease. After baking, the engine block is placed in a sand blaster where the surface is cleaned with very fine steel shot. The engine block is then placed in a large pressure washer which removes the steel shot. Next, the crank and cam shafts are ground and turned on machinery similar to lathes. There is usually a separate room or area which is called the "head shop" where the heads and valves are machined on valve grinders, valve facers, and head grinders. Engine rebuild shops that do not have the equipment to grind the crank and cam shafts will contract work out to other shops, or buy new crank shafts and cam shafts. Other machinery includes, but is not limited to, boring bars and hones to polish cylinder walls, small pressure washers for oil pans and other smaller parts, solvent tanks, and hoists or forklifts for lifting the engines or engine parts. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in machining or rebuilding auto or truck parts, other than engines, which are to be reported separately in classification 3402-85.

### **3402-91 Bed spring or wire mattress: Manufacturing**

Applies to establishments engaged in the manufacture of bed springs or wire mattresses. The wire stock is coiled and cut to length on a coiling machine, then tempered in an oven to produce the spring. The coils are fastened to the frame either by hand or by machine. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of stuffed mattresses which are to be reported separately in classification 3708.

### **3402-93 Valve: Manufacturing**

Applies to establishments engaged in the manufacture of valves. Valves regulate the flow of air, gases, liquids, or loose material through structures by opening, closing, or obstructing passageways. They are operated manually, electrically, with compressed air, or hydraulic pressure. Valves are usually cut from aluminum, steel, or stainless steel either by a

Computer Numeric Controlled machine (CNC) or water jet machine. Depending upon the complexity of the valve, they are assembled in one or several stages. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of valves made in a die mold which are to be reported separately in classification 3402-74.

**3402-94 Precision machined parts, N.O.C.: Manufacturing**

Applies to establishments engaged in manufacturing precision machined parts not covered by another classification (N.O.C.). Most of these establishments are "job shops." Job shops make component parts for other businesses according to customer specifications, rather than manufacturing a specific product. Many establishments in this classification manufacture precision parts for the aerospace industry. Machining usually begins with solid blocks of material such as, but not limited to, steel, aluminum, titanium, inconel, or plastic, although some hollow tube, flat bar, and angle stock may also be used. The "rough cuts" are often made on manual machines, and the finish cuts on Computer Numeric Controlled (CNC) machines. Depending on the establishment and the job specifications, a specific part may be sent to one or more additional shops to be tempered, milled, or inspected before the original establishment is through with the manufacturing process. Some parts are so sensitive that climate controlled conditions are necessary. Both manual and CNC mills and lathes are the most common types of machines used. Others include, but are not limited to, saws, drills, and grinding machines. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3402-95 Storage battery: Manufacturing, assembly or repair**

Applies to establishments engaged in the manufacture, assembly, or repair of storage batteries. Lead ingots, weighing 20-25 pounds, are melted and poured into a mold or casting machine. After the grids are cooled lead oxide is then pumped onto each side of a grid and cured by baking in an oven of about 300 - 400 degrees F. The plates are then assembled by placing a negative separator (zinc) between a positive separator (copper), and so forth until there are enough of these cells to form the battery. Next, they are sent to a burning machine that cures the paste and plates. After the burning

process, the plates are placed into a plastic or hard rubber box-like container and cured for two or three days. The plates are welded together and the top is attached to the body of the battery case with an epoxy glue. Diluted sulfuric acid is added to the battery and then it is put on a charger. The battery is then cleaned and packed for shipping. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in the manufacture of dry cell (flashlight type) batteries which are to be reported separately in classification 3602; and establishments engaged in battery sales and installation which are to be reported separately in the applicable automotive services classification.

**3402-96 Automobile or motorcycle: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of automobiles or motorcycles. Most of the manufacturing operations, such as cutting, milling, and turning, are performed with Computer Numerically Controlled (CNC) machinery. Most of the assembly operations are performed with air and hand tools. Other machinery includes but is not limited to saws, grinders, and drill presses. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged only in the manufacture of auto bodies which are to be reported separately in classification 3402-77.

**3402-98 Machinery, N.O.C.: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of machinery not covered by another classification (N.O.C.). For purposes of this classification, machinery means any combination of mechanical parts constructed primarily with metal. Finished products vary widely and range from hand held machines to those weighing thousands of pounds; products include, but are not limited to, grinding machines, boring machines, conveyer systems, and wood chippers. Machinery used to manufacture these items includes, but is not limited to, lathes, mills, press, breaks, shears, and welders, some of which may be Computer Numerically Controlled (CNC). This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work

being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3402-99 Photo processing machinery: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of photo processing machinery such as, but not limited to, photo processors or film enlargers. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification when the repair is done as a part of and in connection with the manufacturing or assembly operation. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-3404 Classification 3404.**

**3404-01 Can: Manufacturing - aluminum or galvanized**

Applies to establishments engaged in the manufacture of cans from aluminum or galvanized metals lighter than 9 gauge. Products include, but are not limited to, soda cans, food cans, and garbage cans. The galvanizing process includes dipping the tin/metal into liquid zinc. The manufacturing process involves cutting, forming, stamping, and soldering/welding. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3404-02 Galvanized iron works: Manufacturing - non-structural**

Applies to establishments engaged in the manufacture of nonstructural galvanized iron from sheet metal lighter than 9 gauge. Processes include cutting, forming, welding, riveting, punching, and drilling. The equipment used includes, but is not limited to, drills, presses, punches, shears, and press breaks. Establishments in this classification may paint, powder coat, or silk screen their products; which is included when performed by employees of employers subject to this classification. This classification includes the repair of items being manufactured or assembled when done by employees of employers subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3404-03 Hardware, N.O.C.: Manufacturing**

Applies to establishments engaged in the manufacture of hardware that is not covered by another classification (N.O.C.), such as, but not limited to, handles, latches, hinges, and buckles. Operations include, but are not limited to, stamping and assembly, electroplating and/or other types of finishing. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of nuts, bolts, screws, nails, tacks, rivets, eyelets, spikes, and needles which are to be reported separately in classification 3402.

**3404-04 Metal stamping**

Applies to establishments engaged in the mass production of products by metal stamping techniques which impress, cut out, or shape something to a desired size. Products produced by this technique include, but are not limited to, license plates, pie plates, pots, and waste baskets. This classification includes any finish work when performed by employees of employers subject to this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3404-06 Metal sign: Manufacturing**

Applies to establishments engaged in the manufacture of signs from metals lighter than 9 gauge. Materials may be cut, punched, drilled, riveted, and welded. Machinery includes, but is not limited to, punches, presses, drills, shears, brake presses, water jets and welders. All operations necessary to make a sign operative, such as, but not limited to, adding electrical wiring or circuitry, painting, powder coating, or silk screening are included within the scope of this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; the installation or removal of signs outside of



buildings which is to be reported separately in classification 0403; the installation or removal of signs inside of buildings which is to be reported separately in classification 0513; sign painting or lettering on the inside of buildings, or establishments that paint on or apply lettering to sign "backings" that are manufactured by others, which is to be reported separately in classification 4109; and establishments engaged in the manufacture of wood or plastic signs which are to be reported separately in the classification applicable to the manufacturing process and materials.

**3404-07 Metal goods, N.O.C.: Manufacturing or assembly from materials lighter than 9 gauge**

Applies to establishments engaged in the manufacture or assembly of metal goods from materials lighter than 9 gauge which are not covered by another classification (N.O.C.) including water heaters, electric baseboard heaters, electric furnaces, boat manufacturing, and bicycles. Materials may be cut, punched, drilled, riveted, and welded. Machinery includes, but is not limited to, punches, presses, drills, shears, brake presses, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3404-12 Aluminum ware: Manufacturing from sheet aluminum**

Applies to establishments engaged in the manufacture of aluminum ware such as, but not limited to, mail boxes, buckets, gutters, and down spouts, from sheet aluminum. Materials may be cut, bent, punched, drilled, riveted, and welded. Machinery includes, but is not limited to, punches, presses, drills, shears, brake presses, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3404-18 Metal coffin/casket: Manufacturing or assembly**

Applies to establishments engaged in the manufacture of coffins or caskets out of metal. Materials may be cut, bent, punched, drilled, riveted, and welded. Machinery includes, but is not limited to, punches, presses, drills, shears, break presses, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer

having operations subject to this classification. Physically separated upholstery departments of establishments engaged in furniture, coffin, casket manufacturing, assembly, or finishing may be reported separately in classification 3808 provided all the conditions in the general reporting rule covering the division of an employees hours have been met.

