

WSR 09-08-117
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed March 31, 2009, 5:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-072.

Title of Rule and Other Identifying Information: The department is amending WAC 388-502-0150 Time limits for providers to bill MAA, 388-550-2800 Payment methods and limits—Inpatient hospital services for medicaid and state children's health insurance program (SCHIP) clients, 388-550-3000 Payment method—Diagnosis related groups (DRG), 388-550-3010 Payment method—Per diem payment, 388-550-3020 Payment method—Bariatric surgery—Per case payment, 388-550-3460 Payment method—Per diem rate, 388-550-3900 Payment method—Bordering city hospitals and critical border hospitals, and 388-550-4000 Payment method—Emergency services—Out-of-state hospitals.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2009.

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 DSHSRulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, 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 proposed changes update and clarify hospital-related and provider-related sections and are intended to address the anticipated levels of funding from the legislature, inform providers of program changes, and clarify and update current language. These rules:

- Add language putting providers on notice that the department will make adjustments to existing inpatient hospital rates and/or payment methods, by applying an "inpatient adjustment factor," when directed by the legislature to achieve targeted budget expenditure levels;
- Add language regarding the department's intent to apply the inpatient adjustment factor in a proportional manner across the inpatient hospital rates and payment methods;
- Add language that makes a delivery by cesarean section without complications and comorbidities payable at the same rate as a vaginal birth with complicated diagnosis;

- Expand the types of facilities and/or programs to which an acute care hospital or distinct unit can transfer an eligible client and receive a prorated diagnosis related group (DRG) payment from the department;
- Add clarifying language that the department uses the per diem payment method to pay for hospital stays that have insufficient data available to determine stable relative weights and for other specified specialty services;
- Add language that the department may adjust the DRG conversion factor when directed by the legislature to achieve budgetary targets;
- Add language that the department may adjust the per diem rate when directed by the legislature to achieve budgetary targets;
- Add language that the department may adjust a per case payment when directed by the legislature to achieve budgetary targets;
- Put in rule how per diem rates are determined for chronic pain services;
- Remove "emergency services" from the title of WAC 388-550-4000 and clarify that the section applies to both emergency and nonemergency services provided by out-of-state hospitals;
- Add language that the department may adjust the outlier threshold or the percentages of outlier adjustment factors when directed by the legislature to achieve budgetary targets;
- Reduce the total period allowed for resubmission or modification of a claim, other than a prescription drug or major trauma claim, from thirty-six months to twenty-four months from the date of service, effective with dates of services or admission on and after July 1, 2009;
- Add language specifying a three-hundred sixty-five-day limit for resubmission or modification of a claim for major trauma services, consistent with the limit set in WAC 388-550-5450 and 388-531-2000; and
- Update, clarify, and rearrange current language for improved readability.

Reasons Supporting Proposal: The department must meet the legislature's targeted budget expenditure levels for payment of hospital and hospital-related services provided to medical assistance clients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

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 45505, Olympia WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Carolyn Adams, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1854.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impact small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Carolyn Adams, Health and Recovery Services Administration, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1854, fax (360) 753-9152, e-mail adamsr@dshs.wa.gov.

March 30, 2009

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-14-067, filed 7/5/00, effective 8/5/00)

WAC 388-502-0150 Time limits for providers to bill ~~((MAA)) the department~~. Providers ~~((may)) must~~ bill the ~~((medical assistance administration (MAA))) department~~ for covered services provided to eligible clients ~~((:)) as follows:~~

(1) ~~((MAA)) The department~~ requires providers to submit initial claims and adjust prior claims in a timely manner. ~~((MAA)) The department~~ has three timeliness standards:

(a) For initial claims, see subsections (3), (4), (5), and (6) of this section;

(b) For resubmitted claims other than prescription drug claims and claims for major trauma services, see subsections (7) and (8) of this section; ~~((and))~~

(c) For resubmitted prescription drug claims, see subsections (9) and (10) of this section; and

(d) For resubmitting claims for major trauma services, see subsection (11) of this section.

(2) The provider must submit claims to ~~((MAA)) the department~~ as described in ~~((MAA's)) the department's current published~~ billing instructions.

(3) Providers must submit ~~((their)) the initial~~ claim to ~~((MAA)) the department~~ and have an internal control number (ICN) assigned by ~~((MAA)) the department~~ within three hundred sixty-five calendar days from any of the following:

(a) The date the provider furnishes the service to the eligible client;

(b) The date a final fair hearing decision is entered that impacts the particular claim;

(c) The date a court orders ~~((MAA)) the department~~ to cover the service; or

(d) The date the department certifies a client eligible under delayed certification criteria.

(4) ~~((MAA)) The department~~ may grant exceptions to the time limit of three hundred sixty-five ~~((day time limit)) calendar days~~ for initial claims when billing delays are caused by either of the following:

(a) The department's certification of a client for a retroactive period; or

(b) The provider proves to ~~((MAA's)) the department's~~ satisfaction that there are other extenuating circumstances.

(5) ~~((MAA)) The department~~ requires providers to bill known third parties for services. See WAC 388-501-0200 for exceptions. Providers must meet the timely billing standards

of the liable third parties in addition to ~~((MAA's)) the department's~~ billing limits.

(6) When a client is covered by both medicare and ~~((MAA)) medicare~~, the provider must bill medicare for the service before billing ~~((medicare)) the initial claim to the department~~. If medicare:

(a) Pays the claim the provider must bill ~~((MAA)) the department~~ within six months of the date medicare processes the claim; or

(b) Denies payment of the claim, ~~((MAA)) the department~~ requires the provider to meet the three hundred sixty-five-day requirement for timely initial claims as described in subsection (3) of this section.

(7) ~~((MAA allows providers to)) The following applies to claims with a date of service or admission before July 1, 2009:~~

(a) Within thirty-six months of the date the service was provided to the client, a provider may resubmit, modify, or adjust any claim, other than a prescription drug claim or a claim for major trauma services, with a timely ICN ~~((within thirty-six months of the date the service was provided to the client))~~. This applies to any claim, other than a prescription drug claim or a claim for major trauma services, that met the time limits for an initial claim, whether paid or denied. ~~((MAA)) The department~~ does not accept any claim for resubmission, modification, or adjustment after the thirty-six-month period ends.

(b) After thirty-six months from the date the service was provided to the client, a provider cannot refund overpayments by claim adjustment; a provider must refund overpayments by a negotiable financial instrument, such as a bank check.

~~((The thirty-six month period described in subsection (7) of this section does not apply to overpayments that a provider must refund to the department. After thirty-six months, MAA does not allow a provider to refund overpayments by claim adjustment; a provider must refund overpayments by a negotiable financial instrument, such as a bank check)) The following applies to claims with a date of service or admission on or after July 1, 2009:~~

(a) Within twenty-four months of the date the service was provided to the client, a provider may resubmit, modify, or adjust an initial claim, other than a prescription drug claim or a claim for major trauma services.

(b) After twenty-four months from the date the service was provided to the client, the department does not accept any claim for resubmission, modification, or adjustment. This twenty-four-month period does not apply to overpayments that a provider must refund to the department by a negotiable financial instrument, such as a bank check.

(9) ~~((MAA)) The department~~ allows providers to resubmit, modify, or adjust any prescription drug claim with a timely ICN within fifteen months of the date the service was provided to the client. After fifteen months, ~~((MAA)) the department~~ does not accept any prescription drug claim for resubmission, modification or adjustment.

(10) The fifteen-month period described in subsection (9) of this section does not apply to overpayments that a prescription drug provider must refund to the department. After fifteen months a provider must refund overpayments by a negotiable financial instrument, such as a bank check.

(11) ~~((MAA does not allow a provider or any provider's agent to bill a client or a client's estate when the provider fails to meet the requirements of this section, resulting in the claim not being paid by MAA))~~ The department allows a provider of trauma care services to resubmit, modify, or adjust, within three hundred and sixty-five calendar days of the date of service, any trauma claim that meets the criteria specified in WAC 388-531-2000 (for physician claims) or WAC 388-550-5450 (for hospital claims) for the purpose of receiving payment from the trauma care fund (TCF).

(a) No increased payment from the TCF is allowed for an otherwise qualifying trauma claim that is resubmitted after three hundred sixty-five calendar days from the date of service.

(b) Resubmission of or any adjustments to a trauma claim for purposes other than receiving TCF payments are subject to the provisions of this section.

(12) The three hundred sixty-five-day period described in subsection (11) of this section does not apply to overpayments from the TCF that a trauma care provider must refund to the department. A provider must refund an overpayment

for a trauma claim that received payment from TCF using a method specified by the department.

(13) If a provider fails to bill a claim according to the requirements of this section and the department denies payment of the claim, the provider or any provider's agent cannot bill the client or the client's estate. The client is not responsible for the payment.

AMENDATORY SECTION (Amending WSR 07-14-018, filed 6/22/07, effective 8/1/07)

WAC 388-550-2800 Payment methods and limits—Inpatient hospital services for medicaid and SCHIP clients. The term "allowable" used in this section means the calculated allowed amount for payment based on the applicable payment method before adjustments, deductions, or add-ons.

(1) The department pays hospitals for medicaid and SCHIP inpatient hospital services using the rate setting methods identified in the department's approved state plan as follows:

Payment method used for medicaid and SCHIP inpatient hospital claims	Applicable providers/services	Process to adjust for third-party liability insurance and any other client responsibility
Diagnosis related group (DRG) negotiated conversion factor	Hospitals participating in the medicaid hospital selective contracting program under waiver from the federal government	Lesser of either the DRG billed amount minus the third-party payment amount and any client responsibility amount, or the allowed ((amount)) <u>amount</u> , minus the third-party payment amount and any client responsibility amount.
DRG cost-based conversion factor	Hospitals not participating in or exempt from the medicaid hospital selective contracting program	Lesser of either the DRG billed amount minus the third-party payment amount and any client responsibility amount, or the allowed ((amount)) <u>amount</u> , minus the third-party payment amount and any client responsibility amount.
Ratio of costs-to-charges (RCC) ((Costs to charges rate with a "hold harmless" settlement provision)) <u>Ratio of costs-to-charges (RCC) subject to cost settlement</u>	Some services exempt from DRG payment methods Hospitals eligible to be paid through the certified public expenditure (CPE) payment program	The allowable minus the third-party payment amount and any client responsibility amount. ((For the "hold harmless" settlement, the lesser of the billed amount minus the third party payment amount and any client responsibility amount, or the allowed amount minus the third party payment amount and any client responsibility amount.)) <u>The payment made is the federal share ((only)) of costs after deducting any third party payment amount and any client responsibility amount.</u>
Single case rate	Hospitals eligible to provide bariatric surgery to medical assistance clients	Lesser of either the billed amount minus the third-party payment amount and any client responsibility amount, or the single case rate allowed amount minus the third-party payment amount and any client responsibility amount.
Fixed per diem rate	Long-term acute care (LTAC) hospitals	Lesser of either the billed amount minus the third-party payment amount and any client responsibility amount, or the per diem allowed amount minus the third-party payment amount and any client responsibility amount.

Payment method used for medic-aid and SCHIP inpatient hospital claims	Applicable providers/services	Process to adjust for third-party liability insurance and any other client responsibility
Per diem rate	Some providers/services exempt from the DRG payment methods	Per diem allowed amount, and for some services a high outlier amount, minus the third-party ((payer)) payment amount and any client responsibility amount.
Cost settlement	DOH-approved critical access hospitals (CAHs)	The allowed amount, subject to retrospective cost settlement, minus the third-party payment amount and any client responsibility amount.
Medicaid base community psychiatric hospitalization rate	Nonstate-owned free-standing psychiatric hospitals located in Washington state	Paid according to applicable payment method in WAC 388-550-2650 for medicaid and SCHIP clients, minus the third-party payment amount and any client responsibility amount.

See WAC 388-550-4800 for payment methods used by the department for inpatient hospital services provided to clients eligible under state-administered programs. The department's policy for payment on state-administered program claims that involve third-party liability (TPL) and/or client responsibility payments on claims is the same policy indicated in the table in subsection (1) ~~((#))~~ of this section. However, to determine the department's payment on the claim, state-administered program rates, not medicaid or SCHIP rates, apply when comparing the lesser of either the billed amount minus the third-party payment and any client responsibility amount, or the allowed amount minus the third-party payment amount and any client responsibility amount.

(2) In response to direction from the legislature, the department may change any one or more payment methodologies outlined in chapter 388-550 WAC for the purpose of achieving the legislature's targeted expenditure levels. The legislative direction may take the form of express language in the biennial appropriations act or may be reflected in the level of funding appropriated to the department in the biennial appropriations act. In response to this legislative direction, the department may calculate an adjustment factor (known as an "inpatient adjustment factor") to apply to inpatient hospital rates.

(a) The inpatient adjustment factor is a specific multiplier calculated by the department and applied to existing inpatient hospital rates in order to meet targeted expenditure levels as directed by the legislature.

(b) The department will apply the inpatient adjustment factor when the department determines that its expenditures on inpatient hospital rates will exceed the legislature's targeted expenditure levels.

(c) The department will apply any such inpatient adjustment factor to each affected rate in a proportional manner.

(3) The department's annual aggregate medicaid and SCHIP payments to each hospital for inpatient hospital services provided to medicaid and SCHIP clients will not exceed the hospital's usual and customary charges to the general public for the services (42 CFR Sec. 447.271). The department recoups annual aggregate medicaid and SCHIP payments that are in excess of the usual and customary charges.

~~((#))~~ (4) The department's annual aggregate payments for inpatient hospital services, including payments to state-

operated hospitals, will not exceed the estimated amounts that the department would have paid using medicare payment principles.

~~((#))~~ (5) When hospital ownership changes, the department's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

~~((#))~~ (6) Hospitals participating in the department's medical assistance program must annually submit to the department:

(a) A copy of the hospital's CMS medicare cost report (form 2552-96) that is the official "as filed" cost report submitted to the medicare fiscal intermediary; and

(b) A disproportionate share hospital (DSH) application if the hospital wants to be considered for DSH payments. See WAC 388-550-4900 for the requirements for a hospital to qualify for a DSH payment.

~~((#))~~ (7) Reports referred to in subsection ~~((#))~~ (6) of this section must be completed according to:

- (a) Medicare's cost reporting requirements;
- (b) The provisions of this chapter; and
- (c) Instructions issued by the department.

~~((#))~~ (8) The department requires hospitals to follow generally accepted accounting principles.

~~((#))~~ (9) Participating hospitals must permit the department to conduct periodic audits of their financial records, statistical records, and any other records as determined by the department.

~~((#))~~ (10) The department limits payment for private room accommodations to the semiprivate room rate. Room charges must not exceed the hospital's usual and customary charges to the general public as required by 42 C.F.R. Sec. 447.271.

~~((#))~~ (11) For a client's hospital stay that involves both regional support network (RSN)-approved voluntary inpatient and involuntary inpatient hospitalizations, the hospital must bill the department for payment, unless the hospital contracts directly with the RSN. In that case, the hospital must bill the RSN for payment.

~~((#))~~ (12) Refer to subsection (1) of this section for how the department adjusts inpatient hospital claims for third party payment amounts and any client responsibility amounts.

AMENDATORY SECTION (Amending WSR 07-14-055, filed 6/28/07, effective 8/1/07)

WAC 388-550-3000 Payment method—DRG. (1) The department uses the diagnosis-related group (DRG) payment method to pay for covered inpatient hospital services, except as specified in WAC 388-550-4300 and 388-550-4400.

(2) The department uses the all-patient grouper (AP-DRG) to assign a DRG to each inpatient hospital stay. The department periodically evaluates which version of the AP-DRG to use.

(3) A DRG payment includes all covered hospital services provided to a client during days the client is eligible, but is not limited to:

(a) An inpatient hospital stay.

(b) Outpatient hospital services, including preadmission, emergency room, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital stay. These outpatient services must be billed on the inpatient hospital claim (see WAC 388-550-6000 (3)(c)).

(c) Any specific service(s), treatment(s), or procedure(s) (such as renal dialysis services) that the admitting hospital is unable to provide and:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s) during the client's inpatient hospital stay; and

(ii) The client returns as an inpatient to the admitting hospital.

(d) All transportation costs for an inpatient client when the client requires transportation to another facility or provider for a specific service(s), treatment(s), or procedure(s) that the admitting hospital is unable to provide and:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s); and

(ii) The client returns as an inpatient to the admitting hospital.

(4) The department's allowed amount for the DRG payment is determined by multiplying the assigned DRG's relative weight, as determined in WAC 388-550-3100, by the hospital's specific DRG conversion factor. See WAC 388-550-3450. The total allowed amount also includes any high outlier amount calculated for claims. ~~((See WAC 388-550-3450 and 388-550-4600(4))).~~

(5) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 388-550-2800(2), the department may apply an inpatient adjustment factor to each hospital's specific DRG conversion factor rate used in calculating the DRG payment.

(6) The department's DRG payment to a hospital may be adjusted when one or more of the following occur:

(a) For dates of admission before August 1, 2007, a claim qualifies as a DRG high-cost or low-cost outlier, and for dates of admission on and after August 1, 2007, a claim qualifies as a DRG high outlier (see WAC 388-550-3700);

(b) A client transfers;

(i) Before July 1, 2009, from one acute care hospital or distinct unit to another acute care hospital or distinct unit; or

(ii) On and after July 1, 2009 from one acute care hospital or distinct unit to:

(A) Another acute care hospital or distinct unit;

(B) A skilled nursing facility (SNF);

(C) An intermediate care facility;

(D) Home care under the department's home health program;

(E) A long term acute care facility (LTAC);

(F) Hospice (facility-based or in the client's home);

(G) A hospital-based medicare-approved swing bed, or another distinct unit such as a rehabilitation or psychiatric unit (see WAC 388-550-3600); or

(H) A nursing facility certified under medicaid but not medicare.

(c) A client is not eligible for a medical assistance program on one or more ~~((of the))~~ days of the hospital stay;

(d) A client has third party liability coverage at the time of admission to the hospital or distinct unit;

(e) A client is eligible for Part B medicare and medicare has made a payment for the Part B hospital charges; or

(f) A client is discharged from an inpatient hospital stay and, within seven calendar days, is readmitted as an inpatient to the same hospital. The department or its designee performs a retrospective utilization review (see WAC 388-550-1700) on the initial admission and the readmission(s) to determine which inpatient hospital stay(s) qualify for DRG payment. Upon the department's retrospective review, an outlier payment may be made if the department determines the claim for combined hospital stays qualifies as a high-cost outlier or high outlier. See WAC 388-550-3700 for DRG high-cost outliers and high outliers.

~~((6))~~ (7) For dates of admission on and after July 1, 2009, the department pays inpatient claims assigned by the all-patient DRG grouper (AP-DRG) as cesarean section without complications and comorbidities, at the same rate as the vaginal birth with complicating diagnoses.

(8) The department does not pay for a client's day(s) of absence from the hospital.

~~((7))~~ (9) The department pays an interim billed hospital claim or covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 388-550-2900.

~~((8))~~ (10) The department applies to the payment for each claim all applicable ~~((claim payment))~~ adjustments for client responsibility, any third party liability, medicare, ~~((etc., to the payment))~~ and any other adjustments as determined by the department.

(11) The department pays hospitals in designated bordering cities for allowed covered services as described in WAC 388-550-3900.

(12) The department pays out-of-state hospitals for allowed covered services as described in WAC 388-550-4000.

AMENDATORY SECTION (Amending WSR 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-3010 Payment method—Per diem payment. (1) Effective for dates of admission on and after August 1, 2007, the department uses the per diem payment method to pay some covered inpatient hospital services as

specified in this section and WAC 388-550-4300, 388-550-4400, and 388-550-3460.

(2) The per diem payment method is effective for dates of admission before, on, and after August 1, 2007, for the following:

(a) Long term acute care (LTAC)(;);

(b) Hospital administrative day(;) bed; and

(c) Hospital swing bed ((is effective for dates of admission before, and on and after, August 1, 2007)).

~~((2))~~ (3) The department uses the all-patient diagnosis related group (AP-DRG) grouper ((software)) to assign a DRG classification to each inpatient hospital stay. The department ((periodically evaluates which version of the AP-DRG grouper software to use and updates the grouper version. This update is normally completed once every three years during inpatient payment system rebasing)) uses the per diem payment method to pay for hospital stays that have insufficient data available to determine stable relative weights and other specialty services identified in WAC 388-550-3460.

~~((3))~~ (4) A per diem payment includes, but is not limited to:

(a) A hospital covered service(s) provided to a client during the client's inpatient hospital stay.

(b) An outpatient hospital covered service(s), including preadmission, emergency room, and observation services related to an inpatient hospital stay and provided within one calendar day of a client's inpatient hospital ((stay)) admission. These outpatient services must be billed on the inpatient hospital claim (see WAC 388-550-6000 (3)(c)).

(c) Any specific service(s), treatment(s), or procedure(s) (such as renal dialysis services) that the admitting hospital is unable to provide when:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s) during the client's inpatient stay; and

(ii) The client returns as an inpatient to the admitting hospital.

(d) All transportation costs for an inpatient client when the client requires transportation to another facility or provider for a specific service(s), treatment(s), or procedure(s) that the admitting hospital is unable to provide when:

(i) The admitting hospital sends the client to another facility or provider for the service(s), treatment(s), or procedure(s); and

(ii) The client returns as an inpatient to the admitting hospital.

~~((4))~~ (5) The department ((has established)) establishes an average length of stay (ALOS) for each DRG classification during the rebasing process. The DRG ALOS is used as a benchmark to authorize and pay for inpatient hospital stays that are exempt from the DRG payment method. See WAC 388-550-4300(6).

~~((5))~~ (6) The department's per diem payments to ((hospitals)) a hospital may be adjusted when one or more of the following occur:

(a) A claim qualifies as a per diem high outlier claim (see WAC 388-550-3700). The outlier provision does not include a claim grouped to a DRG classification in a specialty service category. The specialty ((services)) service categories

include psychiatric, rehabilitation, detoxification, and CUP program services. Long term acute care (LTAC), administrative days and swing bed days do not qualify for high outlier payment(;).

(b) A client is not eligible for a medical assistance program on one or more of the days of the hospital stay(;).

(c) A client has third party liability coverage at the time of admission to the hospital or distinct unit(;).

(d) A client is eligible for medicare, and medicare has made a payment for the hospital charges(;-of).

(e) A client is discharged from an inpatient hospital stay and, within seven calendar days, is readmitted as an inpatient to the same hospital or a different hospital. The department or its designee performs a retrospective utilization review (see WAC 388-550-1700) on the initial admission and the readmission(s) to determine which, if any, inpatient hospital stay(s) qualify for payment. An outlier payment may be made if the department determines the claim for the combined hospital stays qualifies as a high outlier. (See WAC 388-550-3700 for high outliers.)

(f) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 388-550-2800(2), the department may apply an inpatient adjustment factor to the per diem rate payments.

~~((6))~~ (7) The department does not pay for a client's day(s) of absence from the hospital.

~~((7))~~ (8) The department pays an interim billed hospital claim for covered inpatient hospital services provided to an eligible client only when the interim billed claim meets the criteria in WAC 388-550-2900.

~~((8))~~ (9) The department applies to the payment for each claim, all applicable ((claim payment)) adjustments for client responsibility, any third party liability, medicare, ((etc., to the payment)) and any other adjustments as determined by the department.

AMENDATORY SECTION (Amending WSR 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-3020 Payment method—Bariatric surgery—Per case payment. (1) The department pays designated department-approved hospitals for prior authorized bariatric surgery when the criteria in WAC 388-550-2301 are met. Claims grouped to a DRG classification in a bariatric surgery service category (diagnosis and procedure codes recognized by the department for bariatric surgery per case payment) do not qualify for outlier payments.

~~((For dates of admission before and on and after August 1, 2007.))~~ The department pays for claims grouped to a DRG classification in a bariatric surgery service category (diagnosis and procedure codes recognized by the department for bariatric surgery per case payment) using a per case rate. See WAC 388-550-3470.

(3) The department applies to the payment for each claim, all applicable ((claim payment)) adjustments for client responsibility, any third party liability, medicare, ((etc., to the payment)) and any other adjustments as determined by the department.

(4) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 388-550-2800(2),

the department may apply an inpatient adjustment factor to each hospital's specific per case rate.

AMENDATORY SECTION (Amending WSR 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-3460 Payment method—Per diem rate. (1) For dates of admission before August 1, 2007 the department established per diem rates for:

(a) Inpatient chronic pain management as ~~((indicated))~~ specified in WAC 388-550-2400;

(b) Long term acute care (LTAC) hospitals as ~~((indicated))~~ specified in WAC 388-550-2595;

(c) Community psychiatric inpatient hospitalization as ~~((indicated))~~ specified in WAC 388-550-2650; and

(d) Administrative day status, and nursing facility swing bed day status, as ~~((indicated))~~ specified in WAC 388-550-4500 as it existed before July 1, 2009 or WAC 388-550-4550 for these services effective for dates of admission on and after July 1, 2009.

(2) For dates of admission on and after August 1, 2007, the department continues to pay per diem~~(s)~~ rates for the services identified in subsection (1), except for the community psychiatric inpatient hospitalization per diem indicated in subsection (1)(c).

(3) For dates of admission on and after August 1, 2007, with the exception of community psychiatric inpatient services, the department establishes per diem rates for specialty services that are generally based on statewide standardized average cost per day amounts, which are then adjusted to reflect the unique characteristic of hospitals in the state of Washington for payment purposes.

(a) The department calculates separate statewide standardized per diem rates for the following categories:

(i) Rehabilitation services—Rehabilitation claims are identified as all claims with a rehabilitation diagnosis (i.e., assigned to a rehabilitation AP-DRG classification) at acute care hospitals and freestanding rehabilitation hospitals including distinct part units;

(ii) Detoxification services—Detoxification claims are identified as all claims from hospital-based detoxification units, and all claims with a detoxification diagnosis (i.e., assigned to a detoxification AP-DRG classification) at acute care hospitals.

(iii) CUP women program services—Chemically using pregnant (CUP) women program services are identified as any claims with units of service (days) submitted to revenue code 129 in the claim record.

(b) The department calculates hospital-specific per diem rates for all medicaid services provided by free-standing psychiatric hospitals, and all psychiatric services provided by acute care hospitals, including distinct part units.

(c) To determine statewide standardized cost per day amounts for rehabilitation, detoxification and CUP women program services, the department uses the estimated costs of the claims identified for each category based on the department's cost finding process for the system. These claims include any statistical outliers. These statewide standardized amounts serve as the basis for calculating per diem rates for each hospital for each service. The department then makes

adjustments to the cost amounts for each hospital to factor out differences related to approved medical education programs.

(i) For each in-state acute care hospital, excluding critical access hospitals (CAHs) and LTAC hospitals, the department estimates operating and capital costs for each of the three specialty services.

(ii) The department then adjusts these costs to remove the indirect costs associated with approved medical education programs. Medicare publishes separate indirect medical education factors for operating and capital components, so these adjustments are made separately for both of these components. These factors are intended to reflect the indirect costs incurred by hospitals in support of approved graduate medical education programs.

(A) For hospital-specific operating costs, the department adjusts the labor portion of the hospital-specific operating costs by the most ~~((currently available))~~ current hospital-specific medicare wage index established and published by medicare ~~((that exists))~~ at the time of the medicaid rebasing; then adds the nonlabor portion to the result; then divides the result by (1.0 plus the most currently available hospital-specific medicare operating indirect medical education factor established by medicare that exists at the time of the medicaid rebasing); then divides that result by the hospital-specific medicaid case-mix index; then

(B) For hospital-specific capital costs, the department divides hospital-specific capital costs by (1.0 plus the hospital-specific medicare capital indirect medical education factor); then divides the result by the hospital-specific medicaid case-mix; then

(ii) The department then sums the costs and days for all included hospitals for each service, and calculates each ~~((services'))~~ service's statewide standardized weighted average cost per day amounts, weighted based on number of days.

(d) Once the department establishes the statewide standardized amounts, hospital-specific per diem rates for each specialty service are calculated.

(i) Starting with the statewide standardized operating amount, the department multiplies the labor portion of the amount ~~((to determine the labor portion, the department used the factor established by medicare multiplied by the statewide operating standardized amount))~~ by the most ~~((currently available))~~ current hospital-specific medicare wage index established and published by medicare ~~((that exists))~~ at the time of the medicaid rebasing ~~((, as published by medicare))~~. (To determine the labor portion, the department uses the factor established by medicare multiplied by the statewide operating standardized amount.) This adjustment is made to reflect wage differences incurred by hospitals in different regions of the state. The department then adds the non-labor portion to the result.

(ii) The department-adjusted operating and capital amounts reflect the indirect costs associated with approved teaching programs. The department adjusts for the indirect costs by multiplying the operating and capital amounts by (1.0 plus the most currently available hospital-specific medicare indirect medical education factor in the medicare final rule for the operating and capital components). These adjustments are made only at the time the rate setting calculation takes place during the rebasing process.

(iii) The department then adds to the operating and capital amounts the hospital-specific direct medical education cost per day (hospital-specific direct medical education cost per day adjusted for hospital-specific case-mix index).