This classification excludes all activities away from the shop or plant, and establishments engaged in the manufacture of caskets from wood or plastic which are to be reported separately in the classification applicable to the manufacturing process and materials.

**3404-19 Metal awnings: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of awnings from metals lighter than 9 gauge. Materials may be cut, punched, drilled, riveted, and bent. Machinery includes, but is not limited to, punches, presses, drills, shears, brake presses, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant, and establishments engaged in the manufacture of awnings from canvas or other textiles which is to be reported separately in classification 3802.

**3404-20 Metal furniture, shower door, showcases: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of furniture, shower doors, or showcases made with metals lighter than 9 gauge. Other items manufactured in this classification include, but are not limited to, file cabinets, desks, and stands. Material may be cut, punched, drilled, riveted, and bent. Machinery includes, but is not limited to, punches, presses, drills, shears, brake presses, and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification. Physically separated upholstery departments of establishments engaged in furniture, coffin, casket manufacturing, assembly, or finishing may be reported separately in classification 3808, provided all the conditions of the general reporting rule covering the division of an employee's hours have been met.

This classification excludes all activities away from the shop or plant and establishments engaged in the manufacture of wood furniture which are to be reported separately in classification 2905.

**3404-21 Stove: Manufacturing from metals lighter than 9 gauge**

Applies to establishments engaged in the manufacture of stoves from metals *lighter than 9 gauge*. Types of stoves

include, but are not limited to, electric or gas cook stoves. Accessory materials such as, but not limited to, electrical assembly units, glass, plastic, or wood may be used in the manufacture of stoves. Materials may be cut, punched, drilled, riveted, and bent. Establishments in this classification may paint or powder coat their products which is included when performed by employees of employers subject to this classification. Machinery includes, but is not limited to, punches, presses, drills, shears, brake presses, grinders and welders. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant, and establishments engaged in the manufacture of wood stoves or other stoves made of metals 9 gauge or heavier which are to be reported separately in classification 3402.

**3404-24 Metal electric or gas lighting fixtures, lampshades or lantern: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of metal fixtures, lampshades, or lanterns from materials lighter than 9 gauge. The metal fixtures may be equipped with electrical or gas lighting and used as signs or other display mediums. Metal may be cut, punched, drilled, riveted, and bent. Depending on the item being made, electrical or gas-filled tubes or bulbs may be attached. Machinery includes, but is not limited to, punches, presses, drills, shears, break presses, grinders, welders, and solders. Establishments in this classification may make a finished product or only component pieces. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes establishments engaged in the manufacture of neon tube signs or displays that are not attached to metal backings which are to be reported separately in classification 3602, and all activities away from the shop or plant.

**3404-25 Brass or copper goods: Manufacturing**

Applies to establishments engaged in the manufacture of brass or copper goods such as, but not limited to, belt buckles, lamp stands, cooking utensils, and flower pots. Materials may be cut, punched, drilled, riveted, and bent. Machinery includes, but is not limited to, punches, presses, drills, shears, break presses, water jets, grinders, welders/solders and brazing guns. Establishments in this classification may make a finished product or a component part. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done

as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3404-26 Aluminum window, sash or door: Manufacturing or assembly**

Applies to establishments engaged in the manufacture or assembly of windows, sashes or doors from aluminum. Accessory materials such as, but not limited to, glass, wood or plastic may also be used in the assembly process. Materials may be cut, punched, drilled, riveted, and bent. Machinery includes, but is not limited to, punches, presses, drills, shears, break presses, grinders, and welders/solders. Establishments in this classification may make a finished product or only component parts. Manufacturers may paint, enamel, or bake a finish onto products, which is included when performed by employees of employers subject to this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant; establishments engaged in manufacturing vinyl window sashes which are to be reported separately in classification 3512; and establishments engaged in manufacturing wooden window sashes and doors which are to be reported separately in classification 2903.

**3404-27 Auto or truck parts, N.O.C.: Manufacturing or assembly; miscellaneous stamped parts**

Applies to establishments engaged in the manufacture or assembly of auto or truck parts not covered by another classification (N.O.C.), and of miscellaneous stamped parts, such as, but not limited to, hub caps, fenders, and trim. Galvanizing or electroplating is included in this classification when performed by employees of employers subject to this classification. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

**3404-29 Metal ski and toboggan: Manufacturing**

Applies to establishments engaged in the manufacture of skies or toboggans primarily from metal although wood or plastic component parts may also be used. Materials may be cut, punched, drilled, riveted, and bent. Machinery includes, but is not limited to, punches, presses, drills, water jets, shears, break presses, grinders, and welders/solders. Estab-

ishments in this classification may make a finished product or only a component part. This classification includes the repair of items being manufactured or assembled when done by employees of an employer having operations subject to this classification and when the repair work is done as a part of, and in connection with, the manufacturing or assembly operations. This is a shop or plant only classification; it includes work being performed in an adjacent yard when operated by an employer having operations subject to this classification.

This classification excludes all activities away from the shop or plant.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-4906 Classification 4906.**

**4906-01 Institutions of higher education - public**

Applies to *public* institutions of higher education such as universities, colleges, and junior colleges that have obtained state accreditation and are supported at least in part by public funds. Work contemplated by this classification includes, but is not limited to, administrative staff, professors/teachers, advisors, librarians, athletic coaches, medical staff at a hospital or research center run as part of the institution, restaurant/snack shop staff, campus security, janitorial/maintenance staff, clerical office and sales personnel.

This classification excludes private institutions of higher education which are to be reported separately in classification 4906-02 and secondary technical or vocational schools which are to be reported separately in classifications 6103 and 6104.

**4906-02 Institutions of higher education - private**

Applies to *private* institutions of higher education such as universities and colleges that have obtained state accreditation. These private institutions include any institution of higher education that is not supported by public funds. Work contemplated by this classification includes, but is not limited to, administrative staff, professors/teachers, advisors, librarians, athletic coaches, medical staff at a hospital or research center run as part of the institution, restaurant/snack shop staff, campus security, janitorial/maintenance staff, and clerical office and sales personnel.

This classification excludes public institutions of higher education which are to be reported separately in classification 4906-01 and secondary technical or vocational schools which are to be reported separately in classifications 6103 and 6104.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6602 Classification 6602.**

**6602-02 Contract window washing services**

Applies to establishments engaged in contract window washing services not done in connection with a janitorial service. These establishments specialize in cleaning both interior and exterior windows in residential and commercial, single and multistory buildings. Also included in this classification is the service of defogging multiple-paned windows.

This classification excludes establishments engaged in residential cleaning which are to be reported separately in classification 6602-04 and establishments engaged in both commercial and residential cleaning which are to be reported separately in classification 6602-03.

**6602-03 Janitorial cleaning services, N.O.C.**

Applies to establishments engaged in providing general interior cleaning services for commercial businesses or for combined commercial and residential customers. General cleaning services include, but are not limited to, washing, waxing, and polishing floors, vacuuming and shampooing carpets, dusting and washing walls, dusting or cleaning mirrors, cabinets, moldings, lights, hardware, sinks, tubs, commodes, and appliances, and replacing light globes, paper or linen towels. This classification includes window washing when performed by the janitorial service employees in conjunction with a general house cleaning contract, it also includes the cleaning of swimming pools, spas and hot tubs. Fire restoration, which includes cleaning smoke or water damaged buildings, drying and/or cleaning carpets and upholstered furniture, washing and polishing furniture, washing walls, washing and waxing floors, cleaning personal contents of the home or business such as linens, dishes, drapes, and other general cleaning tasks, are included in this classification.

This classification excludes establishments engaged exclusively in contract window washing services which are to be reported separately in classification 6602-02, and establishments engaged in residential cleaning which are to be reported separately in classification 6602-04.

**Special note:** Care should be exercised with companies specializing in fire restoration or water damage related work. These companies may be general contractors who will not only do the clean up work, but will also do repairs such as, but not limited to, repair or replace cabinets, doors, and fixtures, patch drywall, paint, and replace windows. Construction-related tasks, when performed by a company doing the clean up work, are to be assigned the appropriate construction classification. Each contract should be reviewed to determine the proper classification assignment. A division of individual work hours between classification 6602 and any construction, erection, or shop classification is not allowed. Employees having duties that fall within a construction classification and who are also engaged in preoccupancy cleanup are to be reported in the applicable construction classification.

**6602-04 Janitorial cleaning services - residential**

Applies to establishments engaged in providing general interior janitorial cleaning or services to residential customers. General cleaning services include, but are not limited to, washing, waxing, and polishing floors, vacuuming and shampooing carpets, dusting and washing walls, dusting or cleaning mirrors, cabinets, moldings, lights, hardware, sinks, tubs, commodes, and appliances. This classification includes window cleaning when performed in connection with a general house cleaning contract.

This classification excludes establishments engaged exclusively in contract window cleaning which are to be reported separately in classification 6602-02 and establishments engaged in commercial or combined commercial and

residential cleaning which are to be reported separately in 6602-03.

#### **6602-05 Janitors, N.O.C.**

Applies to the janitorial staff assigned to clean the clerical and administrative offices of establishments whose principle business undertaking is other than providing janitorial services *and* who are eligible to report their clerical employees in classification 4904. *This classification is applicable only to janitors who clean the office area.* Janitors who clean outside the office area such as a shop, warehouse, or retail store area, are excluded from this classification and are to be reported separately in the classification applicable to the employer's business.

**Special note:** See the special exception section of the general rules for a complete description of these requirements.

#### **6602-08 Pest control**

Applies to establishments engaged in pest control services for others. These establishments offer inspection for, and elimination of, unwanted pests in buildings and other wooden structures. Pests include, but are not limited to, termites, carpenter ants, fleas, ticks, mice, ants, cockroaches, and bees. This classification applies to all operations of elimination services such as, but not limited to, spraying liquid or aerosol pesticide, dusting with powder, setting out traps or bait, applying pesticides to the soil to creating a chemical barrier around the base of a structure, digging trenches around foundations, and drilling holes through masonry surfaces in order to pour or pump chemicals into the infected areas. Establishments may also offer inspection and certification services for customers seeking mortgage approval. This classification also includes the removal of pet waste from the yards of private residences.

This classification excludes any structural repairs which are to be reported separately in the appropriate construction classification.

#### **6602-10 Portable cleaning and washing, N.O.C.**

Applies to establishments engaged in cleaning and washing services not otherwise classified (N.O.C.). This classification contemplates cleaning and washing, by means of portable spray or steam power units, machinery, equipment, automobiles, trucks, recreational vehicles, mobile homes, walk-in freezers, and shopping carts. This classification also applies to the cleaning or removal of snow from roofs, gutters or downspouts of one-story buildings.

This classification excludes establishments engaged in cleaning buildings or structures, cleaning or removing snow from roofs, gutters, and downspouts on multistory buildings, which are to be reported separately in classification 0504.

#### **6602-12 Street and building decoration: Hanging or removing flags or bunting**

Applies to establishments engaged in hanging or removing flags or bunting for conventions, celebrations, events, or similar decorations on the exterior or interior of buildings, structures, or streets. Buntings are strips of decorative cloth which may be used to span a roadway to promote events, as overhead streamers at an auto sales lot, or as a sign hung on a building to advertise grand openings.

This classification excludes the manufacture of flags or bunting which is to be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-6603 Classification 6603.**

#### **6603-00 Auction sales: Industrial or commercial equipment or machinery**

Applies to establishments engaged in auction sales of industrial or commercial plant equipment or machinery such as, but not limited to, tractors, farm implements, backhoes, cranes, booms, asphalt pavers, trailers, conveyors, stone crushers, lifts, bulldozers, forklifts, dump trucks, and logging equipment. Auctions are held at the auctioneer's permanent location or at the client's place of business. Work contemplated by this classification includes, but is not limited to, picking up merchandise from clients, advertising, preparing catalog listings of items for auction, preparing the auction site, demonstrating equipment at preauction inspections, estimating values, ensuring that there is title for the goods, numbering and tagging items into lots, conducting the auction, and receiving payment from buyers and paying the consignor. This classification includes clerical office and outside sales personnel, snack bars, concession stands, and lunch counters when operated by employees of the auction company.

This classification also applies to auctions performed online via the internet.

This classification excludes establishments engaged as equipment or machinery dealers which are to be reported separately as applicable.

#### **6603-01 Auction or estate sales: Antiques or general household furnishings**

Applies to establishments engaged in auction or estate sales of collectibles and antiques or of general household furnishings such as, but not limited to, furniture, pictures, vases, dishes, musical instruments, books, clothing, or lawn and garden furniture, ornaments, tools and equipment. Auctions are held at the auctioneer's permanent location or at the client's location. Work contemplated by this classification includes, but is not limited to, picking up merchandise from clients, advertising, preparing catalog listings of items for auction, preparing the auction site, opening boxes with razor blades and knives, moving merchandise with the use of hand carts, estimating values, ensuring that there is title for the goods, numbering and tagging items into lots, conducting the auction, and receiving payment from buyers and paying the consignor. This classification includes clerical office and outside sales personnel, snack bars, concession stands, and lunch counters when operated by employees of the auction company.

This classification also applies to auctions performed online via the internet.

This classification excludes establishments engaged as antique variety stores which are to be reported separately in classification 6304.

**6603-02 Auction sales: Specialty merchandise, N.O.C.**

Applies to establishments engaged in auction sales of specialty merchandise such as, but not limited to, fine art, furs, collectibles, cars and trucks. Auctions are held at the auctioneer's permanent location or at the client's place of business. Depending on the value of items, these types of auctions may operate on a wholesale only basis, or for dealers or qualified buyers only. Work contemplated by this classification includes, but is not limited to, picking up merchandise from clients, advertising, preparing catalog listings of items for auction, preparing the auction site, opening boxes with razor blades and knives, moving merchandise with the use of hand carts, estimating values, ensuring that there is title for the goods, numbering and tagging items into "lots," conducting the auction, and receiving payment from buyers and paying the consignor. This classification includes clerical office and outside sales personnel, snack bars, concession stands, and lunch counters when operated by employees of the auction company. This classification excludes livestock auctions, which are to be reported in classification 4304.

This classification also applies to auctions performed on-line via the internet.

This classification excludes establishments engaged as stores or dealers which are to be reported separately as applicable.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-7202 Classification 7202.****7202-00 Real estate agencies**

Applies to establishments engaged in buying, selling, renting, and appraising real estate for others. A real estate licensee will study property listings, accompany clients to property sites to show the property, and assist in the completion of real estate documents such as real estate contracts, leases, and seller's disclosure documents. They will also hold open houses, conduct negotiations, and assist at the closing. This classification includes clerical office and sales personnel. Real estate sales personnel, including agents, are considered to be workers of the broker or real estate agency employing them.

This classification excludes building and/or property management services which are to be reported separately in classification 4910.

**Special note:** Real estate sales agents are included in the industrial insurance definition of "worker" and should NOT be treated as independent contractors. (RCW 51.08.180 and 51.08.195.)