(iv) Finally, the department adjusts the facility-specific combined operating, capital and medical education cost per day amounts to reflect increases in inflation between the base year and the implementation year using the CMS PPS Input Price Index. For purposes of this adjustment, the department applies the operating index to the operating and direct medical education components of the per diem rate, and the capital-related index to the capital component of the per diem rate.

(e) Specialty service claims are not eligible for high outlier payments. See WAC 388-550-3700.

(4) For dates of admission on and after August 1, 2007, the department establishes hospital-specific per diem rates for psychiatric services provided by in-state noncritical access hospitals that are free-standing psychiatric hospitals, acute care hospitals with psychiatric distinct part units, or other acute care hospitals.

(a) The department identifies psychiatric claims for hospitals meeting the criteria in this subsection as all claims from free-standing psychiatric hospitals, and all claims with a psychiatric diagnosis (i.e., assigned to a psychiatric AP-DRG classification) at the acute care hospitals. The department includes all claims from freestanding psychiatric hospitals, regardless of AP-DRG assignment.

(b) To determine a facility-specific payment rate per day for psychiatric services, the department uses the greater of the estimated costs per diem of the:

(i) Hospital's inpatient psychiatric claims in the base year dataset; or

(ii) Statewide average of the estimated costs of the hospital's inpatient psychiatric claims (as described in subsection (4)(a)) in the base year claims including adjustments for regional wage differences and for differences in medical education costs.

(c) The department calculates average cost per day amounts for each hospital and then makes adjustments to the average cost per day amounts to reflect changes in the indirect medical education factor and hospital-specific wage index between the base year and the implementation year.

(d) Finally, the department adjusts the hospital-specific combined operating, capital and medical education cost per day amounts to reflect increases in inflation between the base year and the implementation year using the CMS PPS Input Price Index. For purposes of this adjustment, the department applies the operating index to the operating and direct medical education components of the per diem rate, and the capital-related index to the capital component of the per diem rate.

(5) For dates of admission on and after August 1, 2007, for hospitals not meeting the criteria in subsection (4), the department calculates per diem rates using the same method used for rehabilitation, detoxification and CUP women program payments described in this section, except that the department uses only the psychiatric claims from those facilities identified as qualifying for hospital-specific rates.

(6) For dates of admission on and after August 1, 2007, for freestanding rehabilitation facilities, the department uses the per diem rate established for rehabilitative services rather than a facility-specific rate.

(7) For dates of admission on and after August 1, 2007, for claims that are classified into AP-DRG classifications that do not have enough claims volume to establish stable relative weights, and that are not specialty claims as described in this section, the department also uses a per diem rate.

(a) These types of claims are less homogeneous than the specialty claims described in this section, and the costs of these claims are more variable than the costs of those that are included under the DRG payment method. The department conducts significant analyses to establish per diem rates based on groupings that would distinguish between higher cost per day claims and lower cost per day claims. As part of this analysis, the department analyzes costs per day based on the following criteria for groupings, which are not mutually exclusive:

(i) Neonatal claims, based on assignment to major diagnostic category (MDC) 15;

(ii) Burn claims based on assignment to MDC 22;

(iii) AP-DRG assignments that include primarily medical procedures;

(iv) AP-DRG assignments that include primarily surgical procedures;

(v) Cranial procedure claims, based on specific cranial procedure AP-DRG classifications, and

(vi) MDC assignment.

(b) Based on the analyses of cost per day amounts for each grouping criteria identified in subsection (7)(a), the department identified four nonspecialty service groupings appropriate for establishing per diem payments. These are:

(i) Neonatal claims, based on assignment to MDC 15;

(ii) Burn claims based on assignment to MDC 22;

(iii) AP-DRG assignments that include primarily medical procedures, excluding any neonatal or burn classifications identified in this subsection; and

(iv) AP-DRG assignments that include primarily surgical procedures, excluding any neonatal or burn classifications identified in this subsection.

(c) For each service group, except for burn cases, the department calculates a per diem rate for each hospital based on the aggregate statewide weighted average cost per day for the service after adjusting costs for regional wage differences and differences in graduate medical education program costs. ~~((Unstable burn claim))~~ For burn cases, per diem rates are based on the average operating and capital cost per day ~~((of unstable burn claims at))~~ for Harborview Medical Center, which ~~((treats))~~ had the vast majority of burn cases in the state.

(d) The per diem calculations are based on the estimated costs of the claims for each service group in the base year, including both fee-for-service and healthy options claims data. After determining the statewide weighted average cost per day after these adjustments, the department calculates the per diem rate for each hospital for each service group by adjusting the statewide weighted average cost per day amount for each hospital based on its hospital-specific wage index and medical education program costs.

(e) Because of the variability of the cost of claims in unstable AP-DRG classifications, the department developed an outlier policy for these per diem payments, similar to the outlier methodology recommended for the DRG payment method.

(f) Claims that are not in the specialty service groupings indicated in subsection (3)(a) and (b), may qualify for a high outlier payment if the claim qualifies under the high outlier criteria. See WAC 388-550-3700.

(8) For dates of admission on and after August 1, 2007, for inpatient chronic pain services, the department establishes per diem rates based on allowed charges data that the department obtains from the hospital. The department determines the hospital per diem rate by identifying costs and dividing the total cost by the number of days associated with the cost.

AMENDATORY SECTION (Amending WSR 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-3900 Payment method—Bordering city hospitals and critical border hospitals. ~~((1) For dates of admission before August 1, 2007, under the diagnosis-related group (DRG) payment method:~~

~~(a) The department calculates the cost-based conversion factor (CBCF) of a bordering city hospital as defined in WAC 388-550-1050, in accordance with WAC 388-550-3450.~~

~~(b) For a bordering city hospital with no medicare cost report (Form 2552-96) for the rebasing year, the department assigns the department peer group average conversion factor. This is the average of all final conversion factors of hospitals in that group.~~

~~(2) For dates of admission before August 1, 2007, the department calculates:~~

~~(a) The ratio of costs to charges (RCC) in accordance with WAC 388-550-4500.~~

~~(b) For a bordering city hospital with no medicare cost report submitted to the department, its RCC is based on the Washington in-state average RCC.~~

~~(3) For dates of admission before August 1, 2007, the department pays a bordering city hospital using the same payment methods as for an in-state hospital for allowed covered charges related to medically necessary services identified on an outpatient hospital claim.~~

~~(4) For dates of admission on and after August 1, 2007, with the exception of outpatient payment to hospitals previously paid under the outpatient prospective payment system (OPPS) methodology and critical border hospitals located in bordering cities, the department pays bordering city hospitals for allowed covered charges related to medically necessary services based on the inpatient and outpatient hospital rates and payment methods used to pay out-of-state hospitals. See WAC 388-550-4000.~~

~~(5) For dates of admission on and after August 1, 2007, the department pays a critical border hospital for allowed covered charges related to medically necessary services identified on an inpatient hospital claim:~~

~~(a) Under one of the inpatient DRG, RCC, per diem, or per case rate payment methods that are similar to the methods used to pay in-state hospitals;~~

~~(b) Using a DRG conversion factor, per diem, or per case rate based on the statewide standardized average that will result in payment that does not exceed the payment that would be made to any in-state hospital for the same service, including medical education components of payments; and~~

~~(c) Using a hospital's specific RCC rate based on the hospital's annual medicare cost report information for the applicable period. For a critical border hospital that does not submit a medicare cost report to the department, the department determines which in-state hospital has the lowest RCC rate and uses that rate as the critical border hospital's RCC rate.~~

~~(6) The inpatient payment rates used to calculate payments to critical border hospitals are prospective payment rates. Those rates are not used to pay for claims with dates of admission before the hospital qualified as a critical border hospital. Bordering city hospitals' base period claims data is analyzed during the rebasing process, and annually thereafter, to determine if a bordering city hospital qualifies as a critical border hospital.~~

~~(7) For dates of admission on and after August 1, 2007, the department pays a critical border hospital for allowed covered charges related to medically necessary services identified on an outpatient hospital claim using the outpatient hospital payment methods and payment criteria identified in WAC 388-550-6000 and 388-550-7200. The department limits payment to bordering city hospitals that are noncritical border hospitals to the lesser of the billed charges or the calculated payment amount.~~

~~(8) The department makes applicable claim payment adjustments for client responsibility, third party liability, medicare, etc., to claim payments)) The department uses the payment methods described in this section to pay bordering city hospitals and critical border hospitals for inpatient and outpatient claims. Bordering city hospitals and critical border hospitals are defined in WAC 388-550-1050.~~

~~(1) Bordering city hospitals—Inpatient hospital claim payment methods.~~

~~(a) For dates of admission before August 1, 2007, under the diagnosis related group (DRG) payment method:~~

~~(i) The department calculates the cost-based conversion factor (CBCF) of a bordering city hospital as defined in WAC 388-550-1050, in accordance with WAC 388-550-3450.~~

~~(ii) For a bordering city hospital with no medicare cost report (Form 2552-96) submitted for the rebasing year, the department assigns the department peer group average conversion factor. This is the average of all final conversion factors of hospitals in that group.~~

~~(b) For dates of admission before August 1, 2007, under the ratio of costs-to-charges (RCC) payment method:~~

~~(i) The department calculates the RCC in accordance with WAC 388-550-4500.~~

~~(ii) For a bordering city hospital with no medicare cost report (Form 2552-96) submitted for the rebasing year, the department bases the RCC on the Washington in-state average RCC.~~

~~(c) For dates of admission on and after August 1, 2007:~~

~~(i) The department calculates the payment for allowed covered charges related to medically necessary services, using the lowest of the in-state inpatient hospital rates without graduate medical education (GME) (excluding DWCC rates~~

that are paid to instate critical access hospitals) for the DRG conversion factor, the per diem, per case, and RCC payment methods; and

(ii) The department pays the lesser of the:

(A) Billed charges; or

(B) Calculated payment amount.

(2) Bordering city hospitals—Outpatient hospital claim payment methods for allowed covered charges related to medically necessary services.

(a) For bordering city hospitals paid according to the outpatient prospective payment system (OPPS), refer to WAC 388-550-7000 through 388-550-7600. The department uses the following types of payment methods used in OPPS:

(i) Ambulatory payment classification (APC) method (the primary payment method for OPPS) (WAC 388-55-7200):

(A) Before August 1, 2007, the department determines the OPPS conversion factor using the methods described in WAC 388-550-7500.

(B) On and after August 1, 2007, the department pays using the lowest instate OPPS conversion factor.

(ii) OPPS maximum allowable fee schedule (WAC 388-550-7200).

(iii) Hospital outpatient RCC rate (WAC 388-550-4500).

(A) Before August 1, 2007, the department pays the instate average hospital outpatient RCC rate times the allowed covered charges for medically necessary services.

(B) On and after August 1, 2007, the department pays the lowest instate hospital outpatient RCC rate times the allowed covered charges for medically necessary services.

(b) For bordering city hospitals exempt from OPPS, the department uses the following payment methods:

(i) Outpatient maximum allowable fee schedule (WAC 388-550-6000); and

(ii) Hospital outpatient RCC rate (WAC 388-550-4500).

(c) When the RCC payment method described in WAC 388-550-4500 is used to pay for outpatient services provided:

(i) Before August 1, 2007, the department pays the instate average hospital outpatient RCC rate times the allowed covered charges for medically necessary services.

(ii) On and after August 1, 2007, the department pays the lowest instate hospital outpatient RCC rate times the allowed covered charges for medically necessary services.

(d) When the maximum allowable fee schedule method is used to pay for outpatient services provided, the department pays the lesser of the:

(i) Billed charges; or

(ii) Calculated payment amount.

(3) Designated critical border hospitals.

(a) Beginning August 1, 2007, the department designated certain qualifying hospitals located out-of-state as critical border hospitals. A designated critical border hospital must:

(i) Be a bordering city hospital as described in WAC 388-550-1050; and

(ii) Have submitted at least ten percent of the total non-emergency inpatient hospital claims that have been paid to bordering city hospitals for the prior state fiscal year (SFY) for clients eligible for Washington state medicaid and state-administered programs. Nonemergency inpatient hospital

claims are defined as those that do not include emergency room charges (revenue code 045X series).

(b) The department analyzes bordering city hospitals' base period claims data during the rebasing process, and annually thereafter, to determine if a bordering city hospital qualifies or continues to qualify as a critical border hospital.

(4) Critical border hospitals—Inpatient hospital claim payment methods. The department pays inpatient critical border hospital claims with dates of services on and after August 1, 2007, as follows:

(a) The inpatient payment rates used to calculate payments to critical border hospitals are prospective payment rates. The rates are not used to pay for claims with dates of admission before the hospital qualified as a critical border hospital.

(b) The department pays inpatient critical border hospital claims using the same payment methods and rates as for instate hospital claims, including DRG, RCC, per diem, outliers, and per case rate, subject to the following:

(i) Inpatient payment rates used to pay critical border university hospitals for inpatient hospital claims cannot exceed the highest corresponding inpatient payment rate for an instate university hospital:

(ii) Inpatient payment rates used to pay critical border Level 1 trauma centers for inpatient hospital claims cannot exceed the highest corresponding inpatient payment rate for an instate Level 1 trauma center; and

(iii) Inpatient payment rates used to pay critical border hospitals not listed in (A) and (B) of this subsection for inpatient hospital claims cannot exceed the highest corresponding instate inpatient payment rate for instate hospitals that are not designated as:

(A) Critical access hospitals (CAHs);

(B) University hospitals; or

(C) Level 1 trauma centers.

(5) Critical border hospitals—Outpatient hospital claim payment methods. The department pays outpatient critical border hospital claims with dates of services on and after August 1, 2007, using the same payment methods as for instate outpatient hospital claims, including the APC method using the hospital's OPPS conversion factor, maximum allowable fee schedule method, and the hospital outpatient RCC rate method (refer to WAC 388-550-7000 through 388-550-7600 and WAC 388-550-4500), subject to the following:

(a) Outpatient rates used to pay critical border university hospitals for outpatient claims cannot exceed the highest corresponding rate for an instate university hospital.

(b) Outpatient rates used to pay critical border Level 1 trauma centers for outpatient claims cannot exceed the highest corresponding rate for an instate Level 1 trauma center.

(c) Outpatient rates used to pay the critical border hospitals not listed in (i) and (ii) of this subsection for outpatient claims cannot exceed the highest corresponding rate for instate hospitals that are not designated as:

(i) Critical access hospitals (CAH);

(ii) University hospitals; or

(iii) Level 1 trauma centers.

(6) Critical border hospitals are eligible to receive payment for graduate medical education (GME). All other bor-

dering city hospitals are not eligible to receive payment for GME.

(7) The department makes:

(a) Claim payment adjustments, including but not limited to, third party liability, medicare, and client responsibility; and

(b) Other necessary adjustments as directed by the legislature (e.g., rate rebasing and other changes).

AMENDATORY SECTION (Amending WSR 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-4000 Payment method—~~(Emergency services—)~~**Out-of-state hospitals.** ~~((The department pays for emergency services that are covered by the department and provided to eligible medical assistance clients as follows:))~~ This section describes the payment methods the department uses to pay hospitals located out-of-state for providing services to eligible Washington state medical assistance clients. This section does not apply to hospitals located in any of the designated bordering cities listed in WAC 388-501-0175. Payment methods that apply to bordering city hospitals, including critical border hospitals, are described in WAC 388-550-3900.

(1) ((For dates of admission)) Emergency hospital services before August 1, 2007((, the department pays:)).

(a) For inpatient hospital claims for emergency services provided in out-of-state hospitals(;) with dates of admission before August 1, 2007, the department limits the payment to the lesser of the:

(i) Billed charges; or

(ii) ((The)) Weighted average of ratio of costs-to-charges (RCC) ratios for in-state hospitals multiplied by the allowed covered charges for medically necessary services.

(b) For outpatient hospital claims for emergency services provided in out-of-state hospitals(;) with the first date of service before August 1, 2007, the department limits the payment to the lesser of the:

(i) Billed charges; or

(ii) ((The)) Weighted average of hospital outpatient ((hospital)) RCC rates for in-state hospitals multiplied by the allowed covered charges for medically necessary services.

(2) ((For dates of admission)) Emergency hospital services on and after August 1, 2007((, the department pays:)).

(a) For inpatient hospital claims for emergency services provided in out-of-state hospitals ((under the inpatient diagnostic related group (DRG), ratio of costs-to-charges (RCC), per diem, and per case rate payment methods, whether or not the hospital has submitted a medicare cost report (Form 2552-96) to the department for the rebasing year.)) with dates of admission on and after August 1, 2007, the department:

(i) Pays ((an out-of-state hospital and bordering city hospital that is not a critical border hospital, using the lowest of the in-state inpatient hospital rates, and excludes payment for medical education (out-of-state hospitals are not eligible to receive payment for medical education). This rate is the same rate calculated for all rural hospitals in Washington for the same service (excluding DWCC rates that are paid to in-state critical access hospitals))) using the same methods used to pay in-state hospitals:

(A) Diagnosis related group (DRG) (WAC 388-550-3000);

(B) Per diem (WAC 388-550-3010);

(C) DRG and per diem outliers (WAC 388-550-3700); and

(D) Ratio of costs-to-charges (RCC) (WAC 388-550-4500).

(ii) Pays ((a department designated critical border hospital according to WAC 388-550-3900)) using the lowest in-state inpatient hospital rate corresponding to the payment method used in (a)(i) of this subsection.

(iii) Limits payment to out-of-state hospitals ((and bordering city hospitals that are noncritical border hospitals)) to the lesser of the:

(A) Billed charges; or ((the))

(B) Calculated payment amount.

(b) ((Pays)) For outpatient hospital claims for emergency services provided in out-of-state hospitals ((that are)) with dates of service on or after August 1, 2007, the department pays an out-of-state hospital using one or both of the following methods:

(i) ((Bordering city hospitals, including critical border hospitals previously paid under the outpatient prospective payment system (OPPS) methodology for dates of admission before August 1, 2007, in accordance with WAC 388-550-7200; and

(ii) Out-of-state hospitals, including bordering city hospitals not previously paid under the OPPS methodology, the lesser of)) The maximum allowable fee schedule method described in WAC 388-550-6000, and limits payment when the maximum allowable fee schedule method is used to the lesser of the:

(A) Billed charges; or

(B) ((The in-state average hospital outpatient rate times the allowed covered charges for medically necessary services)) Calculated payment amount.

(ii) The hospital outpatient RCC method described in WAC 388-550-4500. When using the RCC payment method, the department pays the lowest in-state hospital outpatient RCC rate, excluding departmental weighted costs-to-charges (DWCC) rates that are paid to in-state critical access hospitals.

(c) Out-of-state hospitals are not eligible to receive payment for graduate medical education (GME).

(3) The department makes:

(a) Claim payment adjustments, including but not limited to client responsibility, third party liability, and medicare; and

(b) Other necessary adjustments as directed by the legislature (e.g., rate rebasing and other changes).

(4) Nonemergency services. The department does not pay for nonemergency hospital services provided to a medical assistance client(s) in a hospital located out-of-state ((hospitals)) unless the ((facility)) hospital is contracted and/or prior authorized by the department or the department's designee, for the specific service provided.

((+)) (a) Contracted services are paid according to the contract terms whether or not the hospital has signed a core provider agreement.

((+)) (b) Authorized services are paid according to subsections (1) ((and)), (2), and (3) of this section.

(c) Bariatric surgery performed in a designated department-approved hospital is paid a per case rate and must be prior authorized by the department (see WAC 388-550-3020).

~~((4) The department makes all applicable claim payment adjustments for clients responsibility, third party liability, medicare, etc., to claim payments.))~~

WSR 09-08-118
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed March 31, 2009, 5:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-072.

Title of Rule and Other Identifying Information: Amending WAC 388-550-3600 Diagnosis-related group (DRG) payment—Hospital transfers, 388-550-3700 DRG high-cost and low-cost outliers, and new system DRG and per diem high outliers, 388-550-4500 Payment method—Inpatient RCC rate, administrative day rate, hospital outpatient rate, and swing bed rate, 388-550-7050 OPPS definitions, 388-550-7100 OPPS—Exempt hospitals, 388-550-7500 OPPS conversion factor, and 388-550-7600 OPPS payment calculation; and new sections WAC 388-550-4550 Administrative day rate and swing bed day rate and 388-550-7450 OPPS budget target adjustor.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2009.

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 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes update and clarify hospital-related sections and are intended to address the anticipated levels of funding from the legislature, inform providers of program changes, and clarify and update current language. These rules:

- Update and clarify how the department pays a hospital when an acute care hospital or distinct unit transfers a client to another acute care hospital or distinct unit, or when a client transfers from an acute care hospital or distinct unit to another acute care

hospital or distinct unit or other places as identified in the rule;

- Remove "neonatal" from the list of DRG service categories for claims that group to a medical, surgical, or burn diagnosis related services (DRG) category; remove "prepay" from "retrospective prepay utilization review" and clarify that the department may perform these reviews;
- Define "outpatient adjustment factor" and add that the inpatient adjustment factor does not apply to hospitals paid under the certified public expenditure (CPE) payment method, except to payments for repriced claims adjusted according to WAC 388-550-4670 (2)(a)(ii); update and clarify how the department calculates and uses the ratio of costs-to-charges (RCC) payment method to pay inpatient hospital claims;
- Remove language for "administrative day rate and swing bed rate" from WAC 388-550-4500 and place it into a new section;
- Add language that the department may change the method for calculating OPPS rates to achieve the legislature's targeted expenditure levels for outpatient hospital services;
- Add language that the legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the department in the Biennial Appropriations Act;
- Update the definitions for "budget target adjustor," outpatient code editor (OCE), and "outpatient prospective payment system (OPPS) conversion factor";
- Add definitions for "nationwide rate," and "outpatient prospective payment system (OPPS) rate";
- Add language that incorporates into rule which hospitals are no longer exempted from the outpatient prospective payment system (OPPS) method and that the department pays all covered outpatient hospital services, except for those provided in critical access hospitals (CAHs), under the OPPS methodology;
- Add a new section "OPPS budget target adjustor" that describes the budget target adjustor and how the department calculates the OPPS budget target adjustor;
- Clarify how the department calculates the hospital-specific OPPS rates;
- Add language that the department may change the method for calculating OPPS payments to achieve the legislature's targeted expenditure levels; and
- Update and clarify current language for improved readability.

Reasons Supporting Proposal: The department must meet the legislature's targeted budget expenditure levels for payment of hospital and hospital-related services provided to medical assistance clients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, and 74.09.500.

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 45505, Olympia, WA 98504-5504, (360) 725-1342; Implementation and Enforcement: Carolyn Adams, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1854.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impact small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Carolyn Adams, Health and Recovery Services Administration, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-1854, fax (360) 753-9152, e-mail adamsr@dshs.wa.gov.

March 30, 2009

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-3600 Diagnosis-related group (DRG) payment—Hospital transfers. ~~((The department applies the following payment rules when an eligible client transfers from one acute care hospital or distinct unit to another acute care hospital or distinct unit:~~

~~(1) The department does not pay a hospital for a none-emergency case when the hospital transfers the client to another hospital.~~

~~(2) The department pays a hospital that transfers emergency cases to another hospital, the lesser of:~~

~~(a) The appropriate diagnosis-related group (DRG) payment; or~~

~~(b) For dates of admission:~~

~~(i) Before August 1, 2007, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital. The department determines the per diem rate by dividing the hospital's DRG payment amount for the appropriate DRG by that DRG's average length of stay.~~

~~(ii) On or after August 1, 2007, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital plus one, not to exceed the total calculated DRG-based payment amount including any outlier payment amount. The department determines the per diem rate by dividing the hospital's DRG allowed amount for payment for the appropriate DRG by that DRG's statewide average length of stay for the AP-DRG classification as determined by the department.~~

~~(3) The department uses:~~

~~(a) The hospital's midnight census to determine the number of days a client stayed in the transferring hospital prior to the transfer; and~~

~~(b) The department's length of stay data to determine the number of medically necessary days for a client's hospital stay.~~

~~(4) The department:~~

~~(a) Pays the hospital that ultimately discharges the client to any residence other than a hospital (e.g., home, nursing facility, etc.) the full DRG payment; and~~

~~(b) Applies the outlier payment methodology if a transfer case qualifies:~~

~~(i) For dates of admission before August 1, 2007, as a high cost or low cost outlier; and~~

~~(ii) For dates of admission on or after August 1, 2007, as a high outlier.~~

~~(5) The department does not pay a discharging hospital any additional amounts as a transferring hospital if it transfers a client to another hospital (intervening hospital) which subsequently sends the client back:~~

~~(a) The department's maximum payment to the discharging hospital is the full DRG payment.~~

~~(b) The department pays the intervening hospital(s) a per diem payment based on the method described in subsection (2) of this section.~~

~~(6) The department makes all applicable claim payment adjustments to claims for client responsibility, third party liability, medicare, etc)) (1) The rules in this section apply when an eligible client transfers from an acute care hospital or distinct unit:~~

~~(a) Before July 1, 2009, to another acute care hospital or distinct unit; and~~

~~(b) On or after July 1, 2009, to one of the following:~~

~~(i) Another acute care hospital or distinct unit;~~

~~(ii) A skilled nursing facility (SNF);~~

~~(iii) An intermediate care facility (ICF);~~

~~(iv) Home care under the department's home health program;~~

~~(v) A long-term acute care facility (LTAC);~~

~~(vi) Hospice (facility-based or in the client's home);~~

~~(vii) A hospital-based medicare-approved swing bed, or another distinct unit such as a rehabilitation or psychiatric unit (see WAC 388-550-3000); or~~

~~(viii) A nursing facility certified under medicaid but not medicare.~~

~~(2) The department pays a hospital that transfers an emergency case to another acute care hospital, including an acute physical medicine and rehabilitation (acute PM&R) facility or distinct unit, an acute psychiatric facility or distinct unit, and a long-term acute care facility, the lesser of:~~

~~(a) The appropriate diagnosis-related group (DRG) payment based on a stable DRG; or~~

~~(b) A prorated DRG payment when the client's stay at the transferring hospital is less than the average length of stay (LOS) for the AP-DRG classification as determined by the department.~~

~~(3) The department pays a transferring hospital as follows:~~

~~(a) For dates of admission before August 1, 2007, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital. The department determines the per diem rate by dividing the hospital's~~

DRG payment amount for the appropriate DRG by that DRG's average LOS.

(b) For dates of admission on and after August 1, 2007, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital plus one day, not to exceed the total calculated DRG-based payment amount including any outlier payment amount. The department determines the per diem by dividing the hospital's allowed payment amount for the appropriate DRG by that DRG's statewide average LOS (see WAC 388-550-4300) for the AP-DRG classification as determined by the department.

(4) The department uses:

(a) The hospital's midnight census to determine the number of days a client stayed in the transferring hospital prior to the transfer; and

(b) The department's LOS data to determine the number of medically necessary days for a client's hospital stay.

(5) When a post-acute care hospital transfer occurs to one of the locations listed in subsection (1)(b)(ii) through (viii) of this section, the department pays the transferring hospital the lesser of:

(a) The appropriate DRG payment; or

(b) For dates of admission on and after July 1, 2009, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital plus one day, not to exceed the total calculated DRG-based payment amount including any outlier payment amount. The department determines the per diem by dividing the hospital's allowed payment amount for the appropriate DRG by that DRG's statewide average length of stay (see WAC 388-550-4300) for the AP-DRG classification as determined by the department.

(6) The department applies the outlier payment methodology if a transfer case qualifies:

(a) For dates of admission before August 1, 2007, as a high-cost or low-cost outlier; and

(b) For dates of admission on or after August 1, 2007, as a high-cost outlier.

(7) The department does not pay a transferring hospital for a nonemergency case when the transfer is to another acute care hospital.

(8) The department pays the full DRG payment to the discharging hospital for a discharge to home or self-care. This is the department's maximum payment to a discharging hospital.

(9) The department does not pay a discharging hospital any additional amounts as a transferring hospital if it transfers a client to another hospital (intervening hospital) which subsequently sends the client back.

(10) The department pays the intervening hospital(s) a per diem payment based on the method described in subsection (3) of this section.

(11) The transfer payment policy described in this section does not apply to claims grouped into AP-DRG classifications that are paid based on the per diem, case rate, or ratio of costs-to-charges (RCC) payment methods.

(12) The department applies to the payment for each claim, all applicable adjustments for client responsibility, any third party liability, medicare, and any other adjustments as determined by the department.

AMENDATORY SECTION (Amending WSR 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-3700 DRG high-cost and low-cost outliers, and new system DRG and per diem high outliers.

This section applies to inpatient hospital claims paid under the diagnosis-related group (DRG) payment methodology, and for dates of admission on and after August 1, 2007. It also applies to inpatient hospital claims paid under the per diem payment methodology.

(1) For dates of admission before August 1, 2007, a medicaid or state-administered claim qualifies as a DRG high-cost outlier when:

(a) The client's admission date on the claim is before January 1, 2001, the stay did not meet the definition of "administrative day," and the allowed charges exceed:

(i) A threshold of twenty-eight thousand dollars; and

(ii) A threshold of three times the applicable DRG payment amount.

(b) The client's admission date on the claim is January 1, 2001, or after, the stay did not meet the definition of "administrative day," and the allowed charges exceed:

(i) A threshold of thirty-three thousand dollars; and

(ii) A threshold of three times the applicable DRG payment amount.