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 296-17A-4801      Classification 4801.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0607 Classification 0607.****0607-11 Household appliances: Installation, service and/or repair by nonstore service or repair company; dealers of used household appliances**

Applies to establishments engaged in the installation, service and/or repair of electrical or gas household appliances and to dealers of used electrical or gas household appliances. Many establishments covered by this classification have small retail store operations where they offer reconditioned or second hand appliances for sale, a parts department, and an area where appliances brought into the shop are repaired. Although this classification deals primarily with service away from the shop, the store, parts department and shop operations are included within the scope of this classification. The term "household appliances" includes, but is not limited to, stoves, ovens, ranges, dishwashers, refrigerators, trash compactors, television sets, residential type garage door openers, washing machines, and clothes dryers. This classification also applies to the installation, service or repair of automated teller machines. Repair services provided by establishments subject to this classification may also include related smaller appliances such as video players, portable television sets, stereo systems, microwave and toaster ovens, blenders, coffee makers and mixers. The *servicing* of water softening systems, coffee and juice machines, and beer taps is also included in this classification.

This classification excludes dealers of new household appliances who are to be reported separately in classification 6306; installation, service, and/or repair of commercial appliances such as those used in laundries, bakeries, and restaurants which is to be reported separately in classification 0603; installation, service, and repair of commercial garage doors and openers which is to be reported separately in classification 0603; installation of water softening systems which is to be reported separately in classification 0306; and small table top or counter top appliance stores which are to be reported separately in classification 6406.

**Special note:** Classification 0607 is distinguishable from classification 6306-02 operations in that appliance stores covered in classification 6306-02 are engaged primarily in the sales of new appliances. Although classification 6306 includes repair of appliances, most repairs are related to warranty work and represent a minor part of the business. By contrast, the repair of appliances in classification 0607 is the primary activity of the business.

**0607-16 Television antenna or satellite dish: Installation, removal, service and/or repair**

Applies to establishments engaged in the installation, removal, service and/or repair of television antennas or satellite dish receiving units. Operations contemplated by this classification are limited to rooftop installation of television antennas or ground or rooftop-mounted satellite dish reception units. Establishments covered by this classification will generally employ technicians and installers to install systems and trouble shoot reception problems. Equipment is limited primarily to delivery trucks, vans, ladders, and small power and/or hand tools.

This classification excludes specialty contractors who install, remove, service or repair antennas, dish units, and/or other transmitting/receiving apparatus to a structure covered by classification 0508, who are to be reported separately in classification 0508; and establishments engaged in the sale of new console type and big screen televisions who also sell and install antennas which are to be reported separately in classification 6306.

**0607-17 Safes or vaults: Installation, removal, service and/or repair(±)**

Lock sets and/or dead bolt locks: New installation

Applies to contractors engaged in the installation, removal, service and/or repair of all types of safes or vaults regardless of size or application, private mail or postal boxes, or safe deposit box units within buildings. Safes and vaults are found in businesses such as, but not limited to, banks, jewelry stores, rare coin and stamp stores, grocery stores, and gasoline service stations, as well as in private residences. Services contemplated by this classification include, but are not limited to, safe opening services.

*New installation* of lock sets and/or dead bolt locks on buildings or structures by contractor or by employees of a locksmith also applies to this classification. The term new installation applies to installing a lock set (locking doorknob) or a dead bolt where none previously existed. The process consists of measuring and marking where the unit is to be placed on the door, boring holes into the door to accept the lock set or dead bolt lock, and installing the lock set unit using a power drill and basic hand tools.

This classification excludes the installation of a *replacement* lock set or dead bolt lock unit by employees of a locksmith, and locksmith store operations which are to be reported separately in classification 6309.

**0607-18 Window/door blinds, shades, curtains and drapes: Installation**

Applies to contractors and employees of store operations who are engaged in the installation of indoor or outdoor window coverings, such as, but not limited to, blinds, shades, screens, exterior roll shutters and draperies or curtains, but does not include awnings. The process consists of marking the location of covering on the frame or opening, securing brackets or hardware, rods and poles, and installing the covering.

This classification excludes the installation of window and door awnings which is to be reported separately in the applicable classification, and the manufacture of coverings which is to be reported in the applicable classification.

**Special note:** Care should be taken when considering the assignment of a store classification to an establishment engaged in the installation of coverings to verify that a store exists. It is common for establishments subject to this classification to have show rooms to help customers visualize covering products available for sale. These establishments have little or no product available for immediate sale, as most items are special order from the manufacturer. A bona fide window/door covering store will have a large assortment of coverings, as well as related home interior products such as, but not limited to, pillows, small rugs, and accent pieces, readily available for sale to customers.

**0607-19 Advertising or merchandise display: Set up or removal within buildings by nonstore employees; staging services**

Applies to contractors engaged in the set up or removal of advertising or merchandise displays within buildings for retail or wholesale store customers. Operations contemplated by this classification will vary from seasonal panoramas with extensive carpentry, painting, and art work to dressing mannequins to be displayed in store windows.

This classification also applies to establishments engaged in providing merchandising services, not covered by another classification, (N.O.C.), without the responsibility of delivering products to the customer's place of business. Merchandising services contemplated by this classification include, but are not limited to, taking inventory of goods on hand, restocking, reordering, removing outdated or damaged merchandise from shelves, and/or assembling temporary displays.

This classification also applies to establishments providing staging services. They prepare a vacant or occupied home, showroom, or other types of property for viewing to make it appealing to prospective buyers. Usually under the direction of an interior decorator, employees will rearrange existing furniture or add accessories, eliminate clutter and depersonalize a home to make it more spacious and inviting. Staging may also be done on the exterior to provide better curb appeal, but this would generally be minimal by these firms.

This classification excludes employees of store operations engaged in setting up displays or providing staging services who are to be reported (~~separately~~) in the applicable store classification as this is a common store activity; assembly of work stations or office furniture which is to be reported in classification 2002, and merchandising establishments or employees who deliver products to their customer's place of business, and may also perform related merchandising functions, who are to be reported separately in classification 1101.

**0607-21 Meat slicer or grinder: Installation, service and/or repair**

Applies to contractors and employees of equipment manufacturers engaged in the installation service and/or repair of meat cutting, slicing, or grinding equipment within stores, restaurants, or processing plants. Repair may be performed at the customer's location or in a shop operated by an employer subject to this classification. This classification includes repair shops, field technicians, installers, and warehouse or parts department employees.

**Special note:** Establishments subject to this classification generally do not have store operations. Equipment is generally ordered from the manufacturer or distributor and shipped to the customer's location where it will be installed. In the event that an establishment subject to this classification has a store operation it is included within classification 0607.

**0607-22 Protective bumpers: Installation**

Applies to contractors engaged in the installation of protective bumpers on structures such as, but not limited to, store loading docks for freight or cargo. Operations contemplated by this classification are limited to measuring the dock to be

fitted with a rubber bumper, finish cutting or otherwise fabricating the rubber pieces to fit the required application, and fastening the dock bumper with the use of hand tools. Dock bumpers are made of rubber from recycled tires or similar pliable materials.

This classification excludes the manufacture of loading dock bumpers which is to be reported separately in the applicable manufacturing classification.

**0607-23 Cellular phone systems or audio components: Installation in vehicles, service and repair**

Applies to establishments engaged in the installation of cellular phone systems and/or audio components in vehicles. Audio components include, but are not limited to, radios and stereo systems, speakers and amplifiers, alarm systems, television units, antennas, two-way radio systems. This classification applies to installation employees of stores that sell products as well as to auto service centers that specialize in the installation of products covered by this classification.

This classification excludes retail and wholesale store operations which are to be reported separately in the applicable store classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-4109 Classification 4109.**

**4109-10 Sign painting or lettering inside buildings**

Applies to establishments engaged in sign painting or lettering inside a customer's building. This type of painting includes, but is not limited to, names, addresses and office hours on a door or window, and signs in the form of lettering/illustrations on an interior wall. Work contemplated by this classification includes preparing the surface by cleaning, sanding, etc., applying the lettering/illustrations by appropriate method (brushing, rolling, spraying, etc.), and applying a protective finish. This classification includes the painting of scenery, by a contractor, in a shop or theater (if done by the employees of a theater or television broadcasting station it would be an inclusion in classification 4504 or 4502 as applicable), and the painting of an interior mural.