(2) For dates of admission before August 1, 2007, if the claim qualifies as a DRG high-cost outlier, the high-cost outlier threshold, for payment purposes, is the amount in subsection (1)(a)(i) or (ii), whichever is greater, for an admission date before January 1, 2001; or subsection (1)(b)(i) or (ii), whichever is greater, for an admission date on or after January 1 (~~(, 2001 or after)~~).

(3) For dates of admission before August 1, 2007, the department determines payment for medicaid claims that qualify as DRG high-cost outliers as follows:

(a) All qualifying claims, except for claims in psychiatric DRGs 424-432 and ~~((in-state))~~ claims from instate children's hospitals, are paid seventy-five percent of the allowed charges above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

(b) In-state children's hospitals are paid eighty-five percent of the allowed charges above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

(c) Psychiatric DRG high-cost outliers for DRGs 424-432 are paid one hundred percent of the allowed charges above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

~~((Three examples for DRG high-cost outlier claim qualification and payment calculation (admission dates are January 1, 2001, or after, and before August 1, 2007):))~~

Examples for DRG high-cost outlier claim qualification and payment calculation (Admission dates are January 1, 2001, or after, and before August 1, 2007.)(:)						
Allowed Charges	Applicable DRG Payment	Three times App. DRG Payment	Allowed Charges > \$33,000?	Allowed Charges > Three times App. DRG Payment?	DRG High-Cost Outlier Payment	Hospital's Individual RCC Rate
\$17,000	\$5,000	\$15,000	No	Yes	N/A	64%
*33,500	5,000	15,000	Yes	Yes	**\$5,240	64%
10,740	35,377	106,131	No	No	N/A	64%

Medicaid Payment calculation example for allowed charges of:	Nonpsych DRGs/Nonin-state children's hospital (RCC is 64%)
*\$33,500	Allowed charges
- \$33,000 \$500	The greater amount of 3 x ((app-) applicable DRG pymt (\$15,000) or \$33,000
x 48%	75% of allowed charges x hospital RCC rate (nonpsych DRGs/((nonin-state)noninstate children's) (75% x 64% = 48%)
\$240	Outlier portion
+ \$5,000	Applicable DRG payment
**\$5,240	Outlier payment

(4) For dates of admission before August 1, 2007, DRG high-cost outliers for state-administered programs are paid according to WAC 388-550-4800.

(5) For dates of admission before August 1, 2007, a medicaid or state-administered claim qualifies as a DRG low-cost outlier if:

(a) The client's admission date on the claim is before January 1, 2001, and the allowed charges are:

(i) Less than ten percent of the applicable DRG payment; or

(ii) Less than four hundred dollars.

(b) The client's admission date on the claim is January 1, 2001, or after, and the allowed charges are:

(i) Less than ten percent of the applicable DRG payment; or

(ii) Less than four hundred fifty dollars.

(6) If the claim qualifies as a DRG low-cost outlier:

(a) For an admission date before January 1, 2001, the low-cost outlier amount is the amount in subsection (5)(a)(i) or (ii), whichever is greater; or

(b) For an admission date on January 1, 2001, or after, the low-cost outlier amount is the amount in subsection (5)(b)(i) or (ii), whichever is greater.

(7) For dates of admission before August 1, 2007, the department determines payment for a medicaid claim that qualifies as a DRG low-cost outlier by multiplying the allowed charges for each claim by the hospital's RCC rate.

(8) For dates of admission before August 1, 2007, DRG low-cost outliers for state-administered programs are paid according to WAC 388-550-4800.

(9) For dates of admission before August 1, 2007, the department makes day outlier payments to hospitals in accordance with section 1923 (a)(2)(C) of the Social Security Act, for clients who have exceptionally long stays that do not reach DRG high-cost outlier status. A hospital is eligible for the day outlier payment if it meets all of the following criteria:

(a) The hospital is a disproportionate share hospital (DSH) and the client served is under age six, or the hospital may not be a DSH hospital but the client served is a child under age one;

(b) The payment methodology for the admission is DRG;

(c) The allowed charges for the hospitalization are less than the DRG high-cost outlier threshold as defined in subsection (2) of this section; and

(d) The client's length of stay exceeds the day outlier threshold for the applicable DRG payment amount. The day outlier threshold is defined as the number of days in an average length of stay for a discharge (for an applicable DRG payment), plus twenty days.

(10) For dates of admission before August 1, 2007 the department bases the day outlier payment on the number of days that exceed the day outlier threshold, multiplied by the administrative day rate.

(11) For dates of admission before August 1, 2007, the department's total payment for a day outlier ((~~claims~~) claim) is the applicable DRG payment plus the day outlier or administrative days payment.

(12) For dates of admission before August 1, 2007, a client's outlier claim is either a day outlier or a high-cost outlier, but not both.

(13) For dates of admission on and after August 1, 2007, the department does not identify a claim as a low cost outlier or day outlier. Instead, these claims are processed using the applicable payment method described in this chapter. The department may review claims with very low costs.

(14) For dates of admission on and after August 1, 2007, the department allows a high outlier payment for claims paid using the DRG payment method when high outlier qualifying criteria are met. The estimated costs of the claim are calculated by multiplying the total submitted charges, minus the noncovered charges on the claim, by the hospital's ratio of costs-to-charges (RCC) rate. The department identifies a DRG high outlier claim based on the claim's estimated costs. To qualify as a DRG high outlier claim, the ((~~department~~)

determined)) department's estimated costs for the claim must be greater than both the fixed outlier cost threshold of fifty thousand dollars, and one hundred seventy-five percent of the applicable base DRG allowed amount for payment. These criteria are also used to determine if a transfer claim qualifies for high outlier payment when a transfer claim is submitted to the department by a transferring hospital.

For Children's Hospital Regional Medical Center, Mary Bridge Children's Hospital and Health Center, and claims grouped to neonatal and pediatric DRGs under the DRG payment method, the department identifies a high outlier claim based on the claim's estimated costs. To qualify as a high outlier claim, the claim's estimated cost amount must be greater than both the fixed outlier threshold of fifty thousand dollars and one hundred fifty percent of the applicable base DRG allowed amount for payment.

(15) For dates of admission on and after August 1, 2007, the department may allow an adjustment for a high outlier for per diem claims grouped to a DRG classification in one of the acute unstable DRG service categories, i.e., medical, surgical, burn, and neonatal. These service categories are described in subsection (16) of this section.

(a) The department identifies high outlier per diem claims for medical, surgical, burn, and neonatal DRG service categories based on the claim estimated costs. The claim estimated costs are the total submitted charges, minus the non-covered charges for the claim, multiplied by the hospital's ratio of costs-to-charges (RCC) related to the admission. ~~((To qualify as a high outlier claim, when))~~ Except as specified in (b) of this subsection, a claim that is grouped to a medical, surgical, or burn, ~~(-or neonatal)~~ DRG service category ~~(;) qualifies as a high outlier when~~ the claim's estimated cost ~~((amount must be))~~ is greater than both the fixed outlier threshold of fifty thousand dollars and one hundred seventy-five percent of the applicable per diem base allowed amount for payment.

(b) For Children's Hospital Regional Medical Center, Mary Bridge Children's Hospital and Health Center, and claims grouped to neonatal and pediatric DRGs under medical, surgical, burn, and neonatal services categories, the department identifies high outlier claims based on the claim's estimated costs. To qualify as a high outlier claim, the claim's estimated cost ~~((amount))~~ must be greater than both the fixed outlier threshold of fifty thousand dollars and one hundred fifty percent of the applicable per diem base allowed amount for payment.

(c) The department ~~((performs))~~ may perform retrospective ~~((prepay))~~ utilization reviews on all per diem outlier claims that exceed the department determined DRG average length of stay (LOS). If the department determines the entire LOS or part of the LOS is not medically necessary, the claim will be denied or the payment will be adjusted.

(16) For dates of admission on and after August 1, 2007, the term "unstable" is used generically to describe an AP-DRG classification that has fewer than ten occurrences (low volume), or that is unstable based on the statistical stability test indicated in this subsection, and to describe such claims in the major service categories of per diem paid claims identified in this section. The formula for the statistical stability test calculates the required size of a sample population of val-

ues necessary to estimate a mean cost value with ninety percent confidence and within an acceptable error of plus or minus twenty percent given the population's estimated standard deviation.

Specifically, this formula is:

$N = (Z^2 * S^2) / R^2$, where

- The Z statistic for 90 percent confidence is 1.64
- S = the standard deviation for the AP-DRG classification, and
- R = acceptable error range, per sampling unit

If the actual number of claims within an AP-DRG classification is less than the calculated N size for that classification during relative weight recalibration, the department designates that DRG classification as unstable for purposes of calculating relative weights. And as previously stated, for relative weight recalibration, the department also designates any DRG classification having less than ten claims in total in the claims sample used to recalibrate the relative weights, as low volume and unstable.

The DRG classifications assigned to the per diem payment method, that are in one of the ~~((following))~~ major ~~((services))~~ service categories in subsection (16)(a) through (d) of this section, qualify for ~~((determination to ascertain))~~ examination if a high outlier payment is appropriate. The department specifies those DRG classifications to be paid the per diem payment method because the DRG classification has low volume and/or unstable claims data for determination of an AP-DRG relative weight. A claim in a ~~((DRB))~~ DRG classification that falls into one of the following major services categories that the department designates for per diem payment, may receive a per diem high outlier payment when the claim meets the high outlier criteria as described in subsection (15) of this section:

(a) Neonatal claims, based on assignment to medical diagnostic category (MDC) 15;

(b) Burn claims based on assignment to MDC 22;

(c) AP-DRG groups that include primarily medical procedures, excluding any neonatal or burn per diem classifications identified in (a) and (b) of this subsection; and

(d) AP-DRG groups that include primarily surgical procedures, excluding any neonatal or burn per diem classifications identified in (a) and (b) of this subsection.

(17) For dates of admission on and after August 1, 2007, the high outlier claim payment processes for the general assistance-unemployable (GA-U) program are the same as those for the medicaid or SCHIP DRG paid and per diem paid claims, except that the DRG rates and per diem rates are reduced, and the percent of outlier adjustment factor applied to the payment may be reduced. The high outlier claim payment process for medicaid or SCHIP DRG paid and per diem paid claims is as follows:

(a) The department determines the claim estimated cost amount that is used in the determination of the high outlier claim qualification and the high outlier threshold for the calculation of outlier adjustment amount. The claim estimated cost is equal to the total submitted charges, minus the non-covered charges reported on the claim, multiplied by the hospital's inpatient ratio of costs-to-charges (RCC) related to the admission.

(b) The high outlier threshold when calculating the high outlier adjustment portion of the total payment allowed amount on the claim is:

(i) For DRG paid claims grouped to nonneonatal or non-pediatric DRG classifications, and for DRG paid claims that are not from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred seventy-five percent of the base DRG payment allowed amount;

(ii) For DRG paid claims grouped to neonatal or pediatric DRG classifications, and for DRG paid claims that are from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred fifty percent of the base DRG payment allowed amount;

(iii) For nonspecialty service category per diem paid claims grouped to nonneonatal and nonpediatric DRG classifications, and for nonspecialty service category per diem paid claims that are not from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred seventy-five percent of the base per diem payment allowed amount; and

(iv) For nonspecialty service category per diem paid claims grouped to neonatal and pediatric DRG classifications, and for all nonspecialty service category per diem paid claims from Children's Hospital Regional Medical Center and Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred fifty percent of the base per diem payment allowed amount;

(c) The high outlier payment allowed amount is equal to the difference between the department's estimated cost of services associated with the claim, and the high outlier threshold for payment indicated in (b)(i) through (iv) of this subsection, respectively, the resulting amount being multiplied by a percent of outlier adjustment factor. The percent of outlier adjustment factor is:

(i) Ninety-five percent for outlier claims that fall into one of the neonatal or pediatric AP-DRG classifications. Hospitals paid with the payment method used for out-of-state hospitals are paid using the percent of outlier adjustment factor identified in (c)(iii) of this subsection. All high outlier claims at Children's Hospital Regional Medical Center and Mary Bridge Children's Hospital and Health Center receive a ninety-five percent of outlier adjustment factor, regardless of AP-DRG classification assignment;

(ii) Ninety percent for outlier claims that fall into burn-related AP-DRG classifications;

(iii) Eighty-five percent for all other AP-DRG classifications; and

(iv) Used as indicated in WAC 388-550-4800 to calculate payment for state-administered programs' claims that are eligible for a high outlier payment.

(d) The high outlier payment allowed amount is added to the calculated allowed amount for the base DRG or base per diem payment, respectively, to determine the total payment allowed amount for the claim.

DRG high outlier							
Three examples for medicaid or SCHIP DRG high outlier claim qualification and payment calculation (admission dates are on or after August 1, 2007). Example dollar amounts are approximated and not based on real claims data.							
Total Submitted Charges Minus Noncovered Charges	Base DRG Payment Allowed Amount ¹	175% of Base DRG Payment Allowed Amount	Department Determined Estimated Costs Are Greater Than \$50,000? ²	Department Determined Estimated Costs Are Greater Than 175% of Base DRG Payment Allowed Amount?	Total DRG High Outlier Claim Payment Allowed Amount ^{3,4}	Hospital's Individual RCC Rate	
\$95,600	\$28,837	\$50,465	Yes	Yes	\$38,761	65%	
\$64,500	\$28,837	\$50,465	No	Yes	\$28,837	65%	
\$77,000	\$28,837	\$50,465	Yes	No	\$28,837	65%	

All examples represent a claim that is a nonpsychiatric claim and a claim that isn't from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center.

Example one: The claim meets high cost outlier criteria. Example dollar amounts are approximated and not based on real claims data:

¹DRG conversion factor times DRG relative weight = Base DRG allowed amount

\$6,300 x 4.5773 = \$28,837 = Base DRG allowed amount

²Total submitted charges minus total noncovered charges times RCC rate = Department determined estimated costs

\$95,600 x 65% = \$62,140 = Department determined estimated costs

³If department determined estimated costs are greater than the outlier qualifying criteria (in this example \$50,000), then (department determined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

\$62,140 - \$50,465 = \$11,675 x 85% = \$9,924 = High outlier portion allowed amount

⁴Base DRG payment allowed amount plus high outlier portion allowed amount = Total DRG high outlier claim payment amount

\$28,837 + \$9,924 = \$38,761

Example two: The claim does not meet high cost outlier criteria due to department-determined estimated cost being

less than \$50,000. Example dollar amounts are approximated and not based on real claims data:

$${}^1\text{DRG conversion factor times DRG relative weight} = \text{Base DRG allowed amount}$$

$$\$6,300 \times 4.5773 = \$28,837 = \text{Base DRG allowed amount}$$

$${}^2\text{Total submitted charges minus total noncovered charges times RCC rate} = \text{Department determined estimated costs}$$

$$\$64,500 \times 65\% = \$41,925 = \text{Department determined estimated costs}$$

³If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$(\$41,925 - \$50,465 = (\$8,540)) \times 85\% = (\$7,259)$, which is converted to \$0. Also, \$41,925 is not greater than \$50,000, so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is \$0.

$${}^4\text{Base DRG payment allowed amount plus high outlier portion allowed amount} = \text{Total DRG high outlier claim payment allowed amount}$$

$$\$28,837 + \$0 = \$28,837$$

Example three: The claim does not meet high outlier criteria due to high DRG allowed amount. Example dollar amounts are approximated and not based on real claims data:

$${}^1\text{DRG conversion factor times DRG relative weight} = \text{Base DRG allowed amount}$$

$$\$6,300 \times 4.5773 = \$28,837 = \text{Base DRG allowed amount}$$

$${}^2\text{Total submitted charges minus total noncovered charges times RCC rate} = \text{Department determined estimated costs}$$

$$\$77,000 \times 65\% = \$50,050 = \text{Department determined estimated costs}$$

³If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = high outlier portion allowed amount, if greater than \$0, otherwise \$0.

$(\$50,050 - \$50,465 = (\$415)) \times 85\% = (\$353)$, which is converted to \$0. Also, \$50,050 is greater than \$50,000, but not greater than \$50,465, so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is \$0.

$${}^4\text{Base DRG payment allowed amount plus high outlier portion allowed amount} = \text{Total DRG high outlier claim payment allowed amount}$$

$$\$28,837 + \$0 = \$28,837$$

Per Diem High Outlier						
Three examples for medicaid and SCHIP per diem high outlier claim qualification and payment calculation (admission dates are on or after August 1, 2007). Example dollar amounts are approximated and not based on real claims data.						
Total Submitted Charges Less Total Noncovered Charges	Base Per Diem Payment Allowed Amount ¹	175% of Base Per Diem Payment Allowed Amount	Department Determined Estimated Costs Are Greater Than \$50,000? ²	Department Determined Estimated Costs Are Greater Than 175% of Base Per Diem Payment Allowed Amount?	Total Per Diem High Outlier Claim's Payment Allowed Amount ^{3,4}	Hospital's Individual RCC Rate
\$100,000	\$25,000	\$43,750	Yes	Yes	\$47,313	70%
\$64,000	\$25,000	\$43,750	No	Yes	\$25,000	70%
\$75,000	\$35,000	\$61,250	Yes	No	\$35,000	70%

All examples represent a claim that is a nonpsychiatric claim and a claim that isn't from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center.

Example one: The claim meets high cost outlier criteria. Example dollar amounts are approximated and not based on real claims data:

$${}^1\text{Per diem rate times client's department recognized length of stay for eligible days} = \text{Base per diem allowed amount}$$

$$\$1,000 \text{ (rate)} \times 25 \text{ (days)} = \$25,000 = \text{Base per diem allowed amount}$$

$${}^2\text{Total submitted charges minus total noncovered charges times RCC rate} = \text{Department determined estimated costs}$$

$$\$100,000 \times 70\% = \$70,000 = \text{Department determined estimated costs}$$

³If department determined estimated costs are greater than the outlier qualifying criteria, then (department deter-

mined estimated costs minus 175% of base per diem payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$$(\$70,000 - \$43,750 = \$26,250) \times 85\% = \$22,313 = \text{High outlier portion allowed amount}$$

$${}^4\text{Base per diem payment allowed amount plus high outlier portion allowed amount} = \text{Total per diem high outlier claim payment allowed amount}$$

$$\$25,000 + \$22,313 = \$47,313$$

Example two: The claim does not meet high cost outlier criteria due to department-determined estimated cost being less than \$50,000. Example dollar amounts are approximated and not based on real claims data:

$${}^1\text{Per diem rate times client's department recognized length of stay for eligible days} = \text{Base per diem allowed amount}$$

$\$1,000 \times 25 = \$25,000 =$ Base per diem allowed amount

²Total submitted charges minus total noncovered charges times RCC rate = Department determined estimated costs

$\$64,500 \times 70\% = \$45,150 =$ Department determined estimated costs

³If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base per diem payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$(\$45,150 - \$43,750 = \$1,400)$, but \$45,150 is not greater than \$50,000, so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is \$0.

⁴Base per diem payment allowed amount plus high outlier portion allowed amount = Total per diem high outlier claim payment allowed amount

$\$25,000 + \$0 = \$25,000$

Example three: (The claim does not meet high outlier criteria due to high DRG allowed amount. Example dollar amounts are approximated and not based on real claims data):

¹Per diem rate times client's department recognized length of stay for eligible days = Base per diem allowed amount

$\$1,000 \times 35 = \$35,000 =$ Base per diem allowed amount

²Total submitted charges minus total noncovered charges times RCC rate = Department determined estimated costs

$\$75,000 \times 70\% = \$52,500 =$ Department determined estimated costs

³If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$(\$52,500 - \$61,250 = (8,750)) \times 85\% = (\$7,438)$, which is converted to \$0. Also, \$52,500 is greater than \$50,000, but not greater than \$61,250, so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is \$0.

⁴Base per diem payment allowed amount plus high outlier portion allowed amount = Total per diem high outlier claim payment allowed amount

$\$35,000 + \$0 = \$35,000$

(18) ~~((The department makes all applicable claim payment adjustments for client responsibility, third party liability, medicare, etc., to the payment))~~ When directed by the legislature to achieve targeted expenditure levels, as described in WAC 388-550-2800(2), the department may apply an inpatient adjustment factor to any of the high outlier thresholds and to any of the percentages of outlier adjustment factors described in this section.

(19) The department applies to the payment for each claim, all applicable adjustments for client responsibility, any third party liability, medicare, and any other adjustments as determined by the department.

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 07-14-051, filed 6/28/07, effective 8/1/07)

WAC 388-550-4500 Payment method—~~((Inpatient RCC rate, administrative day rate, hospital outpatient rate, and swing bed rate))~~ **Ratio of costs-to-charges (RCC).** (1) ~~((The inpatient))~~ Ratio of costs-to-charges (RCC) ~~((allowed amount is the hospital's covered charges on a claim multiplied by the hospital's inpatient RCC rate. The department limits this RCC allowed amount for payment to the hospital's allowable usual and customary charges.~~

~~(a) The department calculates a hospital's RCC rate by dividing allowable costs by patient-related revenues associated with these allowable costs. The department determines the allowable costs and associated revenues.~~

~~(b) The department bases the RCC rate calculation on data from the hospital's "as filed" annual medicare cost report (Form 2552-96) and applicable patient revenue reconciliation data provided by the hospital.~~

~~(c) The department updates a hospital's inpatient RCC rate annually after the hospital sends its "as filed" hospital fiscal year medicare cost report to the centers for medicare and medicaid services (CMS) and to the department.~~

~~(i) In situations where a delay in submission of the CMS medicare cost report to the medicare fiscal intermediary is granted by medicare, the department may adjust the RCC rate based on a department-determined method.~~

~~(ii) Prior to calculating the RCC rate, the department excludes department nonallowed costs and nonallowable revenues. Costs and revenues attributable to a change in ownership are one example of what the department does not allow in the calculation process.~~

~~(2) The department limits a hospital's RCC payment to one hundred percent of its allowed covered charges.~~

~~(3) The department establishes the basic inpatient hospital RCC allowed amount by multiplying the hospital's assigned RCC rate by the allowed covered charges for medically necessary services. The department deducts client responsibility and third party liability (TPL), and makes other applicable payment program adjustments to the basic allowed amount to determine the actual payment due.~~

~~(4) For dates of admission:~~

~~(a) Before August 1, 2007, the department uses the RCC payment method to pay:~~

~~(i) DRG-exempt hospitals identified in WAC 388-550-4300; and~~

~~(ii) Any hospital for DRG-exempt services identified in WAC 388-550-4400. See the services identified in WAC 388-550-4400 (2)(g), (h), and (k) for an exception to this policy.~~

~~(b) For dates of admission on and after August 1, 2007, the department uses the RCC payment method to pay:~~

~~(i) Transplant services identified in WAC 388-550-4400;~~

~~(ii) DRG and per diem payment method high outlier payments;~~

~~(iii) Long term acute care (LTAC) hospital services not covered under the LTAC per diem rate; and~~

(iv) Other services specified by the department.

(5) For dates of admission before August 1, 2007, the department pays in-state and bordering city hospitals that lack sufficient Medicare cost report data to establish a hospital specific RCC, using the weighted average in-state:

(a) RCC rate for applicable inpatient services identified in WAC 388-550-4300 and 388-550-4400; and

(b) Outpatient rate as provided in WAC 388-550-6000.

(6) The department pays out-of-state hospitals for covered services as described in WAC 388-550-4000.

(7) The department identifies all in-state hospitals that have hospital specific RCC rates, and calculates the weighted average in-state RCC rate annually by dividing the department determined total allowable costs of these hospitals by the department determined total patient-related revenues associated with those costs.

(8) The department allows hospitals an all-inclusive administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because an appropriate placement outside the hospital is not available.

(a) Upon request, the department's nursing facility rate-setting staff provides the department's hospital rate-setting staff with the statewide weighted average nursing facility Medicaid payment rate each year to update the all-inclusive administrative day rate on November 1.

(b) The department does not pay for ancillary services provided during administrative days.

(c) The department identifies administrative days during the length of stay review process after the client's discharge from the hospital.

(d) The department pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a stay until an appropriate sub-acute placement can be made.

(9) The department calculates the weighted average in-state hospital outpatient rate annually by multiplying the weighted average in-state RCC rate by the outpatient adjustment factor.

(10) For hospitals that have their own hospital specific inpatient RCC rate, the department calculates the hospital's specific hospital outpatient rate by multiplying the hospital's inpatient RCC rate by the outpatient adjustment factor.

(11) The outpatient adjustment factor:

(a) Must not exceed 1.0; and

(b) Is updated annually. At the time the outpatient adjustment factor is updated, the hospital outpatient rate for the hospital is adjusted.

(12) The department establishes the basic hospital outpatient allowed amount for a claim as provided in WAC 388-550-6000 and 388-550-7200. The department deducts any client responsibility and any third-party liability (TPL), and makes any other applicable payment program adjustments to the allowed amount to determine the actual payment due.

(13) The department allows hospitals a swing bed day rate for those days when a client is receiving department-approved nursing service level of care in a swing bed. The department's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The department does not allow payment for acute inpatient level of care for swing bed days when a client is receiving department-approved nursing service level of care in a swing bed.

(b) The department's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC 388-550-6000 and 388-550-7200, and may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The department allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that are provided to a client receiving department-approved nursing service level of care, to be billed directly by a pharmacy through the point-of-sale system. The department does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim)) is defined in WAC 388-550-1050. The department uses:

(a) The RCC payment method to pay hospitals for hospital services that are exempt from the diagnosis related group (DRG), per diem, ambulatory payment classification (APC), maximum allowable fee schedule, and per case payment methods.

(b) The term "ratio of costs-to-charges" to refer to the factor (rate) applied to a hospital's allowed covered charges to determine estimated costs for medically necessary services.

(2) The department:

(a) Determines the payment due a hospital under the RCC payment method for:

(i) Inpatient claims by multiplying the hospital's inpatient RCC rate by the allowed covered charges for medically necessary services.

(ii) Outpatient claims by multiplying the hospital's outpatient RCC rate by the allowed covered charges for medically necessary services.

(b) Deducts from the amount derived in (a) of this subsection any:

(i) Client responsibility amount;

(ii) Third-party liability (TPL) amount; and

(iii) Other applicable payment program adjustment.

(c) Limits the RCC payment to the hospital's allowable usual and customary charges.

(3) For inpatient hospital dates of admission before August 1, 2007, the department uses the RCC payment method to pay for inpatient hospital services that are:

(a) Provided in a hospital located in the state of Washington (see WAC 388-550-4000 for out-of-state hospital payment methods and WAC 388-550-3900 for payment methods to designated bordering city and critical border hospitals);

(b) Provided in a diagnosis related group (DRG)-exempt hospital identified in WAC 388-550-4300; and

(c) Identified in WAC 388-550-4400 as DRG-exempt services (see WAC 388-550-4400 (2)(g), (h), and (k) for exceptions).

(4) For inpatient hospital dates of admission on and after August 1, 2007, the department uses the RCC payment method to pay for:

(a) Organ transplant services identified in WAC 388-550-4400 (4)(h);

(b) High outlier qualifying claims (see WAC 388-550-3700 (14) and (15));

(c) Hospital services not covered under the LTAC per diem rate (see WAC 388-550-2596);

(d) Hospital services provided in hospitals eligible for certified public expenditure (CPE) payments (see WAC 388-550-4650(5)); and

(e) Any other hospital service identified and published by the department as being paid by the RCC payment method.

(5) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 388-550-2800(2), the department may apply an inpatient adjustment factor to the inpatient RCC payments made for the services in subsection (4) of this section, except as provided in subsection (6) of this section.

(6) For hospitals paid under the certified public expenditure (CPE) payment method, the inpatient adjustment factor referred to in subsection (5) of this section does not apply, except to payments for repriced claims adjusted according to WAC 388-550-4670 (2)(a)(ii).

(7) The department calculates each instate and critical border hospital's RCC rate as follows. The department:

(a) Divides each hospital's allowable costs by patient-related revenues associated with these allowable costs. The department determines the allowable costs and associated revenues.

(b) Excludes, prior to calculating the RCC rate, department nonallowed costs and nonallowed revenue, such as costs and revenues attributable to a change in ownership.

(c) Bases the RCC rate calculation on data from the hospital's "as filed" annual medicare cost report (Form 2552-96) and applicable patient revenue reconciliation data provided by the hospital. The "as filed" medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(d) Updates a hospital's inpatient RCC rate annually after the hospital sends its "as filed" hospital fiscal year medicare cost report to the centers for medicare and medicaid services (CMS) and the department. In the case where a delay in submission of the CMS medicare cost report to the medicare fiscal intermediary is granted by medicare, the department may adjust the RCC rate based on a department-determined method.

(e) Limits a noncritical access hospital's RCC payment to one hundred percent of its allowed covered charges.

(f) Determines an RCC rate, when a hospital is formed as a result of a merger (refer to WAC 388-550-4200), by combining the previous hospital's medicare cost reports and following the process in (a) of this subsection. The department does not use partial year cost reports for this purpose.

(g) Determines a new instate hospital's RCC rate by calculating and using the average RCC rate for all current non-critical access hospitals located in Washington state. The department annually calculates a weighted average instate RCC rate by identifying all instate hospitals with specific RCC rates and dividing the department-determined total patient-related revenues associated with those costs.

(8) The department calculates each hospital's outpatient RCC rate annually.

(a) The department calculates a hospital's outpatient RCC rate by multiplying the hospital's inpatient RCC rate by the outpatient adjustment factor (OAF).

(b) The department determines the weighted average instate hospital outpatient RCC rate by multiplying the instate weighted average inpatient RCC rate by the outpatient adjustment factor.

(9) The outpatient adjustment factor:

(a) Is the ratio between the outpatient and inpatient RCC payments, established in 1998 through negotiation with hospital providers;

(b) Is updated annually to adjust for cost and charge inflation;

(c) Must not exceed 1.0; and

(d) Is differentiated from the OPSS outpatient adjustment factor (defined in WAC 388-550-1050), and applies to hospitals exempt from OPSS.

NEW SECTION

WAC 388-550-4550 Administrative day rate and swing bed day rate. (1) **Administrative day rate.** The department allows hospitals an all-inclusive administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because an appropriate placement outside the hospital is not available.

(a) The department uses the annual statewide weighted average nursing facility medicaid payment rate to update the all-inclusive administrative day rate on November 1 of each year.

(b) The department does not pay for ancillary services provided during administrative days.

(c) The department identifies administrative days during the length of stay review process after the client's discharge from the hospital.

(d) The department pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a stay until an appropriate sub-acute placement can be made.

(2) **Swing bed day rate.** The department allows hospitals a swing bed day rate for those days when a client is receiving department-approved nursing service level of care in a swing bed. The department's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The department does not pay a hospital the rate applicable to the acute inpatient level of care for those days of a hospital stay when a client is receiving department-approved nursing service level of care in a swing bed.

(b) The department's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC 388-550-6000 and 388-550-7200. These ancillary services may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The department allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that

are provided to a client receiving department-approved nursing service level of care, to be billed directly by a pharmacy through the point of sale system. The department does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim.

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7050 OPSS—Definitions. The following definitions and abbreviations and those found in WAC 388-550-1050 apply to the department's outpatient prospective payment system (OPSS):

"Ambulatory payment classification (APC)" means a grouping that categorizes outpatient visits according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed.

"Budget target" means the amount of money appropriated by the legislature or through the department's budget process to pay for a specific group of services, including anticipated caseload changes or vendor rate increases.

"Budget target adjustor" means ~~((the department specific multiplier))~~ a department-established component of the APC payment calculation applied to all payable ambulatory payment classifications (APCs) to allow the department to reach and not exceed the established budget target.

"Discount factor" means the percentage applied to additional significant procedures when a claim has multiple significant procedures or when the same procedure is performed multiple times on the same day. Not all significant procedures are subject to a discount factor.

"Medical visit" means diagnostic, therapeutic, or consultative services provided to a client by a healthcare professional in an outpatient setting.

"Modifier" means a two-digit alphabetic and/or numeric identifier that is added to the procedure code to indicate the type of service performed. The modifier provides the means by which the reporting hospital can describe or indicate that a performed service or procedure has been altered by some specific circumstance but not changed in its definition or code. The modifier can affect payment or be used for information only. Modifiers are listed in fee schedules.

"National payment rate (NPR)" means a rate for a given procedure code, published by the centers for medicare and medicaid (CMS), that does not include a state or location specific adjustment.

"Nationwide rate" see "national payment rate."

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

"Outpatient code editor (OCE)" means a software program ~~((published by 3M Health Information Systems))~~ that the department uses for classifying and editing claims in ambulatory payment classification (APC) based OPSS.

"Outpatient prospective payment system (OPSS)" means the payment system used by the department to calcu-

late reimbursement to hospitals for the facility component of outpatient services. This system uses ambulatory payment classifications (APCs) as the primary basis of payment.

"Outpatient prospective payment system (OPSS) conversion factor" ~~((means a hospital-specific multiplier assigned by the department that is one of the components of the APC payment calculation))~~ see "outpatient prospective payment system (OPSS) rate."

"Outpatient prospective payment system (OPSS) rate" means a hospital-specific multiplier assigned by the department that is one of the components of the APC payment calculation.

"Pass-throughs" means certain drugs, devices, and biologicals, as identified by centers for medicare and medicaid services (CMS), for which providers are entitled to additional separate payment until the drugs, devices, or biologicals are assigned their own ambulatory payment classification (APC).

"Significant procedure" means a procedure, therapy, or service provided to a client that constitutes the primary reason for the visit to the healthcare professional.

"Status indicator (SI)" means a ~~((one digit identifier))~~ code assigned to each medical procedure or service by the ~~((outpatient code editor (OCE) software))~~ department that contributes to the selection of a payment method.

"SI" see "status indicator."

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7100 OPSS—Exempt hospitals. (1) The department ~~((exempts))~~ exempted the following hospitals from the initial implementation of the department's outpatient prospective payment system (OPSS) ~~((Refer to other sections in chapter 388-550 WAC for outpatient payment methods the department uses to pay hospital providers that are exempt from the department's OPSS.))~~

~~((1))~~ in 2004:

- ~~((a))~~ (a) Cancer hospitals;
- ~~((b))~~ (b) Critical access hospitals (CAHs);
- ~~((c))~~ (c) Free-standing psychiatric hospitals;
- ~~((d))~~ (d) Pediatric hospitals;
- ~~((e))~~ (e) Peer group A hospitals;
- ~~((f))~~ (f) Rehabilitation hospitals; and
- ~~((g))~~ (g) Veterans' and military hospitals.

(2) Effective for dates of service on and after July 1, 2009:

(a) Only CAHs remain exempt from OPSS; and

(b) The department pays all covered outpatient hospital services (except for those provided in CAHs), under the OPSS methodology.

(3) Refer to the applicable sections in chapter 388-550 WAC for outpatient payment methods used to pay hospitals exempted from OPSS (see subsections (1) and (2) of this section).

NEW SECTION

WAC 388-550-7450 OPSS budget target adjustor.

(1) The outpatient prospective payment system (OPSS) budget target adjustor is a component of the ambulatory payment classification (APC) payment calculation. The budget target

adjustor allows the department to reach but not exceed the established budget target. The same OPPS budget target adjustor value is applied to payments for all hospitals.

(2) The department calculates the OPPS budget target adjustor using:

(a) A payment system model developed by the department;

(b) The department's budget target;

(c) The department's outpatient fee schedule;

(d) Addendum B to 42 CFR Part 410 (medicare's hospital outpatient regulations and notices); and

(e) The wage index established and published by the centers for medicare and medicaid services (CMS) at the time the OPPS budget target adjustor is set for the upcoming year.

(3) In response to direction from the legislature, the department may change the method for calculating the OPPS budget target adjustor to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the biennial appropriations act or may be reflected in the level of funding appropriated to the department in the biennial appropriations act.

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7500 OPPS ((~~conversion factor~~) rate.

(1) The department calculates ((the) hospital-specific outpatient prospective payment system (OPPS) ((~~conversion factors~~ by modeling, using the centers for medicare and medicaid services (CMS)-addendum B and wage index information available and published at the time the OPPS conversion factors are set for the upcoming year)) rates using:

(a) A payment method model established by the department; and

(b) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) at the time the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) The department may adjust OPPS rates to pay for graduate medical education (GME) costs. The department obtains the GME information from a hospital's "as filed" annual medicare cost report (Form 2552-96) and applicable patient revenue reconciliation data provided by the hospital.

(a) The hospital's "as filed" medicare cost report must cover a period of twelve consecutive months in its medicare cost report year. In the case where a delay in submission of the CMS medicare cost report to the medicare fiscal intermediary is granted by medicare, the department may adjust the hospital's OPPS rate.

(b) The department may not pay GME expenses for hospitals in specified categories, and hospitals that meet, or fail to meet, conditions specified in statute or WAC.

(3) In response to direction from the legislature, the department may change the method for calculating OPPS rates to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the biennial appropria-

tions act or may be reflected in the level of funding appropriated to the department in the biennial appropriations act.

AMENDATORY SECTION (Amending WSR 07-13-100, filed 6/20/07, effective 8/1/07)

WAC 388-550-7600 OPPS payment calculation. (1)

The department follows the discounting and modifier policies of the centers for medicare and medicaid services (CMS). The department calculates the ambulatory payment classification (APC) payment as follows:

APC payment =
National payment rate x Hospital OPPS ((~~conversion factor~~)
rate x
Discount factor (if applicable) x Units of service (if applica-
ble) x
Budget target adjustor

(2) The total OPPS claim payment is the sum of the APC payments plus the sum of the lesser of the billed charge or allowed charge for each non-APC service.

(3) The department pays hospitals for claims that involve clients who have third-party liability (TPL) insurance, the lesser of either the:

(a) Billed amount minus the third-party payment amount; or

(b) Allowed amount minus the third-party payment amount.

(4) In response to direction from the legislature, the department may change the method for calculating OPPS payments to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the biennial appropriations act or may be reflected in the level of funding appropriated to the department in the biennial appropriations act.

WSR 09-09-007

PROPOSED RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed April 2, 2009, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-032.

Title of Rule and Other Identifying Information: WAC 392-121-250 Finance—General Apportionment—Certificated instructional staff.

Hearing Location(s): Old Capital Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on May 27, 2009, at 9:00 a.m.

Date of Intended Adoption: May 28, 2009.

Submit Written Comments to: Legal Services, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail penny.coker@k12.wa.us, fax (360) 753-4201, by May 26, 2009.

Assistance for Persons with Disabilities: Contact Clarice Nnanubu by May 26, 2009, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions clarify the definition of "nondegreed" to provide a clearer standard/criteria of what constitutes a nondegreed vocational/career and technical education instructional employee, beginning in the 2008-09 school year and thereafter.

Statutory Authority for Adoption: RCW 28A.150.-290(1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

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

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

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

April 2, 2009
Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 08-08-033, filed 3/25/08, effective 4/25/08)

WAC 392-121-250 Definition—Highest degree level. As used in this chapter, the term "highest degree level" means:

- (1) The highest degree earned by the employee from a regionally accredited institution of higher education;
- (2) "Nondegreed" for a certificated instructional employee who holds no bachelor's or higher level degree; or
- (3) "Nondegreed" for a certificated instructional employee who holds a valid vocational/career and technical education certificate (~~(acquired as the result of industrial experience rather than college training pursuant to WAC 181-77-041)~~): Provided, That the employee has obtained no other past or present education certificate or permit in which a degree is required pursuant to chapter 181-79A WAC.

WSR 09-09-022
PROPOSED RULES
GAMBLING COMMISSION

[Filed April 6, 2009, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-019.

Title of Rule and Other Identifying Information: Amending WAC 230-15-145 Making wagers with chips and coins.

Hearing Location(s): Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on July 10, 2009, at 9:00 a.m.

Date of Intended Adoption: July 10, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by July 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 230-15-145 requires players to make wagers and pay fees using chips. There is an exception that allows players to use half dollars and quarters in house-banked card games. The petitioner is requesting that players in nonhouse-banked games, primarily poker, be allowed to use half dollars or quarters to pay fees. This would allow poker operators to collect additional fees.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Lance Dodd, 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 not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 6, 2009

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 632, filed 11/14/08, effective 1/1/09)

WAC 230-15-145 Making wagers with chips or coin. Players in card games must make all wagers and pay fees to play card games with chips, except that:

(1) Players may use half dollars or quarters in house-banked card games; and in nonhouse-banked card games to pay fees.

(2) Players may use dimes and nickels in any game that allows a commission to be charged.

WSR 09-09-029
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed April 6, 2009, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-14-114.

Title of Rule and Other Identifying Information: Chapter 308-390 WAC, Uniform Commercial Code, revised Article 9.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard S.W., Room 209, Olympia, WA 98502, on May 26, 2009, at 1:30 - 3:00 p.m.

Date of Intended Adoption: May 29, 2009.

Submit Written Comments to: Margaret Vogeli, P.O. Box 9660, Olympia, WA 98507-9660, e-mail UCC@dol.wa.gov, fax (360) 586-4414, by May 22, 2009.

Assistance for Persons with Disabilities: Contact UCC@dol.wa.gov by May 15, 2009, TTY (360) 664-8885 or (360) 664-1530.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal chapter 308-390 WAC and adopt a new chapter 308-391 WAC:

- To align rules with the current model rules adopted by the International Association of Commercial Administrators.
- To simplify and improve the administration of the Uniform Commercial Code (UCC) by promoting uniform filing procedures in this state and the nation.
- To simplify the public's ability to discover and understand the UCC filing and search procedures.
- To increase public access to information.
- To reflect technological enhancements made to the UCC information management system.

Statutory Authority for Adoption: RCW 62A.9A-409.

Statute Being Implemented: Chapters 62A.9A, 60.68, 9A.82 RCW, RCW 60.13.040, 60.11.040.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Vogeli, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1530; Implementation: Reddy Adamala, 405 Black Lake Boulevard, Olympia, WA 98502; and Enforcement: Nancy Skewis, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1446.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this law.

April 6, 2009
 Nancy Skewis
 Administrator

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 308-390-100	General provisions.
WAC 308-390-101	Definitions.
WAC 308-390-102	UCC record delivery and time of filing.
WAC 308-390-103	Search request delivery.
WAC 308-390-104	Forms.
WAC 308-390-105	Fees.
WAC 308-390-106	Expedited services.
WAC 308-390-107	Methods of payment.
WAC 308-390-108	Overpayment and underpayment policies.
WAC 308-390-109	Bulk records.
WAC 308-390-201	Multiple names.
WAC 308-390-202	Deadline for filing a continuation statement.
WAC 308-390-203	Acknowledgment.
WAC 308-390-204	Grounds for refusal.
WAC 308-390-300	UCC information management system.
WAC 308-390-301	Primary data elements.
WAC 308-390-302	Names of debtors who are individuals.
WAC 308-390-303	Names of debtors that are organizations.
WAC 308-390-304	Estates.
WAC 308-390-305	Trusts.
WAC 308-390-306	Initial financing statement.
WAC 308-390-307	Amendment.
WAC 308-390-308	Assignment of powers of secured party of record.
WAC 308-390-309	Status of parties upon filing a continuation.
WAC 308-390-310	Status of parties upon filing a termination.
WAC 308-390-311	Correction statement.
WAC 308-390-312	Procedure upon lapse.
WAC 308-390-313	XML records.
WAC 308-390-314	EDI documents.
WAC 308-390-315	Direct on-line (non-XML) filing and search procedures.

WAC 308-390-400	Filing and data entry procedures.
WAC 308-390-401	Errors of the filing officer.
WAC 308-390-402	Notice of bankruptcy.
WAC 308-390-403	Data entry of names.
WAC 308-390-500	Search requests and reports.
WAC 308-390-501	Search requests.
WAC 308-390-502	Rules applied to search requests.
WAC 308-390-503	Optional information.
WAC 308-390-504	Search responses.
WAC 308-390-505	Transition.
WAC 308-390-600	Other lien notices.
WAC 308-390-601	Agricultural liens.
WAC 308-390-602	Processor lien or preparer.
WAC 308-390-603	Notice of liens in favor of a governmental body.

Chapter 308-391 WAC

UNIFORM COMMERCIAL CODE, ARTICLE 9

SECTION 1 - GENERAL PROVISIONS

NEW SECTION

WAC 308-391-100 Definitions. Terms used in these filing office rules but not defined below shall have the same meanings as those terms in chapter 62A.9A RCW.

(1) "Active record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the searchable indexes.

(2) "Address" means information provided as an address on a UCC record as long as it includes at least a city and a state or foreign country.

(3) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

(4) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(5) "Correction statement" means a UCC record that indicates a financing statement is inaccurate or wrongfully filed.

(6) "Filing office" and "filing officer" mean the director of the department of licensing or designee.

(7) "Filing officer statement" means a statement entered into the filing office's information system to correct an error made by the filing office.

(8) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(9) "Remitter" means a person who submits a UCC record and payment to the filing office for filing, whether the person is a filer or an agent of a filer responsible for submitting the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

(10) "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.

(11) "Secured party of record" includes a secured party of record as defined in the UCC as well as the person who has been a secured party of record and an amendment has been filed to delete that person as a secured party of record.

(12) "UCC" means the Uniform Commercial Code as adopted in this state under chapter 62A.9A RCW.

(13) "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements and liens as described in these filing office rules.

(14) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement, or a correction statement, and includes a record maintained by the filing office. The term does not refer exclusively to paper or paper-based writings.

(15) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system, which has not yet lapsed under RCW 62A.9A-515 with respect to all secured parties of record.

NEW SECTION

WAC 308-391-101 Methods to deliver UCC records—Time of filing. UCC records may be tendered for filing at the filing office as follows:

(1) Personal delivery at the filing office's street address. Delivery is accepted between 8:00 a.m. and 5:00 p.m. Monday through Friday except state holidays. The file time for a UCC record delivered by this method is when the UCC record is first examined by a filing officer for processing, even though the UCC record may not yet have been accepted for filing and subsequently may be rejected.

(2) Courier delivery at the filing office's street address. Delivery by courier is considered personal delivery under subsection (1) of this section and the same rules apply.

(3) Postal service delivery to the filing office's mailing address. The file time for a UCC record delivered by this method is when the UCC record is first examined by a filing officer for processing, even though the UCC record may not yet have been accepted for filing and subsequently may be rejected.

(4) Electronic mail and telefacsimile delivery are not accepted.

(5) Electronic filing. UCC records may be transmitted electronically using the XML format prescribed by the filing office. The time of filing of a UCC record delivered by this method is the time the filing office's information manage-

ment system determines that all the required elements of the transmission have been received in the required format.

(6) Direct web page data entry. UCC records may be delivered by on-line data entry using the filing office's web site on the internet. The file time for a UCC record delivered by this method is the time the entry of all required elements of the UCC record in the proper format is acknowledged by the on-line entry system.

(7) Means of communication. Regardless of the method of delivery, information in UCC records communicated to the filing office must be machine readable and only in the form of characters included in the American National Standards Institute (ANSI) character set 0-255. Handwriting is not an acceptable means of completing any UCC form.

(8) Transmitting utility. The only means to indicate to the filing office that an initial financing statement is being filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of lapse date, is to check the appropriate box on a UCC1 Addendum filed with the initial financing statement or by transmitting the information in the proper field in an electronic filing of the initial financing statement.

NEW SECTION

WAC 308-391-102 Search request delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. A search request for a debtor named on an initial financing statement may be made on the initial financing statement if the initial financing statement is accepted for filing and the search fee is also tendered.

NEW SECTION

WAC 308-391-103 Forms. The filing office accepts only the forms prescribed by RCW 62A.9A-521, and paper-based forms approved by the International Association of Commercial Administrators, and forms otherwise approved by the filing office. Forms approved by the filing office are available on the UCC web site.

NEW SECTION

WAC 308-391-104 Fees. (1) The nonrefundable processing fee for filing and indexing a UCC record is:

FILINGS	DELIVERY MODE	FEE INCLUDING SURCHARGE
Financing Statement	electronic	\$11.00
Financing Statement Amendment	electronic	\$11.00
UCC1 Financing Statement (1 or 2 pages)	mail	\$23.00

FILINGS	DELIVERY MODE	FEE INCLUDING SURCHARGE
UCC3 Financing Statement Amendment (1 or 2 pages)	mail	\$23.00
UCC5 Correction Statement (1 or 2 pages)	mail	\$23.00
Attachment	mail and electronic	\$1.00 each page

(2) UCC search fee. The nonrefundable fee for processing a UCC search request is:

SEARCH TYPE	DELIVERY MODE	FEE
Search by debtor name	electronic	No charge
Search by file number	electronic	No charge
Debtor name search with copies	electronic	\$15.00
Search held to reflect the filing	electronic	\$10.00/debtor name
UCC11 Search response	mail	\$10.00
UCC11 Search response with copies	mail	\$15.00
Search held to reflect the filing (UCC1 box 7)	mail	\$10.00/debtor name

(3) The fees for purchase of bulk data are:

BULK DATA	DELIVERY MODE	FEE
Full text	electronic	\$500
Text plus images	electronic	\$1,000
Weekly updates	electronic	\$150

NEW SECTION

WAC 308-391-105 Expedited services. Expedited services are not provided.

NEW SECTION

WAC 308-391-106 Methods of payment. Filing fees and search fees may be paid by the following methods:

(1) Cash. Payment in cash is accepted if paid in person at the filing office.

(2) Checks. Personal checks, cashier's checks, and money orders made payable to the filing office are accepted for payment provided that the drawer (or the issuer in the case of a cashier's check or money order) is deemed creditworthy by the filing office in its discretion. Checks may be made payable in an amount to be filled in by the filing office if the filing office is clearly authorized to fill in the amount.

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association (NACHA) rules

from remitters who have entered into appropriate NACHA-approved arrangements for electronic transfers with the UCC filing office and who authorize the relevant transfer under those arrangements and rules.

(4) Credit cards. The filing office accepts payment by credit cards issued by approved issuers. Remitters must provide the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued, the billing address for the card, and any other information required by the filing office to complete the transaction. Payment will not be deemed tendered until the issuer or its agent has confirmed payment. This method of payment is accepted for on-line services only.

(5) The filing office accepts payment for bulk data by check or electronic funds transfer, except weekly updates which must be paid by electronic funds transfer.

NEW SECTION

WAC 308-391-107 Overpayment and underpayment policies. (1) Overpayment. The filing office refunds the amount of an overpayment exceeding \$9.99 to the remitter. The filing office refunds an overpayment of \$9.99 or less only upon the written request of the remitter. The refund is mailed to the name and address provided in box B within thirty days under separate cover.

(2) Underpayment. Upon receipt of a UCC record or search request with an insufficient payment, the filing office returns a copy of the request to the name and address provided in box B. The processing fees paid under WAC 308-391-104 are not refundable and the remitter must submit a new payment.

NEW SECTION

WAC 308-391-108 Public bulk records services. Records filed at the UCC office are available in bulk electronic format to any member of the public on a nondiscriminatory basis. A reimbursable services agreement between the purchaser and the department must be established prior to purchase.

(1) Full text data. The data elements of all active records may be purchased monthly.

(2) Image data. Images of those records filed on paper since October 1, 2001, may be purchased monthly if purchased with full text data.

(3) Weekly updates. A purchaser may subscribe to receiving weekly updates of the records and images filed in the previous week.

NEW SECTION

WAC 308-391-109 Fees for public records services. Fees and payment methods for purchase of bulk data are identified in WAC 308-391-104.

SECTION 2 - ACCEPTANCE AND REFUSAL OF RECORDS

NEW SECTION

WAC 308-391-200 Role of the filing officer. The duties and responsibilities of the filing officer are ministerial. In accepting for filing or refusing to file a UCC record under these rules, the filing officer does not:

- Determine the legal sufficiency or insufficiency of the UCC record;
- Determine that information in the record is correct or incorrect, in whole or in part; or
- Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

NEW SECTION

WAC 308-391-201 Time schedule for filing a continuation statement. (1) First day permitted.

(a) A continuation statement may be filed no earlier than six months preceding the date in which the financing statement would lapse. Example: If a financing statement will lapse on July 7th, the earliest the corresponding continuation statement may be filed is January 7th of the same year.

(b) If there is no corresponding date, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. Example: If a financing statement will lapse on October 31st, the earliest the corresponding continuation statement may be filed is April 30th. This rule is subject to the ability of the filing office to take delivery of the continuation statement.

(2) Last day permitted.

(a) The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses. This rule is subject to the ability of the filing office to take delivery of the continuation statement. Accordingly, the time of filing of the continuation statement must occur on or prior to the last day. Delivery by certain means of communication may not be available on the last day if the filing office is not open for business or the on-line services are unavailable.

(b) The one exception to this rule pertains to a record which lapses on February 29th in a year when there is no February 29th. The last day on which a continuation statement may be filed is March 1st.

NEW SECTION

WAC 308-391-202 Grounds for refusal. In determining under RCW 62A.9A-516 whether or not there is one or more grounds to refuse a UCC record, the filing office will refuse a record for any of the following reasons:

(1) The financing statement does not provide an address that meets the minimum requirements for an address as set forth in these filing office rules.

(2) The information on the financing statement form is not machine-printed. However, attachments to the form may be handwritten.

(3) The record contains illegible information. Labels and imprints from ink stamps are considered illegible.

(4) The named debtor(s) is a public official, as provided in RCW 60.70.030.

NEW SECTION

WAC 308-391-203 Procedure upon refusal. If the filing office finds grounds to refuse a UCC record, the filing office communicates the reason(s) for the refusal and other related information to the name and address provided in box B on the financing statement. The refusal notice will be communicated within two business days after the refused UCC record was received by the filing office, by mail or more expeditious means as the filing office shall determine. Records of refusal, including a copy of the refused UCC record and the ground(s) for refusal, are maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

NEW SECTION

WAC 308-391-204 Refusal errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused, the filing officer will file the UCC record with the filing date and time the UCC record was originally submitted for filing. A filing officer statement record relating to the initial financing statement is placed in the UCC information management system on the date that the corrective action was taken. The filing officer statement provides the date of the correction and explains the nature of the corrective action taken. The filing officer statement record is preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

NEW SECTION

WAC 308-391-205 Notification of defects. Nothing in these rules prevents a filing officer from communicating to a filer or a remitter that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

SECTION 3 - UCC INFORMATION MANAGEMENT SYSTEM

NEW SECTION

WAC 308-391-300 General. The filing office uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names included on financing statements and liens that are in active records. The rules in this section describe the UCC information management system.

NEW SECTION

WAC 308-391-301 Primary data elements. The primary data elements used in the UCC information management system are the following:

(1) Identification numbers.

(a) Each initial financing statement or lien is identified by its unique file number. A record is created in the information management system for each initial financing statement or lien and all information comprising the record is maintained in the system. The record is identified by the same information assigned to the initial financing statement or lien.

(b) A UCC record other than an initial financing statement or lien is identified by a unique file number assigned by the UCC information management system. In the UCC information management system, all UCC records other than initial financing statements and liens are linked to the record of their related initial record.

(2) Type of record. The type of UCC record from which data is transferred is identified in the UCC information management system from information supplied by the remitter.

(3) Filing date and filing time. The filing date and filing time of UCC records are stored in the UCC information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of parties. The names and addresses of debtors and secured parties are transferred from UCC records to the UCC information management system.

(5) Page count. The total number of pages in a UCC record is maintained in the UCC information management system.

(6) Lapse indicator. An indicator is maintained by which the information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse.

(7) Indexes of names. The filing office maintains in the UCC information management system a searchable index of organization debtor names, a searchable index of individual debtor names, a searchable index of organization secured party names, and a searchable index of individual secured party names. The index is not a separate data base but is comprised of records in the UCC information management system identified to be included in the searchable index.

NEW SECTION

WAC 308-391-302 Individual debtor names. For purposes of these rules, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Individual name fields. Individual debtor names are stored in files that include only the individual debtor names, and not organization debtor names. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. The name of a debtor with a single name (e.g., "Cher") is treated as a last name and shall be entered in the last name field. The filing office assumes no responsibility for the accurate designa-

tion of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(2) Titles, prefixes and suffixes. Titles, prefixes (e.g., "Ms.") and suffixes or indications of status (e.g., "M.D.") are not typically part of a debtor's name. However, when entering a "name" into the UCC information management system, the filing office will enter the data exactly as it appears in the fields.

(3) Truncation of individual names. Personal name fields in the UCC information management system are fixed in length. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing office, up to the maximum length of the data entry field. The lengths of data entry name fields are as follows:

- (a) First name: 100 characters.
- (b) Middle name: 100 characters.
- (c) Last name: 100 characters.
- (d) Suffix: 10 characters.

NEW SECTION

WAC 308-391-303 Organization debtor names. For purposes of these rules, an "organization debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Single field. Organization debtor names are stored in files that include only organization debtor names and not individual debtor names. A single field is used to store an organization debtor name.

(2) Truncation of organization names. The organization debtor name field in the UCC data base is fixed in length. The maximum length is 300 characters. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing office, up to the maximum length of the organization debtor name field.

NEW SECTION

WAC 308-391-304 Estates. The debtor name to be provided on a financing statement for a debtor that is an estate is the name of the relevant decedent. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the filer should provide the debtor name as an individual debtor name. However, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in the fields.

NEW SECTION

WAC 308-391-305 Trusts. The debtor name provided for a debtor that is a trust or a trustee acting in respect of trust property is the name of the trust as set forth in its organic record(s), if the trust has such a name. If the trust does not have such a name, the name of the trust's settlor will be used for the debtor name. In order for the information management system to function in accordance with the usual expect-

tations of filers and searchers, the name of a trust or of a settlor that is an organization is provided as an organization debtor name, and the name of a settlor who is an individual is provided as an individual debtor name, in each case without regard to the nature or character of the debtor. However, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in the fields.

NEW SECTION

WAC 308-391-306 Initial financing statement. Upon filing an initial financing statement the status of the parties and the status of the financing statement will be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement is a secured party of record, except that if the UCC record names an assignee, the secured party/assignor is not a secured party of record and the secured party/assignee is a secured party of record. Both names are indexed in the UCC information management system while the financing statement is an active record.

(2) Status of debtor. Each debtor name provided in the initial financing statement is indexed in the UCC information management system while the financing statement is an active record.