This classification excludes sign painting shops that paint on, or apply vinyl lettering to, precut backings which are to be reported separately in classification 4109-18; painting in a shop that is not covered by another classification which is to be reported separately in classification 3603-12; and the painting, repair or erection of signs or murals on any part of the exterior of a building which is to be reported separately in classification 0403.

**4109-18 Sign painting in shop**

Applies to establishments engaged in providing sign painting services in their shop. The use of this classification is limited to painting on, or applying vinyl lettering to, precut mediums (sign backings) provided by the customer or purchased elsewhere; it does not contemplate the manufacture of the sign backing. (Vinyl lettering or designs are usually computerized. Lettering or designs are entered into a computer; a plotter/cutter attached to the computer cuts the programmed design or lettering from rolls of vinyl.) Work contemplated by this classification includes preparing the surface by clean-

ing, sanding, etc., applying the lettering/illustrations by appropriate method (such as brushing, rolling, spraying, applying vinyl designs), and applying a protective finish. This classification includes making and applying vinyl lettering in place of painted lettering and lettering/illustrating on vehicles not in connection with auto body repair or painting.

This classification excludes the painting or lettering of signs in buildings which is to be reported separately in classification 4109-10; painting in a shop which is to be reported separately in classification 3603 (unless the painting is included in another classification); the painting, repair or erection of signs on any part of the exterior of a building which is to be reported separately in classification 0403; and sign painting in connection with sign manufacturing operations which is to be reported separately in the applicable manufacturing classification.

**Special note:** An employee who creates vinyl lettering or designs on computerized equipment in an office environment, and is not involved in the further manufacturing of signs, could qualify for class 4904 provided that all the conditions of WAC 296-17-31018 are met.

**WSR 08-09-137**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed April 23, 2008, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-05-042.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0175 Does the department offer an income deduction as an incentive for general assistance-unemployable (GA-U) clients to work?

Hearing Location(s): Blake Office Park, East Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will clarify that the work incentive deduction for GA-U only applies to the general assistance cash grant.

Reasons Supporting Proposal: The proposed changes are necessary to comply with federal rules governing the food stamp program (7 C.F.R. 273).

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Melissa Mathson, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4563; Enforcement: John Camp, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4616.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by clarifying that the work incentive deduction for GA-U only applies to the general assistance cash grant.

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

April 18, 2008

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-078, filed 3/13/06, effective 5/1/06)

**WAC 388-450-0175 Does the department offer ~~((an))~~ income deduction for the general assistance program as an incentive for ~~((GA-U))~~ clients to work?** The department gives special deductions to people who receive income from work while receiving general assistance ~~((Unemployable (GA-U)))~~. The deductions apply to general assistance cash benefits only. We allow the following deductions ~~((before using your earnings to))~~ when we determine ~~((your eligibility and monthly))~~ the amount of your benefits:

(1) We subtract eighty-five dollars plus one half of the remainder of your monthly gross earned income as an incentive to employment.

(2) We also subtract an amount equal to twenty percent of your gross earned income to allow for work expenses.

**WSR 08-09-143**

**PROPOSED RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Filed April 23, 2008, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-06-069.

Title of Rule and Other Identifying Information: WAC 220-20-005 Oregon-Washington commercial license reciprocity.

Hearing Location(s): WDFW Region 5 Office, 2108 Grand Boulevard, Vancouver, WA 98661, (360) 696-6211, on Tuesday, May 27, 2008, at 10 a.m.

Date of Intended Adoption: On or after May 27, 2008.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail preuslmp@dfw.wa.gov, fax (360) 902-2155, by May 21, 2008.

Assistance for Persons with Disabilities: Contact Susan Yeager at (360) 902-2267 or by TTY (360) 902-2207.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: At present, WAC 220-20-005 allows only salmon to be landed and delivered in Washington by holders of an Oregon gill net license when the fish are taken from the concurrent waters of the Columbia River. Oregon's law, however, allows for landing and delivering sturgeon as well. This rule change will establish commercial-license reciprocity with Oregon to allow salmon and sturgeon to be taken in Washington by holders of an Oregon gill net license when the fish are taken from the concurrent waters of the Columbia River.

Reasons Supporting Proposal: To provide commercial-license reciprocity with Oregon for the benefit of commercial gillnetters in both states.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Statute Being Implemented: RCW 77.12.047 and 77.04.020.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Mike Cenci, 1111 Washington Street, Olympia, (360) 902-2938; Implementation: Phil Anderson, 1111 Washington Street, Olympia, (360) 902-2720; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will economically benefit Oregon gillnetters by providing the same opportunity to land and deliver sturgeon in Washington that Washington gillnetters have. The rule will not impose costs on gillnetters.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

April 23, 2008

Loreva M. Preuss  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-15-068, filed 7/17/07, effective 8/17/07)

**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 and sturgeon 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.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is being amended to clarify the signature requirements on applications for medical assistance for children and pregnant women.

Reasons Supporting Proposal: To be in compliance with federal standards.

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

Statute Being Implemented: RCW 74.04.050.

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

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

Name of Agency Personnel Responsible for Drafting: Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Mary Beth Ingram, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1327.

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

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

April 15, 2008

Stephanie E. Schiller  
Rules Coordinator

#### WSR 08-09-154

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 23, 2008, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-08-094.

Title of Rule and Other Identifying Information: The department is amending WAC 388-406-0010 How do I apply for benefits?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on May 27, 2008, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 28, 2008.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on May 27, 2008.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 20, 2008, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

AMENDATORY SECTION (Amending WSR 06-10-034, filed 4/27/06, effective 6/1/06)

#### WAC 388-406-0010 How do I apply for benefits? (1)

You can apply for cash assistance, medical assistance, or Basic Food by giving us an application form in person, by mail, by fax, or by completing an online application.

(2) If your entire assistance unit (AU) gets or is applying for Supplemental Security Income (SSI), your AU can file an application for Basic Food at the local Social Security administration district office (SSADO).

(3) If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason, a legal guardian, caretaker, or authorized representative can apply for you.

(4) You can apply for cash assistance, medical assistance, or Basic Food with just one application form.

(5) If you apply for benefits at a local office, we accept your application on the same day you come in. If you apply at an office that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it.

(6) We accept your application for benefits if it has at least:

(a) For cash ~~((or))~~ and medical assistance combined, the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be ~~((either))~~ handwritten, electronic or digital as defined by the department, or a mark if witnessed by another person~~((or))~~.

(b) For medical assistance only, the name, address, and signature of the applicant and applicant's spouse, if any, or in the case of an application for children's medical with care-taker adults in the household, the signature of a caretaker adult member of the household.

(c) For Basic Food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005.

(7) As a part of the application process, we may require you to:

(a) Complete an interview if one is required under WAC 388-452-0005;

(b) Meet WorkFirst participation requirements for four weeks in a row if required under WAC 388-310-1600(12);

(c) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030; and

(d) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible.

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

**WSR 08-09-155**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
[Filed April 23, 2008, 11:58 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 308-15-150 Geologist fees.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 209, Olympia, WA 98502, on May 27, 2008, at 1:00 p.m.

Date of Intended Adoption: May 27, 2008.

Submit Written Comments to: Sherri Lonsberry, P.O. Box 9045, Olympia, WA 98507, e-mail slonsbery@dol.wa.gov, fax (360) 664-1495, by May 26, 2008.

Assistance for Persons with Disabilities: Contact Graeme Kennedy by May 23, 2008, TTY (360) 664-8885 or (360) 664-1597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will extend suspension of renewal fees in an effort to maintain a balanced budget for the geologist licensing program.

Reasons Supporting Proposal: The proposed rule change will extend suspension of renewal fees in an effort to maintain a balanced budget for the geologist licensing program.

Statutory Authority for Adoption: RCW 18.220.040.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing (DOL), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lorin Doyle, Olympia, (360) 664-

1387; Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

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

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. Agencies that are not named can apply this rule to themselves voluntarily. DOL has chosen not to do this.

April 23, 2008  
Shelly L. Hagen  
Deputy Assistant Director

**AMENDATORY SECTION** (Amending WSR 06-04-022, filed 1/23/06, effective 2/23/06)

**WAC 308-15-150 Fees.** (1) **Suspension of fees.** Effective ~~((March 1, 2006))~~ July 1, 2008, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

**Renewal Fees**

Annual renewal fee for geologist	<del>\$(20.00)</del> <u>70.00</u>
Annual renewal for each specialty	<del>\$(25.00)</del> <u>70.00</u>
Annual renewal for geologist, with late fee <i>(if paid ninety days or more after due date)</i>	<del>\$(40.00)</del> <u>140.00</u>
Annual renewal fee for each specialty, with late fee <i>(if paid ninety days or more after due date)</i>	<del>\$(50.00)</del> <u>140.00</u>

The fees set forth in this section shall revert back to the fee amounts shown in WAC 308-15-150 on July 1, ~~((2008))~~ 2011.

**(2) Fees.**

<b>Type of Fee</b>	<b>Amount</b>
<b>Application fees - includes initial license</b>	
Application fee for geologist (applying by examination)	\$100.00
Application fee for each specialty (applying by examination)	\$100.00
Application fee for geologist (applying by reciprocity)	\$200.00
Application fee for each specialty (applying by reciprocity)	\$150.00
<b>Examination fees</b>	
Fees for the fundamentals of geology and practice of geology examinations are submitted directly to ASBOG	
Administration fee for reexamination	\$65.00
Specialty examination (hydrogeologist or engineering geologist exam)	\$300.00

Type of Fee	Amount
<b>Renewal fees</b>	
Annual renewal fee for geologist	\$100.00
Annual renewal fee for each specialty	\$85.00
Annual renewal for geologist, with late fee (if paid ninety days or more after due date)	\$200.00
Annual renewal for each specialty, with late fee (if paid ninety days or more after due date)	\$170.00
<b>Miscellaneous fees</b>	
Duplicate license or wall certificate . . .	\$25.00
Certification of license records to other jurisdictions. . . . .	\$45.00
Proctor examination for another jurisdiction . . . . .	\$100.00

**WSR 08-09-156**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**  
 [Filed April 23, 2008, 11:59 a.m.]

Original Notice.  
 Preproposal statement of inquiry was filed as WSR 08-05-128.

Title of Rule and Other Identifying Information: WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses.

Hearing Location(s): Capital Plaza Building, 4th Floor Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on May 28, 2008, at 10:00 a.m.

Date of Intended Adoption: June 4, 2008.

Submit Written Comments to: Tim Jennrich, P.O. Box 47453, Olympia, WA 98504-7453, e-mail [TimJe@dor.wa.gov](mailto:TimJe@dor.wa.gov), fax (360) 586-0127, by May 28, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of proposed Rule 27702:

(1) To clarify the one thousand dollar tax credit available under RCW 82.32.760 for eligible taxpayers who must implement destination based local sourcing beginning July 1, 2008;

(2) To clarify the subsidized certified service provider option available under RCW 82.32.760 available for eligible taxpayers who must implement destination based local sourcing beginning July 1, 2008, and to establish the compensation rate for such certified service providers.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.32.760.

Statute Being Implemented: RCW 82.32.760.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Tim Jennrich, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6136; Implementation and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is preparing a cost-benefit analysis to explain and clarify the effect of this significant legislative rule.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tim Jennrich, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6136, fax (360) 586-0127, e-mail [TimJe@dor.wa.gov](mailto:TimJe@dor.wa.gov).

April 23, 2008  
 Alan R. Lynn  
 Rules Coordinator

NEW SECTION

**WAC 458-20-27702 Taxpayer relief—Sourcing compliance—One thousand dollar credit and certified service provider compensation for small businesses. (1) Introduction.** RCW 82.32.760 provides sourcing compliance relief to certain eligible taxpayers impacted by RCW 82.14.490 and 82.32.730. RCW 82.14.490 and 82.32.730 govern where the local retail sales taxes attributable to the sale of tangible personal property, retail services, extended warranties, and the lease of tangible personal property are sourced. "Sourced" and "sourcing" refer to the location (as in a local taxing district, jurisdiction, or authority) where a sale or lease is deemed to occur and is subject to tax. Effective July 1, 2008, RCW 82.14.490 and 82.32.730 will change the way in which many sellers collect Washington's local retail sales taxes, resulting in some added transitional costs to these sellers. This section gives information about the relief provided in RCW 82.32.760 related to these new sourcing provisions.

In subsection (3)(c) of this section, the department of revenue (department) provides an example that identifies facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined separately after a review of all of the facts and circumstances.

**(2) Commonly used terms.**

**(a) What is a certified service provider (CSP)?** A CSP is an agent of the seller certified under the Streamlined Sales and Use Tax Agreement (SSUTA) to perform all of that seller's retail sales and use tax functions, other than the seller's obligation to remit retail sales and use taxes on its own purchases. For a list of current CSPs visit the SSUTA web site located at: <http://www.streamlinedsalestax.org>. This web site is not maintained by the state of Washington or

the department. The web site is current as of the date of adoption of this section, but may change in future periods by action of the owner of the web site without notice.

(b) **Who is an eligible taxpayer?** You will be an eligible taxpayer if you meet all of the following conditions:

(i) You are registered with the department and are engaged in making sales of tangible personal property delivered to physical locations away from your place of business on June 30, 2008; and

(ii) You meet all of the following requirements for the 2008 calendar year:

(A) You have a physical presence in Washington;

(B) You have annual gross income of the business in an amount less than five hundred thousand dollars;

(C) You have at least five percent of your annual gross income from sales subject to sales tax in Washington derived from sales of tangible personal property delivered to physical locations away from your place of business; and

(D) You have at least one percent of your annual gross income from sales subject to sales tax in Washington derived from deliveries of tangible personal property to destinations in local Washington jurisdictions other than the one to which you reported the most local sales tax.

"Gross income of the business" for the purpose of applying (b) of this subsection means gross income of the business as defined under chapter 82.04 RCW that is subject to tax in Washington. The requirements under (b)(ii) of this subsection apply only to the 2008 calendar year. This means for instance that an eligible taxpayer may earn over five hundred thousand dollars in gross income of the business for the calendar years 2009 and 2010 respectively and not lose eligibility under this section.

(c) **What are eligible costs?** Eligible costs represent those goods and services purchased and labor costs incurred for the purpose of complying with local sales and use tax sourcing rules under RCW 82.14.490 and 82.32.730. Examples of eligible costs include but are not limited to the purchase of new software or modification of existing software used to implement the new local sourcing rules; the hiring of professionals such as accountants, consultants, or attorneys to implement the new local sourcing rules; the costs for the purchase or modification of equipment used to implement the new local sourcing rules (including but not limited to cash registers and similar items); and payroll expenses associated with the implementation of the new local sourcing rules. These costs must be actually incurred between July 1, 2007, and June 30, 2009, to be eligible.

(3) **What relief does Washington provide?** If you are an eligible taxpayer, you are entitled either to take up to a one thousand dollar credit for your eligible costs, or you may use the services of a CSP subsidized by Washington for a period of up to two years. You may choose either the credit or the CSP services option, but not both. You will not need to apply in order to take advantage of these options, but you must keep records sufficient to allow the department to determine eligibility.

(a) **How does the one thousand dollar credit option work?** You may take a tax credit of up to one thousand dollars for your eligible costs (see subsection (2)(c) of this section). You must take this credit against Washington state

retail sales taxes imposed by RCW 82.08.020(1) that you collect or your business and occupation taxes imposed under chapter 82.04 RCW. The credit may not be taken against the local sales taxes you collect. The amount of your credit is equal to the sum of your eligible costs. You may take the credit only for costs actually incurred from July 1, 2007, through June 30, 2009.