(3) Status of financing statement. The financing statement is an active record. A lapse date is calculated, five years from the file date, unless the initial financing statement indicates that it is filed against a transmitting utility, in which case there will be no lapse date.

NEW SECTION

WAC 308-391-307 Amendments generally. Filing an amendment does not change the status of the parties on the record.

(1) If an amendment adds a debtor or a secured party to the record, the new debtor or secured party is added to the appropriate index and associated with the record of the financing statement in the UCC information management system.

(2) An amendment that designates an assignee causes the assignee to be added as a secured party of record.

(3) If an amendment deletes a debtor or a secured party from a financing statement, no debtor or secured party of record is deleted from the UCC information management system. A deleted secured party will still be treated by the filing office as a secured party of record as the filing office cannot verify the effectiveness of an amendment.

NEW SECTION

WAC 308-391-308 Continuation statement. (1) Continuation of lapse date. Upon the timely filing of one or more continuation statements by any secured party(s) of record, the lapse date of the financing statement is postponed for five years. The lapse date is postponed once only, even if more than one continuation statement is filed within a given six-month period prior to a lapse date.

(2) Status. The filing of a continuation has no effect upon the status of any party to the financing statement or upon the status of the financing statement.

NEW SECTION

WAC 308-391-309 Termination. The filing of a termination has no effect upon the status of any party to the financing statement or upon the status of the financing statement.

NEW SECTION

WAC 308-391-310 Correction statement. The filing of a correction statement has no effect upon the status of any party to the financing statement, the status of the financing statement, or to the information maintained in the information management system.

NEW SECTION

WAC 308-391-311 Filing officer statement. A filing officer statement affects the status of parties and of the relevant financing statement as provided in the corrective action described in the filing officer statement.

NEW SECTION

WAC 308-391-312 Procedure upon lapse. If there is no timely filing of a continuation with respect to a financing statement, the financing statement lapses on its lapse date but no action is then taken by the filing office.

NEW SECTION

WAC 308-391-313 Removal of record. A financing statement must remain as an active record until at least one year after it lapses, or if it is indicated to be filed against a transmitting utility, until at least one year after it is terminated with respect to all secured parties of record. On or after the first anniversary of the lapse or termination date, the filing office or the UCC information management system may remove the financing statement and all related UCC records from the searchable indexes or from the UCC information management system and the removed UCC records will cease to be active records. UCC records removed from the UCC information management system cannot be retrieved.

SECTION 4 - FILING AND DATA ENTRY PROCEDURES

NEW SECTION

WAC 308-391-400 Errors of the filing office. The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time. If a correction is made to a record after the filing office has issued a search report with a through date and time on or after the filing date and time of the financing statement, the filing office will add a filing officer statement for that UCC record on the date that the corrective action was taken. The filing officer statement will provide the date and an explanation of the correction.

NEW SECTION

WAC 308-391-401 Data entry. Data provided on a paper-based form is keyed into the system exactly as it appears without regard to apparent errors. Data provided in electronic form is transferred to the information management system exactly as submitted by the remitter. The UCC information management system will not recognize characters outside the ANSI character set as described in WAC 308-391-101. The filing office may determine alternate characters or letters for nonstandard characters and will post these alternates on the web site.

NEW SECTION

WAC 308-391-402 Verification of data entry. (1) The filing office verifies accuracy of the data entry performed by the filing officers of UCC records entered into the UCC information management system.

(2) Data entry performed by remitters in filing UCC records electronically is the responsibility of the remitter and is not verified by the filing office.

NEW SECTION

WAC 308-391-403 Master amendments. The filing office will not accept a master or global amendment to multiple records.

NEW SECTION

WAC 308-391-404 Notice of bankruptcy. The filing office takes no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

NEW SECTION

WAC 308-391-405 Redaction of certain information. The filing office may be obliged to redact certain information from the information it provides to searchers and bulk data purchasers in accordance with applicable privacy and identity theft protection laws. Such information should not be included in UCC financing statements and may be redacted in accordance with those laws.

SECTION 5 - SEARCH REQUESTS AND REPORTS

NEW SECTION

WAC 308-391-500 General requirements. The filing office maintains for public inspection a searchable index of all active records in the UCC information management system. Active records are retrievable by the name of the debtor, by the name of the secured party, or by the file number of the UCC record. Each active record related to an initial financing statement is retrieved with the initial financing statement. A search by file number does not retrieve related records.

NEW SECTION**WAC 308-391-501 Search requests—Required information.** Search requests must include the following:

(1) Name to be searched. A search request must set forth the name to be searched using designated fields for organization and individual first, middle, and last names. A search request will be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor or secured party that is the subject of the search.

(2) Requesting party. The name and address of the person to whom the search results are to be sent.

(3) Fee. The appropriate fee shall be tendered by a method described in WAC 308-391-106.

(4) Search logic. The request shall specify if a search methodology other than that described in WAC 308-391-503 is to be applied in conducting the search. If no such methodology is specified, the one described in WAC 308-390-503 will be applied.

NEW SECTION**WAC 308-391-502 Search requests—Optional information.** Search requests may include the following:

(1) The request may limit the UCC records that would normally be provided by requesting that results be limited to those UCC records that:

- Include a particular city in the debtor address;
- Were filed within a particular range of dates; or
- Relate to agricultural liens and non-UCC records only.

(2) Scope of search. A search request may ask for a search that reports all active records retrieved by the search rather than only unexpired records retrieved by the search.

(3) Mode of delivery. The filing office will honor an on-line request to return the results by courier if the remitter provides a valid courier account number and the requested mode is available to the filing office.

(4) Search request with filing. If a filer requests a search at the time an initial financing statement is filed, by checking box 7 of the UCC1 or by marking the appropriate field on the on-line initial financing statement, the search request will be conducted as soon as it is possible to retrieve all relevant UCC records filed on or prior to the date the initial financing statement is filed. A fee is required for each debtor name searched.

NEW SECTION

WAC 308-391-503 Search methodology. Search results are produced by the application of search logic to the name presented to the filing office. Human judgment does not play a role in determining the results of the search.

(1) Standard search logic. The following rules describe the filing office's standard search logic and apply to all searches except for those where the search request specifies that a nonstandard search logic be used:

(a) There is no limit to the number of matches that may be returned in response to the search criteria.

(b) No distinction is made between upper and lower case letters.

(c) The character "&" (the ampersand) is deleted and replaced with the characters "and" in each place it appears in the name.

(d) Punctuation marks and accents are disregarded. Punctuation and accents include all characters other than the numerals 0 through 9 and the letters A through Z (in any case) of the English alphabet.

(e) The following words and abbreviations at the end of an organization name that indicate the existence or nature of the organization are "disregarded" to the extent practicable as determined by the filing office's programming of its UCC information management system:

ATTORNEYS AT LAW, MEDICAL DOCTORS PROFESSIONAL ASSOCIATION, PROFESSIONAL ASSOCIATION, NATIONAL ASSOCIATION, SAVINGS ASSOCIATION, MEDICAL DOCTORS PROFESSIONAL CORPORATION, PROFESSIONAL CORPORATION, SERVICE CORPORATION, PROFESSIONAL LIMITED LIABILITY COMPANY, LIMITED LIABILITY COMPANY" & ", PROFESSIONAL LIMITED LIABILITY CO, REGISTERED LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED PARTNERSHIP, GENERAL PARTNERSHIP, AS TRUSTEE, REAL ESTATE INVESTMENT TRUST, BUSINESS TRUST, FEDERAL CREDIT UNION, CREDIT UNION, FEDERAL SAVINGS BANK" & ", NATIONAL BANK, SOLE PROPRIETORSHIP, GEN PART, PROF ASSN, PROF CORP, INCORPORATED, ASSOCIATION, CORPORATION, PARTNERSHIP, ASSOCIATES, CHARTERED, CHARTER, COMPANY, PARTNERS, RAILROAD, LIMITED, PARTSHP, TRUSTEE, AGENCY, ASSOC, TRUST, ASSN, ASSC, BANK, CORP, LTEE, L T E E" & ", MDPA, M D P A, MDPC, M D P C, PLLC, P L L C, REIT, R E I T, RLLP, L L L P, DBA, D B A, FCU, F C U, FSB, F S B, INC, LLP, L L P, LLC, L L C, LTD, SPA, S P A, CO, CU, C U, GP, G P, LC, L C, LP, L P, NA, N A, PA, P A, PC, P C, P S, PS, RR, SA, S A, SC, SP, S P

(f) The word "the" at the beginning of an organization debtor name is disregarded.

(g) All spaces are disregarded.

(h) For first and middle names of individual debtor names, initials are treated as the logical equivalent of all names that begin with those initials. For example, a search request for "John A. Smith" would cause the search to retrieve all records against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and with the initial "A" or any name beginning with "A" in the middle name field.

A first name with no middle name or initial is equated with all middle names and initials. For example, if the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all records against an individual with "John" or the initial "J" as the first name, "Smith" as the last name, and with any name or initial, or no name or initial, in the middle name field.

(i) If the name being searched is the last name of an individual name without any first or middle name provided, the search will retrieve from the UCC information management system all unexpired records or, if requested by the searcher, all active records with individual names that consist of only that last name.

(j) After using the preceding rules to modify the name being searched, the search will retrieve from the UCC information management system all unexpired records, or, if requested by the searcher, all active records with names that, after being modified as provided in this rule, exactly match the modified name being searched.

(2) Nonstandard search logic. The filing office provides a flexible Browse Names tool to help the searcher narrow the search to one specific name for the standard search request. It helps identify UCC records filed under old laws or under other laws (like IRS liens). It also helps to find names with alternate spellings, abbreviations and other variations.

NEW SECTION

WAC 308-391-504 Changes in standard search logic.

If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that could alter search results, the filing office will provide public notice of the change.

NEW SECTION

WAC 308-391-505 Search responses.

Reports created in response to a search request include the following:

(1) Copies. If copies are requested, copies of all UCC records retrieved by a debtor name search are provided unless only limited copies are requested by the searcher. Copies may reflect redaction of certain personal identifying information. The filing office cannot provide copies with a search by secured party name.

(2) Introductory information. The filing office includes the following information with a search response:

(a) Identification of the agency director responsible for the search report.

(b) Unique number that identifies the search report.

(c) The date and time the report was generated.

(d) The date on or prior to which a UCC record must have been filed with the filing office for it to be reflected on the search.

(e) Certification language: "The Director certifies that the following list and attached copies, if any, are a true and exact representation of all financing statements and non-UCC liens for the name searched, as filed with the Department of Licensing, Uniform Commercial Code Program, as of the through date shown above."

(f) Search logic disclaimer language: "A search limited to a particular city, range of dates, or file number may not reveal all records against a name searched. The searcher bears the risk of relying on such a search result."

(g) Name provided by the searcher to be searched.

(h) Search string. The name searched after modifications made as provided by WAC 308-391-503.

(i) Lien type searched. Identifies the types of records included: All UCC records, or Ag liens, or non-UCC records.

(j) Scope of search: Indicates whether it includes only unexpired, or all active records.

(k) Search logic used: RA-9 standard search logic is used in all certified searches.

(l) Copies. When requested, copies of records will be attached to a certified search report, but the individual copies will not be certified. The requestor may specify certain copies related to one specific debtor name.

(3) Report. The body of the search report will contain the following:

(a) Identification of record. Identification of each initial financing statement and non-UCC lien, including a listing of all related amendments, correction statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria. Financing statement information includes, but is not limited to the following:

- 1 Initial financing statement or lien file number.
- 2 The date and time the financing statement or lien was filed.
- 3 The lapse date as calculated as of the through date and time.
- 4 The debtor name(s) that appear(s) on record.
- 5 The debtor address(es) that appear(s) on record.
- 6 The secured party name(s) that appear(s) on record.
- 7 The secured party address(es) that appear(s) on record.
- 8 An indication of the type of each amendment, if any.
- 9 The date and time each amendment was filed, if any.
- 10 The amendment file number of each amendment, if any.
- 11 The date and time a correction statement was filed, if any.
- 12 The date and time a filing officer statement was filed, if any.

(b) A unique number assigned to the search report.

SECTION 6 - OTHER NOTICES OF LIENS

NEW SECTION

WAC 308-391-601 Agricultural liens. Agricultural liens are filed in the same manner as an initial financing statement. The filer shall designate the statement as an agricultural lien in box 5 of the UCC-1 form or the appropriate field on-line. The lien will be indexed by debtor name and will be revealed by searches as provided in WAC 308-391-505.

NEW SECTION

WAC 308-391-602 Processor lien or preparer lien.

(1) A producer or commercial fisherman may satisfy the condition in chapter 60.13 RCW that a statement evidencing the processor lien or preparer lien be filed under RCW 60.13.040 in a record, authenticated by the producer or fisherman, by using the same filing forms and procedures outlined in this chapter for filing a financing statement, and by satisfying the following additional statutory requirements prescribed in RCW 60.13.040:

(a) Designate the financing statement as a statement filed under RCW 60.13.040 evidencing the processor lien or preparer lien by marking "Non-UCC Filing" (not AG-lien) in box 5, and by stating which type of lien is claimed in box 8.

(b) State the true amount or a reasonable estimate of the debt demanded after deducting all credits and offsets and the date on which payment was due for the agricultural product or fish to be charged with the lien in box 10 of the Addendum.

(c) State the name and address of the processor(s), conditioner(s) or preparer(s) who received the agricultural product or fish to be charged with the lien in boxes 1, 2 and 11, as needed.

(d) State the name and address of the lien holder in box 3.

(e) Add a description sufficient to identify the agricultural product or fish to be charged with the lien in box 4.

(f) Include the statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien, and the statement that the act of filing this notice constitutes the present intention of the producer or commercial fisherman that the statements there are true and adopted by the producer or commercial fisherman as their own in box 10 of the Addendum. If you cannot include all of the information required to be included in box 10, use the additional space provided in box 16 of the Addendum with a cross-reference that it is a continuation of the information to be added to box 10.

(2) Authentication. The authorized filing of the financing statement on the approved forms, containing the additional information, and in the manner that complies with the requirements of this section is deemed to be an authenticated record by the producer or commercial fisherman as required by RCW 60.13.040(2).

(3) Where to file. File in the department of licensing as provided in WAC 308-391-101.

(4) Fee. The fees are the same as provided in WAC 308-391-104.

(5) Duration. As provided in RCW 60.13.060(1), the processor lien shall terminate twelve months after, and the preparer lien shall terminate fifty days after, the later of the date of attachment of the lien or filing of the statement, unless a suit to foreclose the lien has been filed before that time as provided in RCW 60.13.070. Thus a filed statement evidencing a processor lien or a preparer lien is not effective for five years, and need not, and may not be continued as provided in WAC 308-391-201.

(6) Mechanics of search. Crop liens claimed under chapter 60.11 RCW, processor liens or preparer liens claimed under chapter 60.13 RCW for which statements have been filed in accordance with this rule, and financing statements filed under RCW 62A.9A-310 are revealed in a search as provided in WAC 308-391-505.

NEW SECTION

WAC 308-391-603 Notice of liens in favor of a governmental body. Records of certain governmental liens are maintained by the filing office under statutes other than the UCC and are treated in a manner substantially similar to UCC records. These liens are included on all searches as provided in WAC 308-391-505:

(1) Notice of Federal Tax Lien, RCW 60.68.045;

(2) Criminal Profiteering Lien, RCW 9A.82.120 through 9A.82.140;

(3) Department of Justice Lien, RCW 60.68.015.

WSR 09-09-036

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 7, 2009, 4:19 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-08-400 Allowable fees for searching and duplicating medical records.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Room 152/153, Tumwater, WA 98501, on May 26, 2009, at 2:00 p.m.

Date of Intended Adoption: May 26, 2009.

Submit Written Comments to: Sherry Thomas, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by May 22, 2009.

Assistance for Persons with Disabilities: Contact Sherry Thomas by April 21, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to adjust the maximum fees medical providers are allowed to charge for searching and duplicating medical records. The adjustment is required by law to occur biennially, according to the change in the consumer price index (CPI) for the Seattle area. The fees will increase to allow for inflation.

Reasons Supporting Proposal: The proposed rule sets reasonable fees providers are allowed to charge for cost recovery. This adjustment is required by law to occur every biennium. The CPI for the Seattle-Tacoma-Bremerton area changed from 209.3 in December 2006 to 222.580 in December 2008, which is a 6.3% increase.

Statutory Authority for Adoption: RCW 70.02.010(15) and 43.70.040.

Statute Being Implemented: RCW 70.02.010(15).

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 and Implementation: Sherry Thomas, 310 Israel Road, Tumwater, WA, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

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)(v)

exempts rules the content of which is explicitly and specifically dictated by statute.

April 7, 2009
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 07-12-029, filed 5/30/07, effective 7/1/07)

WAC 246-08-400 How much can a medical provider charge for searching and duplicating medical records? RCW 70.02.010(15) allows medical providers to charge fees for searching and duplicating medical records. The fees a provider may charge cannot exceed the fees listed below:

- (1) Copying charge per page:
 - (a) No more than (~~ninety-six~~) one dollar and two cents per page for the first thirty pages;
 - (b) No more than (~~seventy-three~~) seventy-eight cents per page for all other pages.
- (2) Additional charges:
 - (a) The provider can charge a (~~twenty-two~~) twenty-three dollar clerical fee for searching and handling records;
 - (b) If the provider personally edits confidential information from the record, as required by statute, the provider can charge the usual fee for a basic office visit.
- (3) This section is effective July 1, (~~2007~~) 2009, through June 30, (~~2009~~) 2011.
- (4) HIPAA covered entities: See HIPAA regulation Section 164.524 (c)(4) to determine applicability of this rule.

WSR 09-09-037

PROPOSED RULES

WASHINGTON CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

[Filed April 8, 2009, 9:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-045.

Title of Rule and Other Identifying Information: Title 183 WAC, Operating procedures of the Washington citizens' commission on salaries for elected officials.

Adopt new WAC chapters to clarify and define commission operating policies and procedures, chapters 183-01, 183-02, 183-03, 183-05, 183-07, 183-08, 183-09, 183-10, and 183-11 WAC and repeal chapters 183-04 and 183-06 WAC.

Hearing Location(s): General Administration Building, Room 207, 210 11th Avenue S.W., Olympia, on May 27, 2009, at 10:00 a.m.

Date of Intended Adoption: May 28, 2009.

Submit Written Comments to: Carol Sayer, P.O. Box 43120, Olympia, WA 98504-3120, e-mail csayer@salaries.wa.gov, fax (360) 586-7544, by May 26, 2009.

Assistance for Persons with Disabilities: Contact Carol Sayer by May 20, 2009, (800) 809-8116 (toll free).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopt WAC chapters to inform the public about the commission's operat-

ing policies and procedures. Repealing chapter 183-04 WAC, Public records and chapter 183-06 WAC, Public hearing procedures and incorporate repealed chapters into chapters 183-05 and 183-07 WAC.

Reasons Supporting Proposal: Existing operating policies and procedures are out-of-date or do not exist. Adoption of comprehensive operating policies and procedures will aid the public in understanding the commission's role in state government and inform them how to contact the commission to obtain information and how they can become involved in the salary setting process.

Statutory Authority for Adoption: Chapter 43.03 RCW.

Statute Being Implemented: Chapter 43.03 RCW.

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

Name of Proponent: Washington citizens' commission on salaries for elected officials, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Carol Sayer, 210 11th Avenue S.W., Room 301A, Olympia, (360) 725-5669.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The citizens' commission on salaries for elected officials has determined that the rule is not subject to the Regulatory Fairness Act because the rule is for the purpose of informing the public about the commissions' operating policies and procedures.

A cost-benefit analysis is not required under RCW 34.05.328. The citizens' commission on salaries for elected officials is not an agency listed in RCW 34.05.328 (5)(a)(i).

April 8, 2009

Carol Sayer

Director

Chapter 183-01 WAC

PURPOSE AND AUTHORITY

NEW SECTION

WAC 183-01-010 Purpose. The purpose of the commission is to set the salaries of the elected officials in the executive, legislative, and judicial branches of state government including:

(1) Governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and insurance commissioner;

(2) Members of the legislature; and

(3) Justices of the supreme court and judges of the court of appeals, superior courts, and district courts.

NEW SECTION

WAC 183-01-020 Authority and duties. The commission's authority and duties are described in Article 2, section 1 of the state Constitution and in RCW 43.03.310.

Chapter 183-02 WAC**DEFINITIONS**NEW SECTION

WAC 183-02-010 Definitions. The definitions in this chapter apply throughout the title unless the context clearly requires otherwise.

(1) "Commission" means the Washington citizens' commission on salaries for elected officials. Where appropriate, the term "commission" also refers to the staff and employees of the commission.

(2) "Agency" means the Washington citizens' commission on salaries for elected officials. Where appropriate, the term "agency" also refers to the staff and employees of the commission.

(3) "Chair" means the chair of the commission.

(4) "Vice-chair" means the vice-chair of the commission.

(5) "Executive director" means the executive director of the commission.

(6) "Members" means the appointed members of the commission.

(7) As used in this chapter:

(a) Citations to state statutes and regulations include such laws as now or hereafter amended.

(b) The singular shall take the plural and either gender, the other, as the context requires.

Chapter 183-03 WAC**OPERATION**NEW SECTION

WAC 183-03-010 Organization. The commission is a state agency authorized by Article 28, section 1 of the state Constitution and chapter 43.03 RCW. The commission shall be solely responsible for its own organization, operation, and action as described in RCW 43.03.310(2).

NEW SECTION

WAC 183-03-020 Delegation of duties. The commission may delegate certain duties to the executive director but remains responsible for the official acts of its employees.

NEW SECTION

WAC 183-03-030 Operation and office location. The public can find out the commission's hours of operation by contacting the commission at its general mailing address, toll free telephone number, fax, or e-mail as follows:

(1) Contact information.

P.O. Box 43120, Olympia, WA 98504-3120

866-809-8116 (toll free)

360-586-7544 (fax)

(2) E-mail requests shall be sent to the commission by accessing the commission's web site at www.salaries.wa.gov and following the contact instructions.

(3) Office. The commission's office is located in the General Administration Building in Olympia, Washington, 210 11th Avenue S.W., Room 301A.

NEW SECTION

WAC 183-03-040 Information. Information about the commission and its operation, meetings, and actions may be obtained on the commission's web site at www.salaries.wa.gov or by contacting the commission at its general mailing address, toll free telephone number, fax, or e-mail as follows:

(1) Contact information.

P.O. Box 43120, Olympia, WA 98504-3120

866-809-8116 (toll free)

360-586-7544 (fax)

(2) E-mail requests shall be sent to the commission by accessing the commission's web site at www.salaries.wa.gov and following the contact instructions.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 183-04-010	Purpose.
WAC 183-04-020	Definitions.
WAC 183-04-030	Description of organization, operations, and procedures.
WAC 183-04-040	Where and when public records may be obtained.
WAC 183-04-050	Public records available.
WAC 183-04-060	Public records officer.
WAC 183-04-070	Requests for public records.
WAC 183-04-080	Copying and fees.
WAC 183-04-090	Disclosure procedure.
WAC 183-04-100	Review of denials of requests for public records.
WAC 183-04-110	Records index.

Chapter 183-05 WAC**PUBLIC RECORDS**NEW SECTION

WAC 183-05-010 Purpose. The purpose of this chapter is to implement the public records provisions of chapter 42.56 RCW.

NEW SECTION

WAC 183-05-020 Where and when public records may be obtained. The public may obtain public records by contacting the commission at its general mailing address, e-

mail, fax, or in person. Requests may not be made by telephone.

(1) Mail. Requests by mail shall be addressed to the commission's mailing address: The Washington Citizens' Commission on Salaries for Elected Officials, c/o Public Records Officer, P.O. Box 43120, Olympia, WA 98504-3120. The front of the envelope shall conspicuously state: "Public Records Request."

(2) E-mail. The commission will accept public disclosure requests by e-mail. E-mail requests shall be sent to the commission by accessing the commission's web site at www.salaries.wa.gov and following the contact instructions for e-mail. E-mail requests shall contain the subject line "Public Records Request."

(3) Fax. The commission will accept public disclosure requests by fax. Fax requests shall be addressed to "The Washington Citizens' Commission on Salaries for Elected Officials, c/o Public Records Officer" with the subject line "Public Records Request" and sent to 360-586-7544.

(4) In person. The public can find out the commission's hours of operation by contacting the commission as described in WAC 183-03-030. Requests may be made in person at the commission's office at the address identified in WAC 183-03-030(3).

NEW SECTION

WAC 183-05-030 Public records available. (1) The public may obtain public records of the commission under this chapter, in accordance with chapter 42.56 RCW, except as otherwise provided by law.

(2) Public records are available for inspection and copying by contacting the commission at its general mailing address, toll free number, fax, or e-mail as identified in WAC 183-03-030.

NEW SECTION

WAC 183-05-040 Public records officer. The executive director shall serve as the commission's public records officer and shall have charge of its public records. The executive director officer shall be responsible for implementing the commission's public disclosure rules and for coordinating staff and employees in this regard. The executive director may choose such designees as may be appropriate.

NEW SECTION

WAC 183-05-050 Requests for public records. Chapter 42.56 RCW requires the commission to prevent invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions and unreasonable disruptions of operations. Accordingly, the public may inspect, copy, or obtain copies of public records upon compliance with the following procedures:

(1) A member of the public who seeks a public record shall make a written request. No particular form of writing is required so long as the request complies with WAC 183-05-020 and contains the following additional information:

(a) The name, mailing address, and telephone number of the person requesting the record.

(b) The calendar date on which the request is made.

(c) Identification of the record requested with sufficient particularity that the commission can identify the requested record and make it available. Such identifying information might include the title, subject matter, and date of the record.

(d) A signed statement that the records will not be used for commercial purposes if a list of individuals is being requested, or for any other use prohibited by law.

(2) To facilitate processing the request, the person requesting the record may also include:

(a) Either a fax number or an e-mail address, or both.

(b) A reference to the record as it is described in the current public record index maintained by the commission.

(3) The public may make written public records requests to the commission by mail, telephone, fax, or e-mail in accordance with WAC 183-05-020. Members of the public making public records requests in person who have not reduced their request to writing shall be asked to complete a short form with the needed information. The purpose of requiring written requests is to assist the commission in tracking, managing, and responding to requests in a timely and orderly fashion.

(4) The commission shall assist persons making public records requests to appropriately identify the public records being sought. The commission may ask the requesting party to clarify what information is being sought.

NEW SECTION

WAC 183-05-060 Copying and fees. (1) Copying.

(a) The commission shall make copies on the commission's copy equipment when doing so will not unreasonably disrupt the operations of the commission or cause excessive interference with other essential functions or organizations with which the commission may share office space.

(b) Persons requesting public records may use their own copying equipment and paper without charge when the use of such equipment does not cause damage or disorganization to the public records, unreasonably impede the operations of the commission or cause excessive interference with other essential functions. The commission may supervise such copying at all times.

(2) Fees.

(a) The commission shall not charge a fee for locating documents, for making them available, or for inspection of public records by the public.

(b) The commission may impose a reasonable fee for providing copies of public records, for use of the commission's equipment, and for mailing costs, postage, delivery costs, and other costs directly incident to copying the records. The commission shall not charge fees that exceed the amount necessary to reimburse the commission for its actual costs.

(c) The commission shall not provide copies to requesting parties unless associated fees have been paid in full by cash, check, or money order. To ensure that copies requested and made are actually paid for, the commission may require payment prior to making the copies.

(d) The commission may agree to provide copies without fee to federal, state, local, or tribal governments, or to others, when doing so is in the best interest of the commission.

NEW SECTION

WAC 183-05-070 Disclosure procedure. (1) The commission shall review the requested public records prior to disclosure.

(2) If the records do not contain materials exempt from public disclosure, the commission shall disclose the records.

(3) If the records contain materials exempt from public disclosure, the commission shall deny disclosure of the exempt materials and disclose any remaining, nonexempt materials. At the time of the denial, the commission shall clearly specify in writing the reasons for the denial, including a statement of the specific exemptions or reason for denial of disclosure.

NEW SECTION

WAC 183-05-080 Review of denials of requests for public records. For the purpose of judicial review, final agency action is deemed to have occurred at the end of the second business day after the requesting party receives notification of a denial of inspection.

NEW SECTION

WAC 183-05-090 Records index. (1) Availability. The commission shall maintain and make available for public inspection and copying an index that provides identifying information for public records falling within the requirements of chapter 42.56 RCW.

(2) Form and content. The index shall be maintained in electronic form with copies available on paper. The index shall contain topic and subtopic headings.

(3) Location and availability. The index shall be available to the public under the same rules and on the same conditions as are applied to other public records.

(4) Schedule for revisions and updates. The commission will revise and update the index biennially.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 183-06-010 Definitions.
- WAC 183-06-020 Meetings.
- WAC 183-06-030 Conduct of meetings and order of business.

Chapter 183-07 WAC

MEETINGS

NEW SECTION

WAC 183-07-010 Meetings. The commission conducts its meetings in compliance with the Open Public Meetings Act, chapter 42.30 RCW.

(1) Other than executive sessions, the commission's regular meetings, special meetings, and emergency meetings are open to the general public.

(2) Regular meetings. In conformance with the requirement of RCW 43.03.310(6) that the commission schedule at least four public hearings to take public testimony on its proposed salary schedule, the commission shall schedule such hearings by majority vote. The public hearings so scheduled shall be "regular meetings" as defined by RCW 42.30.075. The commission shall fix the time and place of these public hearings and publish a schedule in the *Washington State Register*, in accordance with chapter 42.30 RCW, the Open Public Meetings Act.

(3) Special meetings. The chair or a majority of commission members may call a special meeting at any time in accordance with RCW 42.30.080. In addition, the time and place of special meetings scheduled at the same time that the regular meetings described in subsection (1) of this section are scheduled will also be published in the *Washington State Register*.

(4) Regular meetings and special meetings may be adjourned prior to the published end time if all business has been conducted.

(5) Executive sessions. The chair or a majority of commission members may call an executive session at any time in accordance with RCW 42.30.110.

(6) The presence of at least one-half of the members of the commission shall constitute a quorum.

(7) The affirmative vote of at least nine members of the commission is required to set a schedule of salaries as defined in RCW 43.03.310(4).

(8) The commission shall maintain records of meeting proceedings as minutes; duly recorded, and maintained at the commission's office.

NEW SECTION

WAC 183-07-020 Conduct of meetings and order of business. (1) All commission meeting business shall be transacted by motion. Motions may be made by any commission member and shall require a second.

(2) Voting on all motions shall be by voice vote unless a record of the vote is called for in which case the executive director shall call the roll in alphabetical order and record the vote of each member present, "yea" or "nay."

(3) The chair is a voting member of the commission.

(4) The order of commission meeting business shall be conducted as prescribed by the agenda.

(5) The executive director shall prepare each meeting's agenda in consultation with the chair.

(6) The commission shall approve the minutes of the preceding meeting as the first act of each meeting.

(7) The chair or any commission member may modify a meeting's agenda by motion.

NEW SECTION

WAC 183-07-030 Public hearing procedures. The commission seeks to foster public comment on proposed salary schedules through its public hearing process. The commission will, whenever possible, allow any person an opportunity to present written or oral testimony at its public hearings, upon compliance with reasonable procedures. Such procedures include, but may not be limited to the following:

(1) Those wishing to present oral testimony shall sign the public testimony roster. The commission will generally call for public comments in the order appearing on the public testimony roster but reserves the right to take testimony out of order if deemed necessary or beneficial. Elected officials and expert witnesses may be scheduled first because their testimony may help answer pending questions from the public.

(2) The commission's sign-in form does not ask persons attending any commission meeting to provide personal information such as a home address, e-mail address, or telephone number. Persons providing personal information are advised that such information becomes a public record and may be subject to public inspection and copying if not protected by federal or state law.

(3) To ensure that everyone attending the hearing can hear all oral testimony and questions, speakers shall address the commission after being recognized by the presiding member of the commission.

(4) Oral testimony and questions should be addressed to the presiding member of the commission.

(5) Because the commission wants to hear from as many people as possible, the commission may place reasonable limits on the time allowed for oral testimony. Time for testimony is generally limited to five minutes per person. Answers to questions from the commission are generally limited to three minutes. These time limits may be reduced if deemed necessary by the presiding member of the commission to accommodate all speakers.

(6) Persons testifying, whether orally or in writing, shall state their name and identify whether they represent an organization. If they represent an organization, they shall identify the organization.

(7) Speakers should focus their testimony on the relationship between elected officials' salaries and the duties of their position (RCW 43.03.300 and 43.03.310(1)). Testimony should not focus on elected officials' job performance. Consideration of job performance is the responsibility of the voters, not the commission.

(8) Speakers shall briefly describe the identity and nature of any documents referenced in their comments, and indicate where the document can be reviewed or obtained.

Chapter 183-08 WAC

APPOINTMENTS

NEW SECTION

WAC 183-08-010 Membership. Membership on the commission is as defined in RCW 43.03.305.

NEW SECTION

WAC 183-08-020 Appointment. The secretary of state and the speaker of the house of representatives and the president of the senate shall forward the names of the persons selected as described in RCW 43.03.305(3) and WAC 434-209-080 to the governor for appointment.

NEW SECTION

WAC 183-08-030 Term of office. The governor shall appoint the individuals selected under RCW 43.03.305 to the commission for a four-year term.

NEW SECTION

WAC 183-08-040 Vacancy. (1) Upon a vacancy in any position on the commission, a successor shall be selected and appointed to fill the unexpired term of the previous member in accordance with RCW 43.03.305(6) and WAC 434-209-090 if the vacancy is in a congressional district.

(2) Upon a vacancy in any position on the commission due to a commissioner having two unexcused absences as defined in RCW 43.03.305(4), the executive director will send a letter to that commissioner informing him or her of the relinquishment of his or her position on the commission. The selection and appointment to fill the vacancy shall be conducted in accordance with RCW 43.03.305(6) and WAC 434-209-090 if the vacancy is in a congressional district.

Chapter 183-09 WAC

OFFICERS

NEW SECTION

WAC 183-09-010 Election of chair and vice-chair. (1) The members of the commission shall elect a chair and vice-chair from among their membership as described in RCW 43.03.310(4). Generally, the election of a chair and vice-chair will occur at the commission's fall planning meeting.

(2) There is no set term of office for the chair or the vice-chair.

(3) Upon election, the chair and vice-chair will immediately assume their duties.

(4) The chair and vice-chair may be replaced by majority vote of the commission members at any time.

NEW SECTION

WAC 183-09-020 Duties and responsibilities of chair duties and responsibilities. The chair is the presiding officer

and shall conduct the meetings of the commission and perform other such duties as necessary.

NEW SECTION

WAC 183-09-030 Duties and responsibilities of vice-chair. In the absence of the chair, the vice-chair shall assume the duties of the chair.

NEW SECTION

WAC 183-09-040 Temporary presiding officer. In the absence of the chair and the vice-chair from a meeting, a temporary presiding officer may be designated as acting chair by a majority vote of the commission members present at the meeting.

Chapter 183-10 WAC

MEMBERS

NEW SECTION

WAC 183-10-010 Commission member duties and responsibilities. Members of the commission are considered to be officers of the state and are required to follow the laws, rules, and regulations of the state of Washington. Commissioners are also required to follow the governing statutes and operating rules, policies, and procedures of the commission.

Chapter 183-11 WAC

EXECUTIVE DIRECTOR

NEW SECTION

WAC 183-11-010 Powers and duties. (1) The executive director shall be responsible to the commission for the administration of the commission and its business.

(2) The executive director shall act as the chief administrative officer of the commission and is delegated authority over all matters affecting the operation of the commission.

(3) The executive director shall report to the chair.

(4) In consultation with the chair, the executive director shall appoint such employees as may be appropriate and necessary to the function of the commission and shall set the salary of such employees.

(5) The executive director may delegate authority to employees to act for him or her as needed and appropriate.

NEW SECTION

WAC 183-11-020 Appointment. The chair shall appoint and set the salary of the executive director.

NEW SECTION

WAC 183-11-030 Removal. The executive director may be discharged by majority vote of the commission.

WSR 09-09-039

**WITHDRAWAL OF PROPOSED RULES
SENTENCING GUIDELINES COMMISSION**

[Filed April 8, 2009, 2:07 p.m.]

Pursuant to RCW 34.05.335 and WAC 1-21-060, the sentencing guidelines commission hereby withdraws its CR-102 proposed rule making, filed February 18, 2009, WSR 09-05-101.

The reason underlying this withdrawal is to give commission members more time to pursue suggestions posed by the membership and make changes if necessary.

If you have any questions, Jean Soliz-Conklin can be reached at (360) 407-1056.

Jean Soliz-Conklin
Executive Director

WSR 09-09-040

**WITHDRAWAL OF PROPOSED RULES
SENTENCING GUIDELINES COMMISSION**

[Filed April 8, 2009, 2:07 p.m.]

Pursuant to RCW 34.05.335 and WAC 1-21-060, the sentencing guidelines commission hereby withdraws its CR-102 proposed rule making, filed February 18, 2009, WSR 09-05-102.

The reason underlying this withdrawal is to make some technical corrections due to pending legislation.

If you have any questions, Jean Soliz-Conklin can be reached at (360) 407-1056.

Jean Soliz-Conklin
Executive Director

WSR 09-09-041

**WITHDRAWAL OF PROPOSED RULES
SENTENCING GUIDELINES COMMISSION**

[Filed April 8, 2009, 2:07 p.m.]

Pursuant to RCW 34.05.335 and WAC 1-21-060, the sentencing guidelines commission hereby withdraws its CR-102 proposed rule making, filed February 18, 2009, WSR 09-05-103.

The reason underlying this withdrawal is to give commission members more time to pursue suggestions posed by the membership and make changes if necessary.

If you have any questions, Jean Soliz-Conklin can be reached at (360) 407-1056.

Jean Soliz-Conklin
Executive Director

WSR 09-09-052
PROPOSED RULES
SECRETARY OF STATE

(Elections Division)

[Filed April 10, 2009, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-01-051.

Title of Rule and Other Identifying Information: Election related procedures, including voter registration, voting systems, jurisdiction questionnaires, sample ballots, recounts, and candidate filing.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 Union Avenue S.E., Olympia, WA, (360) 902-4180, on May 28, 2009, at 11:00 a.m.

Date of Intended Adoption: May 29, 2009.

Submit Written Comments to: Joanie Deutsch, P.O. Box 40220, Olympia, WA 98504-0220, e-mail jdeutsch@sec.state.wa.gov, fax (360) 586-5629, by May 28, 2009.

Assistance for Persons with Disabilities: Contact Joanie Deutsch by May 28, 2009, TTY (800) 422-8683 or (360) 902-4182.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules change requirement for jurisdiction questionnaires to be sent out only in the year the local jurisdiction is scheduled to elect officers, clarify the requirement for providing sample ballots at the county auditor's office or on the county auditor's web site, create a definition for overvote and undervote, clarify required information for the county auditor's abstract of votes, clarify a ballot may be rejected where the voter validly transferred out of the county, clarify in a manual recount the two manual counts are compared to each other, clarify when voter registration applicants who fail the identification check are sent letters of notification, clarify county requirements on acceptance testing of voting systems and equipment, change reference from Federal Election Commission to Election Assistance Commission, and repeal language that is obsolete.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.24.070, 29A.24.091, 29A.80.041, 29A.36.151, 29A.60.235, 29A.08.135, 29A.64.061, 29A.08.113, 29A.12.070, and 29A.12.020.

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

Name of Proponent: Office of the secretary of state, elections division, governmental.

Name of Agency Personnel Responsible for Drafting: Joanie Deutsch, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4182; Implementation and Enforcement: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4168.

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

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

April 10, 2009

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 07-09-035, filed 4/11/07, effective 5/12/07)

WAC 434-215-005 Filing information—Questionnaire—Compiling and dissemination. Prior to March 1 (~~of each year~~), the county auditor shall send a questionnaire to the administrative authority of each local jurisdiction for which the auditor is the candidate filing officer subject to the provisions of RCW 29A.04.321 and 29A.04.330. The questionnaire must be sent in the year the local jurisdiction is scheduled to elect officers. The purpose of the questionnaire shall be to confirm information which the auditor (~~may disseminate to the public regarding the filing for elective offices~~) must use to properly conduct candidate filings for each office. The questionnaire should request, (~~as~~) at a minimum, confirmation of offices to be filled at the general election that year, the name of the incumbent, and the annual salary for the position at the time of the filing period. Responses should be received prior to April 1 of that year so that the filing information can be compiled and disseminated to the public at least two weeks prior to the candidate filing period.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-010 Sample ballots. Sample ballots shall be available at least fifteen days prior to an election. A printed copy must be made available through the office of the county auditor for duplication or a sample ballot must be published on the county auditor's web site. Sample paper ballots shall be printed in substantially the same form as official ballots (~~, but shall be a different color than the official ballot~~). Sample ballots shall be printed in a manner that makes them easily distinguishable from the official ballot. (~~Sample ballots shall be available at least fifteen days prior to an election. Such sample ballots shall be made available through the office of the county auditor and at least one shall be available at all polling places on election day.~~)

At any primary or election when a local voters' pamphlet is published which contains a full sample ballot, a separate sample ballot need not be (~~printed~~) produced.

Counties with populations of over five hundred thousand may produce more than one sample ballot for a primary or election, each of which lists a portion of the offices and issues to be voted on at that election. Sample ballots may be printed by region or area (e.g., legislative district, municipal, or other district boundary) of the county, provided that all offices and issues to be voted upon at the election appear on at least one of the various sample ballots (~~(printed for such county)~~). Each regional sample ballot shall contain all offices and issues to be voted upon within that region. A given office or issue may appear on more than one sample ballot, provided it is to be voted upon within that region. Sample ballots shall be made available and distributed to each (~~(polling place and to other locations within the appropriate region or area)~~) voting center.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of vote intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" on a ballot envelope for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) A mark witnessed by two people.

(6) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one."

(7) "Undervote" is no selections made for a race or measure.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-262-030 County auditor's abstract of votes. No later than the fifteenth day following any primary or special election and the twenty-first day following any general election the county canvassing board shall meet and canvass all ballots. Upon completion of this canvass, the board shall direct the county auditor to prepare the auditor's abstract of votes as defined by WAC 434-262-010. The reconciliation of absentee and vote by mail ballots must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received. In addition, county auditors must provide any additional information necessary to explain variances between the number of ballots counted compared to the number of ballots received and credited. ~~((The oaths and the reconciliation report must be substantially similar to the following:))~~ The certification reports established in RCW 29A.60.235(1) must

be included with the abstract of votes and must be submitted at the time of the county certification.

((STRICKEN GRAPHIC _____

Oath of County Auditor or Supervisor of Elections

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I solemnly swear that the returns of the (insert election) held on (insert date), in _____ County, State of Washington, have been in no way altered and that they are the same as when they were deposited in my office.

County Auditor or Supervisor of Elections

Subscribed and sworn to me this ___ day of (insert month, year).

Chairman, County Legislative Authority

Certification Reconciliation Report
_____ Election
(insert date)

County _____
Date of Completion _____

NOTE: Address confidentiality program participants must be included with service voters.

Registration

Total number of active registered voters in all precincts _____
Total number of inactive registered voters in all precincts _____
Total registered voters in all precincts _____

Total absentee ballots counted (includes absentee, VBM, federal write-in, overseas, out of state, and service ballots) _____
Total poll site ballots counted (includes poll site and provisional ballots) _____
Total Ballots counted _____

Absentee and VBM Ballots

The total number of absentee/VBM ballots originally issued _____
The total number of absentee/VBM ballots received _____
The total number of absentee/VBM ballots rejected _____
The total number of absentee/VBM ballots counted _____

STRICKEN GRAPHIC))

((STRICKEN GRAPHIC _____

Federal Write-In Ballots

The total number of federal write-in ballots counted _____

Out-of-State, Overseas, and Service Voters

The total number of out-of-state, overseas, and service voters' ballots issued _____

The total number of out-of-state, overseas, and service voters' ballots received _____

The total number of out-of-state, overseas, and service voters' ballots rejected _____

The total number of out-of-state, overseas, and service voters' ballots counted _____

Provisional Ballots

The total number of provisional ballots issued (by this county) _____

The total number of provisional ballots rejected (includes sending to other counties) _____

The total number of provisional ballots received from other counties _____

The total number of provisional ballots counted _____

Certification of the Canvassing Board

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

The undersigned officers designated by law as constituting the Canvassing Board for the County of _____, State of Washington, hereby certify that this is a full, true and correct copy of the Abstract of Votes including the cumulative results, precinct results, and a reconciliation report of votes cast at the (insert election) held on (insert date), in _____ County, State of Washington, and that the following are the true and reconciled numbers of voters and votes counted.

Witness our hands and official seal this _____ day of (insert month, year).

County Auditor or Supervisor of Elections

Chairman, County Legislative Authority

County Prosecuting Attorney

STRICKEN GRAPHIC))

First	M.I.	Last	date of birth
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- A copy of one of the following:
 - Valid photo identification;
 - A valid enrollment card of a federally recognized tribe in Washington;
 - A current utility bill;
 - A current bank statement;
 - A current government check;
 - A current paycheck; or
 - A government document, other than a voter registration card, that shows both your name and address.

Please provide this documentation as soon possible. **If it is not provided, your ballot will not be counted.**

If you have any questions, please feel free to contact the _____ County Auditor's Office at _____.)

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, he or she is provisionally registered to vote.

(b) A statement explaining that if this information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide a copy of one of the following forms of identification either before or when they vote:

(i) A Washington driver's license or state ID card;

(ii) The last four digits of his or her Social Security number;

(iii) Valid photo identification;

(iv) A valid enrollment card of a federally recognized tribe in Washington;

(v) A current utility bill, a current bank statement;

(vi) A current government check;

(vii) A current paycheck; or

(viii) A government document, other than a voter registration card, that shows both the registrant's name and current address.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. If the applicant votes ((absentee)) by mail, he or she must be notified that the ballot will not be counted unless he or she provides adequate verification of identity.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration shall be canceled.

AMENDATORY SECTION (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

WAC 434-324-075 Timelines for new and transfer registrations. (1) In order to be in effect for an upcoming primary, special, or general election, a registered voter must transfer his or her registration record by mail or in person no later than thirty days prior to the primary, special, or general election. A registered voter may transfer his or her registration record within the county or to another county by completing and submitting a new application for voter registration. ((Upon receipt, the auditor must process the application for voter registration in the same manner as all other applications for voter registration pursuant to WAC 434-324-010.))

(2) In order to vote in an upcoming primary, special, or general election, a person who is not registered to vote in Washington must register:

(a) By mail no later than thirty days prior to the primary, special, or general election; or

(b) In person at the county auditor's office no later than fifteen days before the primary, special, or general election. A person who registers under this subsection will be issued an absentee ballot for the upcoming primary, special, or general election.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-240 Acceptance testing of voting systems and equipment. Whenever a county auditor acquires a new system or an upgrade to an existing system that has been certified by the secretary of state, the county must perform acceptance tests of the equipment before it may be used to count votes at any election. The equipment must operate correctly, pass all tests, and be substantially the same as the equipment certified by the secretary of state. The minimum testing standards are described as follows:

(1) The model number, version number, release number, and any other number, name or description that identifies the product must be the same as the identifying numbers for the product already certified by the secretary of state.

(2) The county must receive all manuals and training necessary for the proper operation of the system.

(3) For ~~((a vote tabulating system, the))~~ new hardware or hardware upgrades, the county must ~~((perform a series of functional and programming tests that test all functions of the system. The tests must include processing a substantial number of test ballots of various ballot codes, including split precincts, multiple candidates, precinct committee officer races, cumulative reports, precinct reports, canvass reports, and any other tests the county auditor finds necessary.~~

(4) The county auditor must certify the results of the acceptance tests to the secretary of state, which must include ~~version numbers of the hardware, software, and firmware installed and tested~~) test the functionality of the hardware to verify the hardware works as designed. The county must operate the hardware and run it through a series of functional tests that verifies all functions of the hardware.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

WAC 434-335-250 Inclusion of the ~~((Federal))~~ Election Assistance Commission standards for voting equipment. The ~~((2002 Federal))~~ Election Assistance Commission standards concerning voting systems and software escrow are hereby included by reference, except where otherwise modified by these rules and the *Revised Code of Washington*. ~~((After January 1, 2006, in order for a modification of a system that was previously certified according to the 1990 Federal Election Commission voting system standards to be administratively approved, the entire voting system must be tested and approved according to the 2002 standards.))~~

WSR 09-09-054

PROPOSED RULES

GAMBLING COMMISSION

[Filed April 10, 2009, 4:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-002.

Title of Rule and Other Identifying Information: Amending WAC 230-15-455 Keeping funds to pay prizes, progressive jackpot prizes, and odds-based prizes.

Hearing Location(s): Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on July 10, 2009, at 9:00 a.m.

Date of Intended Adoption: July 10, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by July 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Recreational Gaming Association (RGA) requests that WAC 230-15-455 be amended to eliminate the requirement for house-banked card room licensees to maintain an amount equal to all individual odds-based wager prizes offered which are greater than \$25,000 in a separate bank account. An "odds-based

wager" means a wager where the player wins an amount over and above the amount he or she wagered if a fixed pattern or combination of cards occurs, for example, a royal flush, four aces, or a pair. Since the "odds-based wager" prize is incorporated in the minimum cash on hand calculation, there is no longer a need for these funds to be held in a separate bank account.

The proposed change would allow house-banked licensees who offer more than one individual odds-based wager prize greater than \$25,000 to keep an amount equal to the **second** highest odds-based wager prize in a bank, mutual savings bank, or credit union in Washington state or possess a verifiable line of credit from a Washington state financial institution.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Recreational Gaming Association, 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 not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 10, 2009

Susan Arland

Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-455 Keeping funds to pay prizes, progressive jackpot prizes, and odds-based wager prizes. (1)

House-banked card game licensees must ensure that they have sufficient funds available to pay prizes, progressive jackpot prizes and odds-based wager prizes. An "odds-based wager" means a wager where the player wins an amount over and above the amount he or she wagered if a fixed pattern or combination of cards occurs, for example, a royal flush, four aces, or a pair.

(2) Licensees must not offer card games until they have met all of these requirements:

(a) Progressive jackpot prizes.

(i) Keep a separate bank account for progressive jackpot prizes ~~((and odds-based wager prizes))~~. The account must be kept in a bank, mutual savings bank, or credit union located in Washington state; ~~((and~~

~~((b) Keep in the account an amount equal to all individual odds-based wager prizes offered which are greater than twenty-five thousand dollars and all progressive jackpot prize funds; and~~

~~(c) Use the highest wager they allow to calculate the individual odds-based wager prize amount and determine the deposit requirement; and~~

~~(d)) (ii) Deposit ((at least weekly)) all funds accrued for progressive jackpot prizes at least weekly; and~~

~~(iii) If the prize bank account is reduced below the level required, licensees must immediately stop operating games until they are in compliance.~~

~~(b) Odds-based wager prizes.~~

~~(i) Licensees offering more than one individual odds-based wager prize greater than twenty-five thousand dollars must keep an amount equal to the second highest odds-based wager prize offered in a bank, mutual savings bank, or a credit union located in Washington state; or possess a verifiable line of credit from a Washington state financial institution for at least the amount required; and~~

~~(ii) Use the highest wager they allow to calculate the individual odds-based wager prize amount to determine the amount for this requirement.~~

~~(3) Licensees may limit pay outs by using table and/or individual player aggregates.~~

~~(4) ((If the prize bank account is reduced below the level required, licensees must immediately stop operating games until they are in compliance.~~

~~(5)) A licensee's failure to keep funds as required in this rule is prima facie evidence of defrauding the public and a violation of RCW 9.46.190.~~

WSR 09-09-055

PROPOSED RULES

GAMBLING COMMISSION

[Filed April 10, 2009, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-22-062.

Title of Rule and Other Identifying Information: New WAC 230-15-267 Remote access to surveillance.

Hearing Location(s): Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on July 10, 2009, at 9:00 a.m.

Date of Intended Adoption: July 10, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by July 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by July 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new rule allows licensed gambling service suppliers who install and maintain closed circuit television surveillance systems (CCTV) to remotely access digital CCTV systems for maintenance or repair under the following restrictions:

1. The card room licensee must notify us before the remote access occurs;

2. The card room licensee must document any remote access in their surveillance log; and

3. Remote access will only be enabled for the duration of the maintenance or repair and the connection terminated immediately after.

Reasons Supporting Proposal: We require Class F and house-banked card game licensees to install and maintain CCTV system[s]. Licensees may use either analog or digital recording equipment. There are no rules that specifically address whether or not licensed service suppliers should be allowed to remotely access digital CCTV systems for maintenance or repair.

Licensed service suppliers have been permitted to conduct periodic remote access to digital systems to install upgrades and perform maintenance. The purpose of this new rule is to codify current industry practice and clarify that only licensed service suppliers can have remote access.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 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 not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 10, 2009

Susan Arland

Rules Coordinator

NEW SECTION

WAC 230-15-267 Remote access of closed circuit television surveillance systems. Licensed service suppliers that install and maintain closed circuit television (CCTV) surveillance systems may remotely access digital CCTV systems for maintenance or repair under the following provisions:

(1) The card room licensee must notify us before the remote access occurs; and

(2) The card room licensee must document any remote access in their surveillance log; and

(3) Remote access will only be enabled for the duration of the maintenance or repair and the connection terminated immediately after.

WSR 09-09-062
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY
 [Filed April 13, 2009, 1:26 p.m.]

Continuance of WSR 09-08-063.

Title of Rule and Other Identifying Information: Amending Regulation I, Section 8.08 (Fire Department Training Exercises).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on May 28, 2009, at 9:15 a.m.

Date of Intended Adoption: May 28, 2009.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail lynns@psc Cleanair.org, fax (206) 343-7522, by May 27, 2009.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by May 21, 2009, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continue hearing from April 23, 2009, to May 28, 2009.

April 13, 2009
 Dennis J. McLerran
 Executive Director

WSR 09-09-069
WITHDRAWAL OF PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD
 (By the Code Reviser's Office)
 [Filed April 14, 2009, 10:44 a.m.]

WAC 181-78A-125 and 181-78A-132, proposed by the professional educator standards board in WSR 08-20-090 appearing in issue 08-20 of the State Register, which was distributed on October 15, 2008, 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 09-09-070
WITHDRAWAL OF PROPOSED RULES
BOARD FOR VOLUNTEER
FIREFIGHTERS AND RESERVE OFFICERS
 (By the Code Reviser's Office)
 [Filed April 14, 2009, 10:44 a.m.]

WAC 491-03-010, 491-03-020 and 491-03-030, proposed by the board for volunteer firefighters and reserve officers in WSR 08-20-119 appearing in issue 08-20 of the State Register, which was distributed on April 14, 2008, 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 09-09-071
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH
 (By the Code Reviser's Office)
 [Filed April 14, 2009, 10:44 a.m.]

WAC 246-883-020, proposed by the department of health in WSR 08-20-127 appearing in issue 08-20 of the State Register, which was distributed on April 14, 2008, 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 09-09-072
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING
 (By the Code Reviser's Office)
 [Filed April 14, 2009, 10:44 a.m.]

WAC 308-10-030, 308-10-070, 308-10-080, 308-10-090, 308-10-100 and 308-10-110, proposed by the department of licensing in WSR 08-20-131 appearing in issue 08-20 of the State Register, which was distributed on October 15, 2008, 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 09-09-080
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed April 15, 2009, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-12-061.

Title of Rule and Other Identifying Information: The department is creating WAC 388-501-0055 Healthcare coverage—How the department determines coverage of services for its healthcare programs using health technology assessments.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at

<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094, on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than May 27, 2009.

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 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, 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: To codify how health technology assessments are used in HRSA's determinations of what services are included in the benefit design of its medical assistance programs.

Reasons Supporting Proposal: It makes HRSA's determination process more transparent to the public.

Statutory Authority for Adoption: RCW 70.14.090 and 74.08.090.

Statute Being Implemented: RCW 70.14.090 and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Gail Kreiger, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1681.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose any new costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1344, fax (360) 586-9727, e-mail sullikm@dshs.wa.gov.

April 13, 2009
Stephanie E. Schiller
Rules Coordinator

NEW SECTION

WAC 388-501-0055 Healthcare coverage—How the department determines coverage of services for its health-care programs using health technology assessments. (1) The department uses health technology assessments in determining whether a new technology, new indication, or existing technology approved by the Food and Drug Administration (FDA) is a covered service under department healthcare programs. The department only uses health technology assessments when coverage is not mandated by federal or state law. A health technology assessment may be conducted by or on behalf of:

- (a) The department; or

- (b) The health technology assessment clinical committee (HTACC) according to RCW 70.14.080 through 70.14.140.

(2) The department reviews available evidence relevant to a medical or dental service or healthcare-related equipment and uses a technology evaluation matrix, in order to:

- (a) Determine its efficacy, effectiveness, and safety;
- (b) Determine its impact on health outcomes;
- (c) Identify indications for use;
- (d) Identify potential for client misuse or abuse; and
- (e) Compare to alternative technologies to assess benefit vs. harm and cost effectiveness.

(3) The department may determine the technology, device, or technology-related supply is:

- (a) Covered (refer to WAC 388-501-0060);
- (b) Covered with authorization (refer to WAC 388-501-0165);
- (c) Covered with limitations (refer to WAC 388-501-0169); or
- (d) Noncovered (refer to WAC 388-501-0070).

(4) The department may periodically review existing technologies, devices, or technology-related supplies and reassign authorization requirements as necessary according to the same provisions as outlined above for new technologies, devices, or technology-related supplies.

(5) The department evaluates the evidence and criteria presented by HTACC to determine whether a service is covered in accordance with WAC 388-501-0050 (6) and (7) and this section.

WSR 09-09-094

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed April 17, 2009, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-041.

Title of Rule and Other Identifying Information: WAC 220-88E-040 Hagfish pot trial fishery—Logbook required.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 5-6, 2009, at 8:45 a.m.

Date of Intended Adoption: June 19, 2009, via conference call.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by May 22, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 22, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The quarterly submission of hagfish harvest logbooks has been required of all participants in the emerging commercial hagfish fishery since the fishery's inception in 2005. In 2007, the submission requirement was increased from quarterly to monthly, but

this rule was not amended to reflect the change. This proposal amends the rule. The reason for the increased logbook submissions is that the department is going to monitor the fishery more closely.