You must first make a claim for the credit during those tax reporting periods that fall between July 1, 2008, and June 30, 2009. Thus, you must make a claim for the credit within the applicable deadline associated with the filing of your returns for that one-year period. However, this does not affect your ability to take unused credit after June 30, 2009, for costs actually incurred before that date until your credit is used. You may not obtain a refund instead of the credit.

(b) **How does the CSP services option work?** You may use the services of a CSP for up to a two-year period starting July 1, 2008, and ending June 30, 2010. Washington will compensate your CSP for its services in collecting and remitting sales and use taxes for Washington on your behalf. Washington will not compensate the CSP unless it is performing for you the full services contractually required of a CSP under the CSP description provided in subsection (2)(a) of this section. If the CSP is providing a lesser level of service, Washington will not compensate the CSP for any of that service. However, you may be able to claim the credit of up to one thousand dollars for what the CSP charges you in such instances.

Washington will not compensate a CSP for services provided to you prior to July 1, 2008, or after June 30, 2010. If you use a CSP under this section, you will generally not be liable to Washington for sales or use taxes due on transactions processed and paid to the state of Washington by your CSP unless you misrepresent the type of items you sell or you commit fraud. CSP compensation will not be funded from any portion of the local retail taxes that are collected and reported. These local retail sales taxes must be remitted to the department in full. This option is not available to model 1 volunteer sellers using the services of a CSP as described in WAC 458-20-277.

(c) **CSPs: Filing returns, remitting taxes, and compensation.**

(i) **How do CSPs file tax returns and remit retail sales taxes under this section?** CSPs must file retail sales and use excise tax returns for eligible taxpayers electronically. CSPs must pay retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fedwire Funds Transfer System.

(ii) **How do CSPs determine their compensation under this section?** A CSP computes its compensation by multiplying the amount of Washington state and local retail sales and use taxes collected and reported by the CSP on behalf of an eligible taxpayer (taxes due) for each applicable calendar year by the established CSP compensation rate.

The compensation rates established for CSPs are provided in Table A below. The applicable calendar years during which a CSP may compute compensation are as follows: Calendar year 2008 (computed from July 1, 2008, through December 31, 2008), calendar year 2009 (computed from January 1, 2009, through December 31, 2009), and calendar

2010 (computed from January 1, 2010, through June 30, 2010).

(iii) **What are the CSP compensation rates?** The CSP compensation rates are contained in Table A below.

Table A

Taxes Due	Compensation Rate:
\$0.00 - \$5,000.00	4%
\$5,000.01 - \$20,000.00	3.7%
\$20,000.01 - \$50,000.00	3.3%
\$50,000.01 - \$100,000.00	3%
\$100,000.01 - \$200,000.00	2.7%
\$200,000.01 - \$500,000.00	2.3%
Over \$500,000.01	2%

- The compensation rate in Table A is graduated. For example, the highest rate (4%) applies to the first five thousand dollars of taxes due, and the next highest rate (3.7%) applies to the next fifteen thousand dollars of taxes due.

- The compensation rate in Table A resets each calendar year. For example, the highest rate (4%) applies to the first five thousand dollars of taxes due for each applicable calendar year that the CSP provides CSP services to an eligible taxpayer, with the next highest rate (3.7%) applying to the next fifteen thousand dollars of taxes due for the applicable calendar year.

(iv) **Example - Determining CSP compensation.** Widgets is an eligible taxpayer that does not claim the \$1,000 credit described in (a) of this subsection. Widgets retains a CSP, Easysoft, to perform all of its retail sales and use tax functions other than the obligation to remit retail sales and use taxes on its own purchases. Easysoft files Widgets' Washington state excise tax returns and remits the related taxes due electronically.

(A) **First year - Calendar year 2008.** From July 1, 2008, through December 31, 2008, Easysoft collects and reports \$5,000 in taxes due for Widgets. Easysoft may retain \$200 of the taxes due as compensation, which is computed as follows:

- 4% the first \$5,000 of taxes due = \$200

(B) **Second year - Calendar year 2009.** From January 1, 2009, through December 31, 2009, Easysoft collects and reports \$200,000 in taxes due for Widgets. Easysoft may retain \$5,945 of the taxes due as compensation (\$200 + \$555 + \$990 + \$1,500 + \$2,700), which is computed as follows:

- 4% the first \$5,000 of taxes due = \$200
- 3.7% of the next \$15,000 of taxes due = \$555
- 3.3% of the next \$30,000 of taxes due = \$990
- 3% of the next \$50,000 in taxes due = \$1,500
- 2.7% of the next \$100,000 in taxes due = \$2,700

(C) **Third year - Calendar year 2010.** From January 1, 2010, through June 30, 2010, Easysoft collects and reports \$120,000 in taxes due for Widgets for this period. Easysoft may retain \$3,785 of the taxes due as compensation (\$200 + \$555 + \$990 + \$1,500 + \$540), which is computed as follows:

- 4% the first \$5,000 of taxes due = \$200
- 3.7% of the next \$15,000 of taxes due = \$555
- 3.3% of the next \$30,000 of taxes due = \$990
- 3% of the next \$50,000 in taxes due = \$1,500
- 2.7% of the next \$20,000 in taxes due = \$540

(d) **Taxpayer liability.**

(i) **What happens if I incorrectly claim the one thousand dollar credit option under (a) of this subsection?** If you take a credit under (a) of this subsection and are not an eligible taxpayer, you are immediately liable to the department for the amount of the credit erroneously claimed. If any amounts due under this subsection are not paid by the due date of any notice informing you of such liability, the department shall apply interest, but not penalties, to amounts remaining due.

(ii) **What happens if I incorrectly claim the CSP services option under (b) of this subsection?** If you use a CSP and the CSP retains compensation under (b) of this subsection and you are not an eligible taxpayer, you are immediately liable to the department for the compensation retained by the CSP. If any amounts due under this subsection are not paid by the due date of any notice informing you of such liability, the department shall apply interest, but not penalties, to amounts remaining due.

**WSR 08-09-157**

**PROPOSED RULES**

**DEPARTMENT OF REVENUE**

[Filed April 23, 2008, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-05-128.

Title of Rule and Other Identifying Information: WAC 458-20-27701 Model 2 volunteer seller—Compensation.

Hearing Location(s): Capital Plaza Building, 4th Floor Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on May 28, 2008, at 11:00 a.m.

Date of Intended Adoption: June 4, 2008.

Submit Written Comments to: Tim Jennrich, P.O. Box 47453, Olympia, WA 98504-7453, e-mail TimJe@dor.wa.gov, fax (360) 586-0127, by May 28, 2008.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of WAC 458-20-27701 is to establish compensation for model 2 volunteer sellers who voluntarily collect and remit retail sales and use taxes for Washington state. Model 2 volunteer sellers are sellers that use a certified automated system to calculate, process, and record their retail sales transactions and meet all other eligibility requirements described in WAC 458-20-27701. The selected certified automated system must be certified through the Governing Board of the Streamlined Sales and Use Tax Agreement and approved by Washington.

WAC 458-20-27701 also contains liability and administrative provisions related [to] model 2 volunteer sellers.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 82.32.715.

Statute Being Implemented: RCW 82.32.715.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Tim Jennrich, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6136; Implementation and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department is preparing a cost-benefit analysis to explain and clarify the effect of this significant legislative rule.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tim Jennrich, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6136, fax (360) 586-0127, e-mail [TimJe@dor.wa.gov](mailto:TimJe@dor.wa.gov).

April 23, 2008

Alan R. Lynn

Rules Coordinator

## NEW SECTION

**WAC 458-20-27701 Model 2 volunteer sellers—Compensation.** (1) **Introduction.** As a requirement of membership in the Streamlined Sales and Use Tax Agreement (SSUTA), Washington has agreed to provide compensation to model 2 volunteer sellers collecting and remitting retail sales and use taxes in Washington. For more information concerning the SSUTA, visit <http://www.streamlinedsal-estax.org>. This section explains who qualifies as a model 2 volunteer seller and the compensation available to such sellers as authorized under RCW 82.32.715.