Reasons Supporting Proposal: WAC 220-88B-040 is not consistent with the hagfish logbook submission requirement listed on the permits for the hagfish pot trial fishery. Amending WAC 220-88B-040 eliminates the inconsistency.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: The Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA 98504, (360) 753-2600; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department already provides fishery participants with the harvest logbooks they need to record all of their hagfish fishery activities. Participants have been required to submit logbook information monthly since 2007. This proposal does not impose any additional requirements.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

April 17, 2009

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-245, filed 10/14/05, effective 11/14/05)

WAC 220-88E-040 Hagfish pot trial fishery—Logbook required. It is unlawful for a participant in the hagfish pot trial fishery to fail to ~~((complete the department-supplied logbook with all indicated entries. Logbook information is required to be submitted quarterly, and it is unlawful to fail to remit the information by April 15, July 15, October 15 or January 15 for the previous quarter, whether or not fishing activity occurred during that quarter))~~ maintain and submit a legible, accurate, and complete harvest log for all hagfish fishing activity. Logs will be submitted such that the department receives them no later than the tenth day following the end of each calendar month. Participants in the hagfish pot trial fishery must use a Hagfish Harvest Logbook provided by the department to record all of their hagfish fishing activity. Failure to submit logbook information may result in revocation of ~~((the))~~ a participant's hagfish pot trial fishery permit.

WSR 09-09-096

WITHDRAWAL OF PROPOSED RULES PROFESSIONAL EDUCATOR STANDARDS BOARD

(By the Code Reviser's Office)

[Filed April 20, 2009, 8:45 a.m.]

WAC 181-77-005, proposed by the professional educator standards board in WSR 08-20-132 appearing in issue 08-20 of the State Register, which was distributed on October 15, 2008, 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 09-09-104

PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Economic Services Administration)

[Filed April 20, 2009, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-20-050.

Title of Rule and Other Identifying Information: WAC 388-310-0400 Entering the WorkFirst program as a mandatory participant, 388-310-0500 WorkFirst—Individual responsibility plan, 388-310-0900 WorkFirst—Basic education, 388-310-1000 WorkFirst—Vocational education, and 388-310-1050 WorkFirst—Skills enhancement training.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 27, 2009.

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 DSHSRulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is clarifying that WorkFirst participants can call in on the same day or as soon as [as] possible thereafter if unable to attend a WorkFirst appointment or activity. The department is also proposing to expand allowable homework hours that count towards WorkFirst participation to include unsupervised study.

Reasons Supporting Proposal: These changes are being proposed to invoke new options under the final Deficit

Reduction Act, and to maximize the state's ability to meet the federal work participation rate.

Statutory Authority for Adoption: 45 C.F.R. 260, 42 U.S.C. 601, chapter 74.08A RCW, RCW 74.04.050, 74.04.055, 74.08.090, 74.04.057, and chapter 74.12 RCW.

Statute Being Implemented: 45 C.F.R. 260, 42 U.S.C. 601, chapter 74.08A RCW, RCW 74.04.050, 74.04.055, 74.08.090, 74.04.057, and chapter 74.12 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Stephanie Nielsen, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4699.

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 rules invoke new options under the final Deficit Reduction Act, and to maximize the state's ability to meet the federal work participation rate.

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." These proposed rules invoke new options under the final Deficit Reduction Act, and to maximize the state's ability to meet the federal work participation rate.

April 15, 2009

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-0400 WorkFirst—Entering the WorkFirst program as a mandatory participant. (1) What happens when I enter the WorkFirst program as a mandatory participant?

If you are a mandatory participant, you must follow instructions as written in your individual responsibility plan (see WAC 388-310-0500), which is written after you have participated in a comprehensive evaluation of elements related to your employability. If you have been identified as someone who needs necessary supplemental accommodation (NSA) services (defined in chapter 388-472 WAC) your case manager will first develop an accommodation plan to help you access WorkFirst services. The case manager will use the accommodation plan to help develop your IRP with you. If you have been identified as a victim of family violence (defined in WAC 388-61-001), you and your case manager will develop an IRP to help you with your situation, including referrals to appropriate services.

If you are a mandatory participant, your case manager will refer you to WorkFirst activities unless any of the following applies to you:

(a) You work thirty-two or more hours a week. "**Work**" means to engage in any legal, income generating activity

which is taxable under the United States tax code or which would be taxable with or without a treaty between an Indian Nation and the United States;

(b) You (~~work sixteen or more hours a week in the federal or state work study program~~) participate the equivalent of twenty or more hours a week in job search, vocational education, issue resolution, or paid or unpaid work that meets the federal definition of core activities, which may include work of sixteen or more hours a week in the federal or state work study program, and you attend a Washington state community or technical college at least half time;

(c) You work twenty or more hours a week in unsubsidized employment and attend a Washington state community or technical college at least half time;

(d) You are under the age of eighteen, have not completed high school, GED or its equivalent and are in school full time;

(e) You are eighteen or nineteen years of age and are attending high school or an equivalent full time;

(f) You are pregnant or have a child under the age of twelve months, and are participating in other pregnancy to employment activities. See WAC 388-310-1450;

(g) Your situation prevents you from looking for a job and you are conducting activities identified on your IRP to help you with your situation. (For example, you may be unable to look for a job while you have health problems or you are homeless); or

(h) Your situation prevents you from looking for work because you are a victim of family violence and you are conducting activities on your IRP to help you with your situation.

(2) How will I know what my participation requirements are?

(a) Your individual responsibility plan will describe what you need to do to be able to enter job search or other WorkFirst activities and then find a job (see WAC 388-310-0500 and 388-310-0700).

(b) If you enter the pregnancy to employment pathway (described in WAC 388-310-1450(3)), you must take part in an assessment.

(3) What happens if I do not follow my WorkFirst requirements?

If you do not participate in creating an individual responsibility plan, job search, or in the activities listed in your individual responsibility plan, and you do not have a good reason, the department will follow the sanction rules in WAC 388-310-1600.

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-0500 WorkFirst—Individual responsibility plan. (1) What is the purpose of my individual responsibility plan?

The purpose of your individual responsibility plan is to give you a written statement that describes:

(a) What your responsibilities are; and

(b) Which WorkFirst activities you are required to participate in; and

(c) What services you will receive so you are able to participate.

(2) What is included in my individual responsibility plan?

Your individual responsibility plan includes the following:

(a) What WorkFirst activities you must do and the participation requirements for those activities including the amount of time you will spend doing the activities, a start and end date for each activity and the requirement to participate fully.

(b) Any other specific requirements that are tied to the WorkFirst work activity. For example, you might be required to learn English as part of your work experience activity or to provide proof of your employment hours.

(c) What services we will provide to help you participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.

(d) Your statement that you recognize the need to become and remain employed as quickly as possible.

(3) How is my individual responsibility plan developed?

You and your case manager will work together and use information gathered from your comprehensive evaluation (see WAC 388-310-0700) when available to develop your individual responsibility plan and decide what activities will be included in it. Then, your case manager will assign you to specific WorkFirst activities that will help you find employment.

(4) What happens after my individual responsibility plan is completed?

Once your individual responsibility plan is completed:

(a) You will sign and get a copy of your individual responsibility plan.

(b) You and your case manager will review your plan as necessary over the coming months to make sure your plan continues to meet your employment needs. You will sign and get a copy of your individual responsibility plan every time it is reviewed and changed.

(5) What should I do if I cannot go to a required WorkFirst appointment or activity because of a temporary situation outside of my control?

If you cannot participate because of a temporary situation outside of your control, you must call the telephone number shown on your individual responsibility plan on the same day you were to report when possible to explain your situation, or as soon as possible thereafter. You will be given an excused absence. Some examples of excused absences include:

(a) You, your children or other family members are ill;

(b) Your transportation or child care arrangements break down and you cannot make new arrangements in time to comply;

(c) A significant person in your life died; or

(d) A family violence situation arose or worsened.

(6) What happens if I don't call in on the same day I am unable to attend to get an excused absence?

If you do not call in on the same day you are unable to attend when possible, or as soon as possible thereafter, to get an excused absence, it will be considered an unexcused absence.

If you exceed the number of unexcused absences allowed on your individual responsibility plan, without good cause, your case manager will begin the sanction process. (See WAC 388-310-1600 for more details.)

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-0900 WorkFirst—Basic education. (1) What is basic education?

Basic education is high school completion, classes to prepare for general equivalency diploma (GED), testing to acquire GED certification, adult basic education (ABE) or English as a second language (ESL) training. Basic education also includes ~~((supervised))~~ approved homework and study activities associated with the educational activity.

(2) When do I participate in basic education as part of WorkFirst?

You may participate in basic education as part of WorkFirst under any of the following circumstances:

(a) You are twenty years of age or older and your comprehensive evaluation shows you need this education to become employed or get a better job and:

(i) You are participating the equivalent of twenty hours or more per week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities; or

(ii) You have limited-English proficiency and you lack language skills that are needed to qualify for entry level jobs.

(b) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or GED certificate and you need this education in order to find employment.

(c) You will be required to be in high school or a GED certification program if you are a mandatory participant, sixteen or seventeen years old and you do not have a high school diploma or GED certificate.

(d) You are enrolled in the pregnancy to employment pathway and your comprehensive evaluation shows basic education would help you find and keep employment. (See WAC 388-310-1450.)

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1000 WorkFirst—Vocational education. (1) What is vocational education?

Vocational education is training that leads to a degree or certificate in a specific occupation, not to result in a baccalaureate or advanced degree unless otherwise indicated below, and is offered by an accredited:

(a) Public and private technical college or school;

(b) Community college;

(c) Tribal college; or

(d) For customized job skills training (formerly known as preemployment training), community based organizations.

(2) Vocational education may include:

(a) Customized job skills training;

(b) High-wage/high-demand training;

(c) ~~((Supervised))~~ Approved homework and study activities associated with the educational activity; and/or

(d) Remedial/developmental education, prerequisites, basic education and/or English as a second language training deemed a necessary part of the vocational education program.

(3) What is customized job skills training?

Customized job skills training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Customized job skills training is an acceptable activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete customized job skills training.

(b) You can find out about current customized job skills training opportunities by asking your employment services counselor, your case manager or staff at your local community and technical college.

(4) What is high-wage/high-demand training?

(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care or other professional-technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology, health care fields or other professional-technical programs that meet high-wage/high-demand criteria; and/or

(ii) Certificate/degree completion: This option allows you to finish up the last year of any certificate or degree program, not to exceed a baccalaureate degree, in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy).

(c) To qualify for HWHD training, you must also:

(i) Meet all of the prerequisites for the course;

(ii) Obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with WorkFirst staff during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

(5) When can vocational education be included in my individual responsibility plan?

We may add vocational education to your individual responsibility plan for up to twelve months if:

(a) Your comprehensive evaluation shows you need this education to become employed or get a better job and you participate full time in vocational education or combine vocational education with any approved WorkFirst work activity; or

(b) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand program; or

(c) You have limited English proficiency and you lack job skills that are in demand for entry level jobs in your area; and the vocational education program is the only way that you can acquire these skills (because there is no available work experience, community service or on-the-job training that can teach you these skills); or

(d) You are in the pregnancy to employment pathway and your comprehensive evaluation shows vocational education would help you find and keep employment. (See WAC 388-310-1450.)

(6) Can I get help with paying the costs of vocational education?

WorkFirst may pay for the costs of your vocational education, such as tuition or books, for up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1050 WorkFirst—Skills enhancement training. (1) What is skills enhancement training?

Skills enhancement training (formerly known as job skills training) is training or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Skills enhancement training may include:

(a) Customized training programs to meet the needs of a specific employer;

(b) General education and training that prepares a person for employment to include vocational education and courses explicitly required for program entry;

(c) Basic education and English as a second language training when such instruction is focused on skills needed for employment, combined in a unified whole with job training or needed to enable the person to perform a specific job or engage in a specific job training program;

(d) Four-year bachelor degree programs at any state-certified college or university; and

(e) (~~Supervised~~) Approved homework and study activities.

(2) Who may provide skills enhancement training?

The training may be offered by the following types of organizations that meet the WorkFirst program's standards for service providers:

(a) Community based organizations;

(b) Businesses;

(c) Tribal governments; or

(d) Public and private community and technical colleges.

(3) When can skills enhancement training be included in my individual responsibility plan?

We may add skills enhancement training in your individual responsibility plan if you are participating the equivalent of twenty or more hours a week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities.

(4) Can I get help with paying the costs of skills enhancement training?

WorkFirst may pay your costs, such as tuition or books, if skills enhancement training is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

WSR 09-09-105
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 20, 2009, 2:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-06-085.

Title of Rule and Other Identifying Information: The department is amending WAC 388-492-0070 How are my WASHCAP food benefits calculated?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>, or by calling (360) 664-6094), on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 27, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposed to amend WAC 388-492-0070 to implement changes necessary to meet cost neutrality requirements between the Washington state combined application project (WASHCAP) and the supplemental nutrition assistance program (SNAP) as specified in the approved WASHCAP demonstration project waiver.

Reasons Supporting Proposal: The department is required by USDA Food and Nutrition Service to maintain cost neutrality between WASHCAP and SNAP as specified in the approved WASHCAP demonstration project waiver. This proposed rule change will fulfill this federal requirement.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.9; 7 C.F.R. 273.10; Section 5(e) and 8(c) of the Food Stamp Act of 1977.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Don Winslow, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4580.

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 setting standards used to determine eligibility and benefit levels for the Washington combined application program.

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 16, 2009

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-106, filed 10/16/08, effective 11/16/08)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract one hundred forty-four dollars from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:
 - (a) (~~Two hundred eighty-four~~) Three hundred dollars or more a month for shelter, we use three hundred seventy-nine dollars as your shelter cost; or
 - (b) Less than (~~two hundred eighty-four~~) three hundred dollars for shelter, we use one hundred eighty-two dollars as your shelter cost; and
 - (c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.
- (4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.
- (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
- (6) We figure your WASHCAP food benefits (allotment) by:
 - (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
 - (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.
 - (c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

WSR 09-09-107
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed April 21, 2009, 7:40 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Fryers, broilers and roasters, chapter 16-512 WAC.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, 1111 Washington Street S.E., Conference Room 205, Olympia, WA 98504-2560, on May 26, 2009, at 1:30 p.m.

Date of Intended Adoption: July 27, 2009.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., May 27, 2009.

Assistance for Persons with Disabilities: Contact WSDA receptionist by May 15, 2008 [2009], TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 16-512-040 Assessments and assessment funds, decrease the assessment rate from .35 of one cent per pound live weight to .10 of one cent per pound live weight on all fryers, roasters and broilers under the age of six months. Growers will have the opportunity to approve or reject the proposed decrease through referendum.

Reasons Supporting Proposal: The need for the Washington fryer commission to maintain its current assessment rate has decreased over the years. In the 1990's, Washington State University cut the poultry program which negated the opportunity for research unique to the poultry industry in Washington. A few years ago, the two remaining processors of Washington-grown chicken opted to combine the state of origin information with Oregon's which eliminated the "Grown in Washington" brand. Prior to that change the marketing and promotional efforts were the primary expenditure for the commission. Instead, the commission will now mainly focus on assisting growers with maintaining their business, consumer outreach, regulatory services and legislative activities. These changes will implement the petition received from the fryer commission in accordance with RCW 15.66.050.

Statutory Authority for Adoption: RCW 15.66.055 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.66 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 fryer producers pursuant to chapter 15.66 RCW.

Name of Proponent: Washington state fryer commission, governmental.

Name of Agency Personnel Responsible for Drafting: Kelly Frost, P.O. Box 42560, Olympia, WA 98504, (360) 902-1802; Implementation and Enforcement: Sue Broderick,

2003 Maple Valley Highway, #212, Renton, WA 98055, (425) 226-6125.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In accordance with RCW 15.66.053, the adoption of the final amendments to chapter 16-512 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 fryer commission are not named agencies in RCW 34.05.328 (5)(a)(i).

Kelly Frost
Commodity Commission
Coordinator

AMENDATORY SECTION (Amending WSR 04-07-128, filed 3/22/04, effective 4/22/04)

WAC 16-512-040 Assessments and assessment funds.

(1) **Assessments levied.** On and after the effective date of this amendment, there is hereby levied and there shall be collected by the commission as provided in the act, upon all fryers, roasters and broilers under the age of 6 months, an assessment of (~~.35~~) .10 of one cent per lb. live weight. Such assessment shall be paid by the producer thereof upon each and every pound of fryers, roasters, or broilers sold, delivered for sale or processed by him or her: Provided, That no assessment shall be collected on the following:

(a) Sales on a producer's premises by a producer direct to a consumer of thirty pounds or less of fryers from a producer's own production;

(b) Fryers of a producer's own production used by him for personal consumption; or

(c) Fryers donated or shipped for relief or charitable purposes.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such fryers sold, processed or delivered for sale or processing by all producers of fryers for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefor. To collect assessments, the commission may require:

(i) Stamps to be known as "Washington fryer commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

(ii) Payment of producer assessments before the fryers are shipped off the farm or payment of assessments at different or later times and in that event, any person subject to the assessments shall give adequate assurance or security for its payment as the commission shall require.

(iii) Every producer subject to the assessment under this order to deposit with the commission in advance an amount based on the estimated number of affected units upon which

the person will be subject to assessments in any one year during which this marketing order is in force, but in no event shall a deposit exceed twenty-five percent of the estimated total annual assessment payable by the person. At the close of the marketing season the sums so deposited shall be adjusted to the total of assessments payable by the person.

(iv) Handlers receiving fryers from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at times required by rule, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of fryers handled, processed, delivered and/or shipped during the period prescribed by the commission.

(b) The commission is authorized to adopt rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No affected units of fryers shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued or stamp canceled, but no liability hereunder shall attach to common carriers in the regular course of their business. When any fryers for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemptions.

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Moneys collected by the fryer commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all fryers sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer, which may include bills of lading, bills of sale, or receipts.

**WSR 09-09-111
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed April 21, 2009, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-19-040.

Title of Rule and Other Identifying Information: The board is proposing adding the following new sections: WAC 308-48-141 Application for examination and reciprocity and 308-48-142 Licensing examination.

The board is proposing changes to WAC 308-48-800 Funeral director/embalmer fees (text only - not actual fees).

The board is proposing repealing WAC 308-48-190 Examination fee.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on June 2, 2009, at 1:00 p.m.

Date of Intended Adoption: June 30, 2009.

Submit Written Comments to: Sherri Lonsbery, P.O. Box 9012, Olympia, WA 98507-9012, e-mail slonsbery@dol.wa.gov, fax (360) 570-7098, by June 2, 2009.

Assistance for Persons with Disabilities: Contact Erica Hansen by June 1, 2009, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments update existing language regarding exams to reflect new exam process. The new section is created to establish the procedures for the new exam process.

Reasons Supporting Proposal: To amend existing language and establish new procedures [to] reflect new exam process.

Statutory Authority for Adoption: RCW 18.39.175 and chapter 34.05 RCW.

Statute Being Implemented: RCW 18.39.175 and chapter 34.05 RCW.

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

Name of Proponent: [Department of licensing], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dennis McPhee, Olympia, (360) 664-1555; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department of licensing (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 to do this.

April 14, 2009

Joe Vincent, Jr.

Administrator

NEW SECTION

WAC 308-48-141 Application for examination and reciprocity. (1) Applicants for initial licensing as a funeral director or embalmer must submit:

- (a) An application on a form prescribed by the board.
- (b) Official sealed college transcripts.
- (c) Official national board or other state board examination scores.
- (d) A nonrefundable application fee as defined in WAC 308-48-800.

- (2) Applicants seeking reciprocity must submit:
 - (a) An application on a form prescribed by the board.
 - (b) Official verification of out-of-state licensure from the out-of-state licensing board.
 - (c) Official sealed college transcripts, if licensed in another state for a period of less than five years.
 - (d) A nonrefundable application fee as defined in WAC 308-48-800.

NEW SECTION

WAC 308-48-142 Licensing examination. (1) The board adopts the national examination and grading procedure of the International Conference of Funeral Service Examining Boards (ICFSEB).

(2) All applicants must pass a state law examination. In addition, applicants for funeral director licensing are required to pass an examination in funeral arts. Applicants for embalmer licensing must pass an examination in funeral sciences.

(3) Examination fees must be paid to and collected by the ICFSEB directly.

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-800 Funeral director/embalmer fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination ((or reexamination)) <u>application</u>	\$100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Embalmer intern:	
Intern application	75.00
Application for examination	100.00
Intern renewal	45.00
Duplicate	15.00
Funeral director:	
State examination ((or reexamination)) <u>application</u>	100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Funeral director intern:	
Intern application	75.00
Application for examination	100.00
Intern renewal	45.00
Duplicate	15.00
Funeral establishment:	
Original application	300.00

Title of Fee	Fee
Renewal	150.00
Branch registration	250.00
Branch renewal	150.00
Preneed application	140.00
Preneed renewal:	
0-25 sales	25.00
26-99 sales	75.00
100 or more sales	125.00
Crematory endorsement registration	140.00
Crematory endorsement renewal 3.20 per cremation performed during previous calendar year.	
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00
<u>Retired status certificate</u>	<u>No fee</u>

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-48-190 Examination fee.

WSR 09-09-112

PROPOSED RULES

THE EVERGREEN STATE COLLEGE

[Filed April 21, 2009, 12:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-016.

Title of Rule and Other Identifying Information: Required and emergency medical leave of absence.

Hearing Location(s): The Evergreen State College, Library Building, Room 2205, 2700 Evergreen Parkway N.W., Olympia, WA 98505, on May 28, 2009, at 3:30 - 4:30 p.m.

Date of Intended Adoption: June 5, 2009.

Submit Written Comments to: Wendy Endress, The Evergreen State College, Library 3009, Olympia, WA 98505, e-mail endressw@evergreen.edu, fax (360) 867-6886, by May 27, 2009.

Assistance for Persons with Disabilities: Contact Wendy Endress by May 27, 2009, TTY (360) 867-6834 or (360) 867-6291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule would permit the college to require a student to withdraw from the college if it is determined that due to a physical illness or a mental, emotional, or psychological condition, the student is unable to continue without significant risk of harm to the student, to others, or disruption of college activities.

Reasons Supporting Proposal: The proposed rule is intended to protect the welfare of students attending The Evergreen State College.

Statutory Authority for Adoption: RCW 28B.40.120.

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, The Evergreen State College, Library 3200, Olympia, WA 98505, (360) 867-5100; Implementation and Enforcement: Phyllis Lane, The Evergreen State College, Library 2153, Olympia, WA 98505, (360) 867-6035

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 21, 2009
J. P. Carmichael
Rules Coordinator

Chapter 174-125 WAC

REQUIRED AND EMERGENCY MEDICAL LEAVE OF ABSENCE

NEW SECTION

WAC 174-125-010 Issuing a required medical leave of absence. (1) The dean of student and academic support services, or the dean's designee, (hereinafter collectively referred to as the "dean") may require a student to take a medical leave of absence if a student has a physical illness or a mental, emotional or psychological condition and as a result of the condition:

(a) Is engaging in, or is threatening to engage in, behavior that poses a significant danger of causing substantial harm to the health, safety or welfare of the student or others; or

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student, or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing substantial harm to the health, safety, or welfare of the student or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) In determining whether to require a student to take a medical leave of absence, the dean shall consult with the director of health and counseling services, or the director's designee (hereinafter collectively referred to as "director of health and counseling services") and, where possible, other

persons who can provide relevant information about a student's condition.

(3) Prior to the dean requiring a student to take a medical leave of absence, the student shall be provided an opportunity to present information about his or her circumstances, where reasonably possible, to the dean. A student waives their opportunity to provide information if he or she is unwilling or unable to meet with the dean in a timely manner.

(4) The dean shall issue the required medical leave of absence in writing to the student. The written notice shall include the effective date of the leave, the reasons for requiring the leave, the conditions for reenrollment, and any restrictions imposed on the student's access to the campus or college-sponsored activities.

(5) The required medical leave of absence shall be effective twenty-one days after it is served on the student, unless the student files a timely written appeal of the dean's decision as set forth in these rules. Service of the dean's decision shall be complete upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

NEW SECTION

WAC 174-125-015 Appealing a required medical leave of absence. A student may appeal the dean's decision imposing a required medical leave of absence to the medical leave of absence review board (review board). The appeal must be submitted in writing to the vice-president for student affairs within twenty days of service of the dean's decision.

NEW SECTION

WAC 174-125-020 Hearing an appeal of a required medical leave of absence. (1) Upon receipt of a timely appeal by a student of the dean's decision imposing a required medical leave of absence, the vice-president of student affairs, or the vice-president's designee, (hereinafter collectively referred to as the "vice-president") shall convene the review board to hear the appeal. The review board may:

(a) Affirm the dean's decision;

(b) Affirm the dean's decision but alter the disposition from imposition of a required medical leave of absence to conditional enrollment under specified directives; or

(c) Reverse the dean's decision allowing the student to remain enrolled without restriction.

(2) The review board's decision shall be in writing and served on the student within seven business days of the hearing. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) The review board shall be composed of at least three members drawn from a pool of academic deans and staff members not reporting to the dean who have been identified by the president. The president shall select one of the members to act as the chair at the hearing.

(4) The vice-president shall notify the student in writing of the time, date, and location of the hearing.

(5) The review board shall conduct the hearing according to the Administrative Procedure Act, chapter 34.05 RCW.

(6) The chair of the review board may order the hearing closed to public observation as necessary to protect from disclosure medical or educational records held to be confidential under state or federal law.

NEW SECTION

WAC 174-125-025 Emergency medical leave of absence. (1) The dean may immediately require a student to take an emergency medical leave of absence if the student has a medical, or mental, emotional or psychological condition and as a result of the condition:

(a) The student is engaging in, or threatening to engage in, behavior that poses a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student, or others; or

(b) The student's behavior has resulted in substantial harm to the health, safety, or welfare of the student, or others and the behavior continues, or there is a risk the behavior will continue, posing a significant danger of causing imminent and substantial harm to the health, safety, or welfare of the student, or others; or

(c) The student's behavior has resulted in significant disruption of the teaching, learning or administrative activities of other members of the campus community and the behavior continues, or there is a risk the behavior will continue, with the likely result of such behavior imminently and substantially impeding the education processes or proper activities or functions of the college and its personnel.

(2) A decision by the dean requiring a student to take an emergency medical leave of absence shall be in writing and served on the student. The decision shall set forth the reasons for requiring the leave, and as appropriate, any restrictions imposed on the student's access to the campus or college-sponsored activities. Service of the decision shall be effective upon deposit in the United States mail to the student, postage prepaid and properly addressed to the student at the last known address on file with the registrar's office, or by personal service on the student.

(3) A student subject to an emergency medical leave of absence shall be provided a hearing before the vice-president to appeal the dean's decision. The hearing shall occur within three business days of the student being served with the dean's decision imposing the emergency medical leave of absence unless a student elects to waive his or her right to a hearing. Except as otherwise provided herein, the process for conducting the hearing before the vice-president shall be as per the Administrative Procedure Act, chapter 34.05 RCW.

(4) An emergency medical leave of absence shall take effect immediately and remain in effect until the review board's decision is issued regarding an appeal of a required medical leave of absence, unless the dean decides that the reasons for the emergency medical leave of absence no longer exist.

NEW SECTION

WAC 174-125-030 Returning from a required medical leave of absence. (1) A student wishing to be considered

for reenrollment to the college shall submit an application for reenrollment to the dean at least one month prior to the start of the quarter in which the student wishes to reenroll. The student shall provide appropriate documentation with any conditions for reenrollment set forth in the dean's decision. If a student files an appeal of the dean's decision, and the conditions for reenrollment are modified by the review board, the student shall provide evidence that the conditions set forth in the review board's order have been met. A student must also meet all other admission or enrollment requirements of the college for reenrollment.

(2) The dean shall consult with the director of health and counseling prior to determining if the student may reenroll.

(3) The dean shall notify the student in writing of the decision and the conditions associated with the approval or denial for reenrollment.

**WSR 09-09-113
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed April 21, 2009, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-03-155.

Title of Rule and Other Identifying Information: Workers' compensation self insurance rules and regulations, chapter 296-15 WAC. This chapter governs employers who are permitted to self insure their workers' compensation obligation pursuant to Title 51 RCW. This filing includes modifications to existing sections for organization and clarity. It also includes new sections specifically related to experience rating of the self insurance second injury fund for assessment purposes.

Hearing Location(s): Department of Labor and Industries, 243 Israel Road S.E., Building 3, Room 304, Tumwater, WA 98501, on May 26, 2009, at 9:00 a.m.

Date of Intended Adoption: May 29, 2009.

Submit Written Comments to: Margaret Conley, P.O. Box 44890, Olympia, WA 98504-4890, e-mail mcgm235@Lni.wa.gov, fax (360) 902-6977, by May 26, 2009, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Margaret Conley by April 22, 2009, TTY (800) 833-6388 or (360) 902-6723.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule-making proposal will modify WAC 296-15-221 for simplification and clarity. References to self-insured assessments have been moved to new sections, leaving the content of WAC 296-15-221 to solely address reporting requirements. The proposal creates four new sections to specifically address self-insured assessments, including the administrative assessment, the second injury fund assessment, the insolvency trust fund assessment, and the supplemental pension reimbursement fund and asbestosis fund assessments.