The web site referenced in this section is not maintained by Washington or the department of revenue (department). This referenced web site may contain recommendations that require a change to Washington law before becoming effective in Washington. The web site is current as of the date of adoption of this section, but may change in future periods by action of the owner of the web site without notice.

(2) **Model 2 volunteer sellers.** This subsection discusses the qualifications for status as a model 2 seller and a model 2 volunteer seller. Only those model 2 sellers qualifying as model 2 volunteer sellers are eligible to receive compensation for remitting sales and use taxes to Washington under subsection (3) of this section. A taxpayer that qualifies as a model 2 volunteer seller under this subsection will be referred to as a "qualified seller."

(a) **What is a model 2 seller?** You will qualify as a model 2 seller if you meet all of the following conditions:

(i) You use a certified automated system to perform part of your sales and use tax functions. (See (f) of this subsection for a definition of certified automated system); and

(ii) You retain the responsibility for remitting your sales and use taxes to Washington.

(b) **What is a model 2 volunteer seller?** If you are a model 2 seller under (a) of this subsection, you will be a model 2 volunteer seller if you are registered through the SSUTA central registration system (CRS) as a model 2 seller and you meet the following additional conditions:

(i) You have represented that you do not have a legal requirement to register and do not in fact have a legal requirement to register in Washington at the time you register with the CRS, regardless of any previous registration you may have made in Washington; or

(ii) You register with Washington through the CRS after November 12, 2002, and you meet all of the following requirements immediately before the date of your registration in Washington through the CRS (and you do not cease to meet these requirements thereafter pursuant to subsection (3)(d) of this section):

(A) You have no fixed place of business in Washington for more than thirty days;

(B) You have less than fifty thousand dollars of property in Washington;

(C) You have less than fifty thousand dollars of payroll in Washington; and

(D) You have less than twenty-five percent of your total property or payroll in Washington.

If you have registered in Washington because you had a legal requirement to register resulting from an administrative, legislative, or judicial action, you cannot be a model 2 volunteer seller under this subsection.

(c) **If I am a qualified seller, do I still need to register with the department for Washington state tax purposes under RCW 82.32.030(1)?** Your status as a qualified seller does not impact your requirement to register with the department. If you meet the conditions for registration with the department under RCW 82.32.030(1), you must register with the department.

(d) **What is property for purposes of (b) of this subsection and how is it valued?** Property refers to the "average value" of the real property and tangible personal property that you own and rent. You will value owned property at its original cost basis. Rented property will be valued at eight times the net annual rental rate of that property. The net annual rental rate is the annual rental rate paid by you less any annual rental rates you receive from subrentals.

You must determine the "average value" of this property by averaging the value of property at the beginning of the twelve-month period immediately before the date you register with Washington with the value of property at the end of the twelve-month period immediately before you register with Washington.

(e) **What is payroll for purposes of (b) of this subsection?** Payroll is the total amount paid by you for compensation during the twelve-month period immediately preceding the date you register with Washington. Compensation means wages, salaries, commissions, and any other form of payment to employees that meet the definition of gross income under

section 61 of the Internal Revenue Code in effect on the effective date of this section.

Compensation is deemed to be payroll in Washington if:

(i) The employee's service is performed entirely within Washington;

(ii) The employee's service is performed both within and outside Washington, and the performance of services outside Washington is merely incidental to the services performed within Washington;

(iii) The employee performs some services within Washington, and the base of operations or the place from which the services are directed or controlled is within Washington; or

(iv) The employee performs some services within Washington, and the base of operations or place from which the services are directed or controlled is not within any state (where some part of the services are performed), but the employee's residence is within Washington.

(f) **What is a certified automated system for purposes of this section?** A certified automated system is software certified by Washington under the SSUTA: To calculate the sales and use tax imposed by each taxing jurisdiction on a transaction; to determine the amount of tax to remit; and to maintain a record of the transaction.

(3) **Qualified seller compensation.** This subsection explains compensation available to qualified sellers.

(a) **What type of compensation is available to qualified sellers?** If you are a qualified seller, you are entitled to monetary allowances from Washington under this subsection in addition to any other vendor compensation that may be allowed by a member or associate member state of the SSUTA. For a list of SSUTA member and associate member states visit <http://www.streamlinedsalestax.org>. You obtain these monetary allowances from Washington by retaining a portion of the Washington state retail sales and use taxes you collect and report to Washington. You are not entitled to monetary allowances unless you are a qualified seller and have filed and paid a timely return.

(b) **How long are qualified sellers permitted to receive monetary allowances?** If you installed a certified automated system prior to July 1, 2008, (the date on which Washington becomes a member of the SSUTA), you are entitled to monetary allowances under this subsection for a period of up to twenty-four months beginning no sooner than July 1, 2007, and no later than June 30, 2008. If you install a certified automated system on or after July 1, 2008, you are entitled to monetary allowances under this subsection for a period up to twenty-four months from the date that you install your certified automated system.

(c) **How do qualified sellers calculate their monetary allowances?** You will calculate your monetary allowance under the following formula:

(Applicable rate) multiplied by (Washington retail sales and use taxes you collect and report).

The applicable rate for this formula is one and one-half percent. Your total monetary allowance for the first twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. Your total monetary allowance for the second twelve months of the twenty-four month period described in (b) of this subsection cannot exceed ten thousand dollars. For purposes of deter-

mining when each ten thousand dollar limit is reached, affiliated qualified sellers must be treated as a single qualified seller if they would qualify as "related persons" under sections 267(b) or 707(b) of the Internal Revenue Code in effect on the effective date of this section.

You may not retain monetary allowances under this subsection based on any sales taxes determined or calculated without the use of a certified automated system. Moreover, you may not retain monetary allowances under this subsection based on any sales taxes determined or calculated with a certified automated system that you have failed to update or modify in accordance with your agreement with your certified automated system provider. It is your duty to make sure all updates and modifications to your certified automated system are properly implemented.

(d) **Can a qualified seller continue to receive monetary allowances if it ceases to be a qualified seller?** No. If you cease to be a qualified seller, you are not entitled to monetary allowances. If you cease to be a qualified seller during any part of a calendar month, you will not be entitled to monetary allowances for that entire month. You will cease to be a qualified seller if you conduct activities in Washington that would require you to register in Washington and as a result of these activities fail to meet one or more of the requirements of subsection (2)(b)(ii)(A) through (D) of this section. The meanings given to property and payroll in subsection (2)(d) and (e) of this section apply for purposes of this subsection (3)(d). However, you must determine the "average value" of property and the amount of payroll under this subsection (3)(d) as follows:

(i) You must determine the "average value" of property by averaging the values at the beginning and end of your last fiscal year that terminates at least thirty days before the date the determination is made.

(ii) You must determine payroll, by calculating the total amount of compensation paid to employees during your last fiscal year that terminates at least thirty days before the date the determination is made.

(e) **Are monetary allowances funded from both Washington state and local retail sales and use taxes?** No, monetary allowances will only be funded from the Washington state portion of the retail sales and use taxes that you collect and must remit.

(4) **Do qualified sellers have any liability protections when operating in Washington?** You are not liable for charging or collecting the incorrect amount of sales or use tax when that error results from reliance on incorrect data provided in the department's taxability matrix. To obtain a copy of the taxability matrix, visit the SSUTA web site located at: <http://www.streamlinedsalestax.org>.

Additionally, you will be held harmless and not liable for sales and use taxes, including interest and penalties on those taxes, not collected due to reliance on Washington's certification of the certified automated system you use. However, you will not be held harmless for the incorrect classification of an item or transaction into a product based exemption certified by the department unless that item or transaction is listed within a product definition approved by the SSUTA's governing board or the department. See also RCW 82.32.-745.

(5) **Filing returns and remitting taxes.** Qualified sellers must electronically file retail sales and use excise tax returns and must remit retail sales and use taxes due with respect to these returns using ACH Debit, ACH Credit, or the Fed Wire Funds Transfer System.