The new section relating to the self insurance second injury fund assessment also includes new requirements for

experience rating 50% of all self-insured employers' second injury fund assessments.

Reasons Supporting Proposal: This rule making is in response to SSB 5992 (chapter 475, Laws of 2005) to establish an experience rating system for self-insurers' use of the industrial insurance second injury fund.

Statutory Authority for Adoption: RCW 51.14.077, 51.14.150, 51.14.160, 51.44.040, 51.44.070, and 51.44.150.

Statute Being Implemented: RCW 51.44.040.

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, Implementation and Enforcement: Jean M. Vanek, 243 Israel Road S.E., Tumwater, WA 98501, (360) 902-6907.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 296-15 WAC applies only to businesses that are certified to self insure in Washington state. Per RCW 19.85.020(1), a business must have fifty or fewer employees to qualify as a small business under the Regulatory Fairness Act. The department reviewed the number of worker hours reported by each employer currently certified to self insure, and no self-insured business has fewer than fifty employees. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 296-15-221, 296-15-223, 296-15-227, and 296-15-229 are not new requirements. They are a restructuring of the content of the preexisting WAC 296-15-221.

WAC 296-15-225 describes a new method of calculating individual employers' contributions to the preexisting self insurance second injury fund assessment. Employers who are no longer active in the self-insurance program but have existing claims from their time in the self-insurance program are now included in the assessment. Under the new methods an employer's assessment for the second injury fund might increase, decrease or stay the same. The rule does not change the methods of calculating the total amount of the assessment required to sustain the self insured second injury fund. Therefore, this rule change does not represent an increased cost to the business community as a whole.

April 21, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-221 Self insurers' reporting requirements. (1) **What information must self insurers report to the department?** Each self insurer must provide the department:

(a) The name, title, address and phone number of the single contact person who is the liaison with the department in all self insurance matters. This contact will be sent all department correspondence and is responsible for forwarding information to appropriate parties for timely action.

(b) A copy of its current policy of applying sick leave, health and welfare benefits or any other compensation in conjunction with, or as a substitute for, time loss benefits.

(2) **When must self insurers notify the department of business status changes?** Self insurers must notify the department in writing:

(a) Immediately, of any plans to:

(i) Cease business entirely or cease business in Washington; or

(ii) Dispose of controlling financial interest of the original self insurer. The self insurer must surrender its certificate for cancellation if requested by the department.

(b) Within thirty days, of any:

(i) Amendment(s) or modification(s) to the self insurer's articles, charter or agreement of incorporation, association, copartnership or sole proprietorship which will materially change the business identity or structure originally certified.

(A) The department may require additional documentation.

(B) If the self insurer becomes a subsidiary to another firm, the parent must provide the department with its written guarantee on L&I form F207-040-001 to assume responsibility for all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities. See WAC 296-15-021 for additional information.

(ii) Separation (for example, divestiture or spinoff) of any part of the original self insurer.

(A) The original self insurer remains responsible for claims liability of the separated part up to the date of separation unless the department approves an alternative.

(B) If the separating part wishes to continue being self insured, it must submit an application for self insurance certification (L&I Form F207-001-000) to the department at least thirty days before separation (~~and requested certification~~).

(C) If certification cannot be granted before separation, industrial insurance coverage must be purchased from the state fund (~~from~~) effective the date of separation.

(iii) (~~Relocating, adding or closing~~) Relocation, addition or closure of physical locations.

(3) **When must self insurers notify the department of administrative changes?** A self insurer must notify the department in writing within ten days, of any change to its:

(a) Single contact person who is the liaison with the department in all self insurance matters. The self insurer must include the contact's title, address and phone number.

(b) Contract with a service organization(~~(/))~~ or third party administrator independent of the self insurer which will participate in the self insurer's responsibilities. The self insurer must submit a copy of the new or updated service contract. See WAC 296-15-021 for additional information.

(c) Administrator of its workers' compensation program, if the self insurer is self administered instead of contracting with a service organization or third party administrator.

(4) **What reports must self insurers submit to the department?** Each self insurer must submit:

(a) Complete and accurate quarterly reports summarizing worker hours and claim costs paid the previous quarter. Self insurers must use a form substantially similar to the pre-printed ((SIQTRR)) Quarterly Report for Self-Insured Busi-

ness, L&I form F207-006-000, form sent by the department. ((Payment is due the 30th day after receiving the preprinted report from the department.)) This report is the basis for determining the administrative, second injury fund, supplemental pension, asbestosis and insolvency trust assessments. Payment is due by the date specified on the preprinted report sent by the department.

(i) ~~((Administrative, second injury fund and insolvency trust assessments are based on a self insurer's total claim costs. Total))~~ Worker hours must be reported as defined in chapter 296-17 WAC General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance.

(ii) ~~Claim costs ((during a quarter))~~ include, but are not limited to:

(A) Time loss compensation. Include the amount of time lost the worker would have been entitled to if kept on full salary.

(B) Permanent partial disability (PPD) awards.

(C) Medical bills.

(D) Prescriptions.

(E) Medical appliances.

(F) Independent medical examinations and/or consultations.

(G) Loss of earning power.

(H) Travel expenses for treatment or rehabilitation.

(I) Vocational rehabilitation expenses.

(J) Penalties paid to injured workers.

(K) Interest on board orders.

~~((ii) Supplemental pension (SPRF) and asbestosis fund assessments are based on a self insurer's worker hours. Worker hours must be reported as defined in chapter 296-17 WAC General reporting rules, classifications, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance.~~

Note: ~~Self insurers may request reimbursement quarterly from SPRF as authorized under Title 51 RCW. Use a form substantially similar to L&I form F207-011-000 or F207-011-222, if there is Social Security offset.~~

~~(iii) The administrative assessment covers department administrative costs, including expenses of other department divisions, the University of Washington environmental research facility, the board of industrial insurance appeals and other general administrative costs. The administrative assessment rate is applied to a self insurer's total claim costs.~~

~~(A) The administrative assessment rate is based on the actual costs of the previous fiscal year and the anticipated costs of the upcoming fiscal year. Employers certified after the fiscal year used for calculation will be assessed at a rate that does not include prior fiscal periods.~~

~~(B) Employers no longer self insured must pay an adjusted assessment rate until one year after all self insurance liabilities and responsibilities are terminated.~~

~~(C) The minimum quarterly assessment is twenty-five dollars.~~

~~(iv) The second injury fund rate will be based on anticipated second injury fund costs.~~

~~(A) Self insurers' contributions to the second injury fund will be recorded in the self insurers' account, separate from the state fund account.~~

~~(B) The self insurers' second injury fund must maintain a two hundred thousand dollar minimum balance.~~

~~(v) Insolvency trust members (all self insurers except school districts, cities and counties) are also assessed to cover claim payments made by the department on behalf of insolvent self insurers. School districts, cities and counties are exempt from and are not covered by this insolvency trust. Any interest earned on the assessment becomes part of the insolvency trust fund. The insolvency assessment rate is applied to a self insurer's total claim costs. Failure to pay an insolvency trust assessment is grounds for withdrawal of certification. Members who voluntarily surrender certification must continue to pay this assessment for three years after the date of surrender.)~~

(b) A complete and accurate annual report of all claim costs paid for each year of liability with an estimate of future claim costs. The self insurer must use a form substantially similar to the Annual Report for Self-Insured Businesses (SIF-7), L&I form F207-007-000. This report is due March 1 ((and is the basis for)) of each year. The department((s)) uses this for the annual determination of each self insurer's surety requirement.

(c) A fully audited financial statement within six months after the end of the self insurer's fiscal year. This report demonstrates the self insurer's continued ability to provide benefits and pay assessments as required. The department will consider a written request for filing time extension.

(i) This statement must be prepared by a certified public accountant.

(ii) A self insurer with a parental guarantee may submit the parent's fully audited financial statement if the parent's audited statement includes the financial condition of all subsidiaries, including the self insurer.

(iii) A political subdivision of the state may submit a state auditor's report if it includes the self insurer's audited financial statement. If the state auditor does not audit the self insurer annually, ~~((political subdivisions))~~ the self insurer must submit financial statements prepared internally for ~~((the years between))~~ any year a report((s)) by the state auditor is not available.

NEW SECTION

WAC 296-15-223 Self insurance administrative assessment. (1) The administrative assessment covers the department's administrative costs, including direct and indirect expenses of each department division, the University of Washington environmental research facility, and the board of industrial insurance appeals. The assessment is paid quarterly at the same time a self insurer submits its quarterly report.

(2) The administrative assessment rate is determined annually for each fiscal year. Each self insured employer uses one of three rates:

(a) The base administrative rate is based on the actual costs of the previous fiscal year and the anticipated costs of the upcoming fiscal year. This rate is used by any active self insured employer certified after the fiscal year used for calculation.

(b) The adjusted administrative assessment rate includes the base rate with adjustments for over or under collections from prior periods. This rate is used by any active self insured employer certified during or prior to the fiscal year used for calculation.

(c) Employers who have voluntarily surrendered their self insurance certificate must pay the inactive rate until one year after all self insurance liabilities and responsibilities are terminated. Usually, administrative assessment payments for inactive self insurers can stop after reporting total claims costs of zero dollars for four consecutive quarters. Payments may again be due if any future costs are reported.

(3) The total administrative assessment due each quarter is calculated by multiplying the self insurer's rate by their total claims costs during that quarter.

(4) The minimum quarterly administrative assessment for all self insured employers is twenty-five dollars, unless the self insurer is not required to make payment (see subsection (2)(c) of this section).

NEW SECTION

WAC 296-15-225 Self insurance second injury fund assessment. (1) The second injury fund assessment is based on anticipated second injury fund costs. The fund is used to relieve employers' costs related to pensions that result from the combined effects of the industrial injury and another prior injury, preferred worker claims, and job modifications. Fifty percent of all self insurers' second injury fund assessment rate is based on the self insurers' estimated expenditures from the second injury fund. The other fifty percent is experience rated based on each self insured employer's actual expenditures from the fund. See RCW 51.44.040 for more information about experience rating. The second injury fund assessment is paid by active and inactive self insurers quarterly at the same time a self insurer submits its quarterly report.

(2) Self insurers' relief from and contributions to the second injury fund will be recorded in an account separate from the state fund account. The self insurers' second injury fund must maintain a two hundred thousand dollar minimum balance.

- (i) $1/2 \times$ [the appropriate base or adjusted rate]
- (ii) [The result of (c)(i) of this subsection] \times [the self insurer's experience rate]
- (iii) [The result of (c)(i) of this subsection] + [The result of subsection (c)(ii) of this subsection] = the final combined second injury fund assessment rate.

(4) The total second injury fund assessment due each quarter is calculated by multiplying the self insurer's final combined second injury fund assessment rate by the self insurer's total claims costs during that quarter.

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

NEW SECTION

WAC 296-15-227 Self insurance insolvency trust fund assessment. (1) The insolvency trust fund assessment is paid by all insolvency trust members to cover claim payments made by the department on behalf of insolvent self

(3) The second injury fund assessment rate is determined annually for each fiscal year.

(a) Each self insurer uses one of two rates for the fifty percent of the second injury fund assessment rate that is based on total estimated expenditures.

(i) The base second injury fund assessment rate is based on fifty percent of the estimated costs for the coming fiscal year. This rate is used by any self insured employer certified after the fiscal year used for calculation.

(ii) The adjusted second injury fund assessment rate includes the base rate with adjustments for over or under collections from prior periods. This rate is used by any self insured employer certified during or prior to the fiscal year used for calculation. This rate is also used by any self insurer who has voluntarily surrendered its self insurance certificate.

(b) The second fifty percent of the second injury fund assessment is experience rated for each self insurer based on each self insurer's actual use of the second injury fund in the previous three fiscal years.

Note: The department may estimate claims cost data when actual data from an employer has yet to be provided.

Each self insurer's experience rating will be calculated using the following steps:

$$\begin{array}{l}
 \text{(i)} \quad \frac{\text{A self insurer's total second injury fund expenditures for the previous three fiscal years}}{\text{Total second injury fund expenditures for all self insurers in the previous three fiscal years}} \\
 \text{(ii)} \quad \frac{\text{A self insurer's self insured claims costs for the previous three fiscal years}}{\text{Total self insured claims costs for all self insurers in the previous three fiscal years}} \\
 \text{(iii)} \quad \frac{[\text{The result of (b)(i) of this subsection}] + [\text{The result of (b)(ii) of this subsection}]}{2} \\
 \text{(iv)} \quad \frac{\text{The result of (b)(iii) of this subsection}}{\text{The result of (b)(ii) of this subsection}} = \text{the self insurer's experience rate}
 \end{array}$$

(c) Each self insurer's final combined second injury fund assessment rate is calculated using the following formula:

insurers. The assessment is paid quarterly at the same time a self insurer submits its quarterly report.

(a) Self insured school districts, cities, and counties are exempt from and are not covered by this insolvency trust. These self insurers are not liable for the insolvency trust fund assessment.

(b) Any interest earned on insolvency trust fund assessments paid by self insurers will be added to the balance of the insolvency trust fund.

(c) Failure to pay an insolvency trust fund assessment is grounds for withdrawal of self insurance certification.

(2) The insolvency trust fund assessment rate is determined annually for each fiscal year.

(3) Insolvency trust members who voluntarily surrender their self insurance certification must continue to pay this assessment for three years after the date of surrender.

(4) The total insolvency trust fund assessment due each quarter is calculated by multiplying the insolvency trust fund assessment rate by an insolvency trust member's total claims costs during that quarter.

NEW SECTION

WAC 296-15-229 Self insurance supplemental pension reimbursement fund (SPRF) and asbestosis fund assessments. (1) The SPRF relieves employers from cost of living increases on benefits paid to workers. The SPRF assessment is paid quarterly at the same time a self insurer submits its quarterly report.

(a) The SPRF rate is determined annually for each calendar year.

(b) The total SPRF assessment due each quarter is calculated by multiplying the SPRF assessment rate by a self insurer's worker hours during that quarter.

(c) One-half of the SPRF assessment may be withheld from employee wages or salaries.

(d) Self insurers may request reimbursement from the SPRF quarterly, as authorized under Title 51 RCW, or they may deduct eligible SPRF reimbursement amounts directly from their quarterly SPRF assessment. If requesting reimbursement from the SPRF quarterly, the self insurer must use a form substantially similar to L&I form F207-011-000 or, if there is Social Security offset, L&I form F207-011-222.

(2) The asbestosis fund provides benefits to workers who have been diagnosed with an industrially related asbestosis condition during the often lengthy process of determining the liable employer. The asbestosis fund assessment is paid quarterly at the same time a self insurer submits its quarterly report.

(a) The asbestosis fund assessment rate is determined annually for each calendar year.

(b) The total asbestosis fund assessment due each quarter is calculated by multiplying the asbestosis fund assessment rate by a self insurer's worker hours during that quarter.

(c) One-half of the asbestosis fund assessment may be withheld from employee wages or salaries.

WSR 09-09-119

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 22, 2009, 7:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-23-041.

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.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>, or by calling (360) 664-6094), on May 26, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 27, 2009.

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 26, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by May 12, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending WAC 388-513-1350 as follows:

- Increasing the state spousal resource maximum from \$45,104, based on RCW 74.09.575. The maximum resource allowance amount for the community spouse shall be adjusted by the consumer price index every other odd year on July 1, and will be effective July 1, 2009. DSHS will continue to point to the internet long-term care standards chart for current resource standards starting July 1, 2009, and every odd year thereafter at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

- Updating the federal maximum community spouse resource standard to \$109,500, effective January 1, 2009. This standard increases annually on January 1 based on the consumer price index. DSHS will continue to point to the internet long-term care standards chart for current resource standards starting January 1, 2009, and each year thereafter at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

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, 74.09.575.

Statute Being Implemented: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575.

Rule is necessary because of federal law, Section 1924(g) of the Social Security Act.

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 17, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-13-072, filed 6/16/08, effective 7/17/08)

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 termi-

nated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367.

(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 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. Effective January 1, ~~((2008))~~ 2009, the maximum allocation is one hundred and ~~((four))~~ nine thousand ~~((four))~~ five hundred and sixty dollars. This standard increases annually on January 1st based on the consumer price index. (For the current standard starting January ~~((2008))~~ 2009 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 through June 30, 2009. Effective July 1, 2009 this standard increases to forty-eight thousand six hundred thirty-nine dollars (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))~~ 2009 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.

WSR 09-09-125

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed April 22, 2009, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-03-034 on January 12, 2009.

Title of Rule and Other Identifying Information: WAC 220-36-023 and 220-40-027, rules for commercial salmon fishing in Grays Harbor and Willapa Bay.

Hearing Location(s): Natural Resources Building, Room 682, 1111 Washington Street S.E., Olympia, WA 98504, on Friday, June 5, 2009, at 1:30 p.m. - 2:30 p.m.

Date of Intended Adoption: June 19, 2009.

Submit Written Comments to: Rules Coordinator, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by May 22, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 22, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing.

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: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-4628; Implementation: Jim Scott, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay and Grays Harbor.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None - these rule changes clarify dates for anticipated open periods, areas that are closed in Grays Harbor and Willapa Bay to commercial harvest methods, and legal gear requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None anticipated.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the 10% of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
 2. Cost per hour of labor; or
 3. Cost per one hundred dollars of sales.
- There are no anticipated costs of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department issues an annual pamphlet and mailer to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department cosponsors the annual North of Falcon process, which is a series of public meetings over a period of several months from February through April each year, and which allows constituents to supply input on the rules contained in this filing.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers using legal commercial gear types seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor and Willapa Bay.

A copy of the statement may be obtained by contacting Lori Preuss, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

April 22, 2009

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 08-166, filed 7/3/08, effective 8/3/08)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods

(1) Gill net gear may be used to fish for salmon and sturgeon according to the chart below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury and must be released immediately to the river/bay:

Time:	Areas:
6:00 p.m. (October 14) <u>September 3</u> through 6:00 p.m. (October 12, 2008) <u>September 4, 2009</u> ;	Area 2C
(AND)	
6:00 p.m. (October 15) <u>September 8</u> through 6:00 p.m. (October 16, 2008 ;	

Time:

~~7:00 a.m. October 8 through 7:00 p.m. October 8, 2008; 7:00 a.m. October 9 through 7:00 p.m. October 9, 2008; 7:00 a.m. October 10 through 7:00 p.m. October 10, 2008.))~~
September 9, 2009;
6:00 a.m. September 13 through 6:00 p.m. September 14, 2009;
6:00 a.m. September 20 through 6:00 p.m. September 21, 2009;
AND
6:00 p.m. September 29 through 6:00 p.m. September 30, 2009.

Areas:

~~((That portion of Area 2A upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore.~~
AND
That portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge.))

Gear

(2) Gill net gear restrictions: All areas:

(a) Drift gill net gear only. It is unlawful to use set net gear.

~~(b) ((6-inch maximum mesh restriction, and nets may be no more than 55 meshes deep.~~

(e)) Nine-inch maximum mesh size allowed.

(c) Nets must be single mesh size.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

~~((d))~~ (e) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Area ((2A/2D on October 8, 9, and 10, 2008)) 2C. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(e) All ~~((Chinook))~~ wild coho, nonlegal sturgeon, and steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box.

(f) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(g) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) Fishers must take department observers if requested by department staff when participating in these openings. Pursuant to WAC 220-69-240, fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to ~~((10:00 a.m.))~~ 5:00 p.m. on ((October 6)) August 28, 2009 for the ~~((October 8-10))~~ openings in Area ~~((s 2A/2D))~~ 2C.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited ~~((;))~~ to protect this federally listed stock.

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

AMENDATORY SECTION (Amending Order 08-166, filed 7/3/08, effective 8/3/08)

WAC 220-40-027 Salmon—Willapa Bay fall fishery. August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods

(1) Gill net gear may be used to fish for salmon and sturgeon as shown below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:

6:00 p.m. September 15 through 6:00 p.m. September ~~((17, 2008))~~ 19, 2009.

Area:

Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H west of Willapa Channel Marker 40, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.

<p>Time:</p> <p>6:00 p.m. September ((21) 22 through 6:00 p.m. September ((22, 2008)) 23, 2009;</p> <p>AND</p> <p>6:00 p.m. September 28 through 6:00 p.m. September 29, ((2008)) 2009.</p> <p>6:00 p.m. September ((21) 22 through 6:00 p.m. ((September 26, 2008).</p> <p>AND</p> <p>6:00 p.m. September 28 through 6:00 p.m.) October ((5, 2008)) 7, 2009.</p> <p>6:00 p.m. October ((7) 10 through 6:00 p.m. October ((10, 2008);</p> <p>AND</p> <p>6:00 p.m. October 12 through 6:00 p.m. October 14, 2009.</p> <p>((Noon,)) 6:00 p.m. November ((6) 10, through 6:00 p.m. November ((14, 2008)) 19, 2009.</p> <p>((6:00 p.m.)) Noon, November ((14, 2008)) 6, 2009, through noon, November 30, ((2008)) 2009.</p>	<p>Area:</p> <p>Area 2K</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H west of the Willapa Channel Marker 40, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.</p> <p>Areas 2G, 2H, 2J, and 2M.</p>
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(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

Gear

- (3) Gill net gear restrictions - All areas:
- (a) Drift gill net gear only. It is unlawful to use set net gear.
- (b) September 1 through ((October 5, 2008)) September 21, 2009: Six-inch maximum mesh, and net may be no more than fifty-five meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure ((break away)) breakaway panels.
- (c) ((October 7)) September 22 through October 31, ((2008)) 2009: Six and one-half inch maximum mesh.
- (d) November 6 through November 30, ((2008)) 2009: Nine-inch minimum mesh; except from 6:00 p.m. November 10 through 6:00 p.m. November ((14, 2008)) 19, 2009 (coho directed), there are two alternatives:
- (i) Use six-inch maximum mesh; and net may be no more than fifty-five meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure break-away panels; or
- (ii) Use nine-inch minimum mesh.
- (iii) Only one net of either six-inch or nine-inch configuration, not exceeding fifteen hundred feet, may be ((on board the vessel)) used when in the act of fishing.

Other

- (4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.
- (5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited((-)); to protect this federally listed stock.

WSR 09-09-128
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed April 22, 2009, 10:16 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 09-06-091.

Title of Rule and Other Identifying Information: WAC 314-29-010(2), What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 27, 2009, at 10:00 a.m.

Date of Intended Adoption: June 10, 2009.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail kjm@liq.wa.gov, fax (360) 664-9689, by June 5, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by June 5, 2009, (360) 664-1361.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 314-29-010(2) is amended to clarify the language for liquor licensees. Licensees will have no question as to what action will be taken by the board if they don't respond to an administrative violation notice within the twenty day timeline.

Reasons Supporting Proposal: Lack of clarity in WAC 314-29-010(2) creates a loophole which results in licensee confusion, increased administrative costs, a lack of adherence to due process timelessness [timeliness], growing contention and litigation. To ensure that consistency, fairness, and appropriate due process apply to all licensees and permit holders, the loophole must be closed.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: Chapter 35.04 [34.05] RCW, RCW 66.24.010(3).

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: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1631; Implementation and Enforcement: Pat Parmer, 3000 Pacific Avenue S.E., Olympia, WA, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal imposes no additional 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 22, 2009

Lorraine Lee
Chairman

AMENDATORY SECTION (Amending WSR 08-17-056, filed 8/15/08, effective 9/15/08)

WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation? (1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(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 suspension 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) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, 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 become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearing examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

WSR 09-09-132

PROPOSED RULES

FOREST PRACTICES BOARD

[Filed April 22, 2009, 11:25 a.m.]

Continuance of WSR 09-06-068.

Preproposal statement of inquiry was filed as WSR 05-2-097 [05-20-097].

Title of Rule and Other Identifying Information: Achieving desired future conditions in riparian management zones. This rule proposal amends WAC 222-30-021(1) to change timber harvest and leave tree requirements in riparian management zones adjacent to Type S and F Waters as defined in WAC 222-16-030. It pertains to forest lands in western Washington.

Hearing Location(s): The forest practices board held hearings in Centralia, Port Townsend, Ellensburg, and Mount Vernon on December 16, 2008, December 18, 2008, January 6, 2009, January 8, 2009, respectively. The board is continuing to accept comments by mail, e-mail, fax, and during the board meeting on May 20.

Date of Intended Adoption: May 20, 2009.

Submit Written Comments to: Patricia Anderson, DNR Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by May 19, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 222-30-021 provides prescriptions and options to harvesting trees in forested "riparian management zones" as defined in WAC 222-16-010. Pursuant to RCW 76.09.370, the forest practices board incorporates a scientific-based adaptive management process to determine the effectiveness of forest practices rules in aiding Washington's salmon recovery effort. Under

this adaptive management process, a scientific study was completed by the forest practices board's cooperative monitoring, evaluation, and research committee. The study, entitled *Validation of the Western Washington Riparian Desired Future Condition (DFC) Performance Targets in the Washington State Forest Practices Rules with Data From Mature, Unmanaged, Conifer-Dominated Riparian Stands*, found that basal area per acre of mature, unmanaged conifer-dominated riparian stands are greater than the values used in the current rule.

In response to the DFC study findings, the board is considering three alternative rule amendments to WAC 222-30-021(1). The anticipated effect of all of the alternatives is to increase the basal area retained in riparian management zones.

- The first alternative would increase the target basal area per acre stand requirement for all site classes to three hundred twenty-five square feet at age one hundred forty.

- The second alternative would increase the target basal area per acre the same as the first alternative, and would also:

- Allow the basal area per acre of the required twenty inner zone conifer leave trees to be credited towards meeting the stand requirement; and

- Expand the table, "Option 2. Leaving trees closest to water," to include site classes III and IV on streams greater than ten feet in width.

- The third would increase the target basal area per acre the same as the first alternative, and also allow the basal area per acre of the required twenty inner zone conifer leave trees to be credited towards meeting the stand requirement.

Reasons Supporting Proposal: The proposed rule changes are based on recommendations resulting from the scientifically based adaptive management process outlined in WAC 222-12-045. Through this process, the board has determined that the forest practices rules should be adjusted to ensure that appropriate riparian buffers are maintained on forest land subject to the Forest Practices Act.

Statutory Authority for Adoption: RCW 76.09.040 and 76.09.370(6).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; Implementation: Mary McDonald, 1111 Washington Street S.E., Olympia, (360) 902-1415; and Enforcement: Gary Graves, 1111 Washington Street S.E., Olympia, (360) 902-1483.

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

Small Business Economic Impact Statement

See WSR 08-13-087.

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

April 20, 2009

Peter Goldmark

Chair

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ((the)) board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See ((the)) board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is ((+40)) one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) <u>325</u> sq. ft.
II	((275)) <u>325</u> sq. ft.
III	((258)) <u>325</u> sq. ft.
IV	((224)) <u>325</u> sq. ft.
V	((190)) <u>325</u> sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See ~~((the))~~ board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;
- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75-))~~ seventy-five foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area sepa-

rating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than ~~((25%))~~ twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;

- Not more than ~~((40%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hundred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive man-

agement process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand

requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory

to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.
- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of ~~((75))~~ seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.
- The number of residual conifer trees per acre in the inner zone will equal or exceed ~~((57))~~ fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ~~((10))~~ ten feet wide and RMZs in site class I and II for streams greater than ~~((10))~~ ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within ~~((30))~~ thirty feet of the core zone for streams less than or equal to ~~((10))~~ ten feet wide and harvest is not permitted within ~~((50))~~ fifty feet of the core zone for streams greater than ~~((10))~~ ten feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a tra-

jectory to desired future condition. See board manual section 7 for calculating stand requirements;

• A minimum of ~~((20))~~ twenty conifers per acre, with a minimum ~~((12))~~ twelve inch dbh, will be retained in any portion of the inner zone where even-age harvest occurs. These riparian leave trees will ~~((not))~~ be counted ~~((or considered))~~ towards meeting applicable stand requirements ~~((not can))~~. The number of riparian leave trees cannot be reduced below ((20)) twenty for any reason.

• Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

• If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ~~((10))~~ ten trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ~~((10))~~ ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ~~((20))~~ twenty riparian leave trees per acre after harvest. **"Outer zone riparian leave trees"** are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ~~((20))~~ twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in

(c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ~~((12))~~ twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of ~~((12"))~~ twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological or historical sites registered with the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(g); or

(VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of ~~((12))~~ twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((10))~~ ten trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

*** (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30-))~~ thirty foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((10%))~~ ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((50-))~~ fifty foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ~~((50%))~~ fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of ~~((100))~~ one hundred feet in length. If an operating area is located more than ~~((500))~~ five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ~~((1,000))~~ one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional ~~((2))~~ two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than ~~((20%))~~ twenty percent in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ~~((the))~~ board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See ~~((the))~~ board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"**Stand requirement**" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is ~~((140))~~ one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) <u>325</u> sq. ft.
II	((275)) <u>325</u> sq. ft.
III	((258)) <u>325</u> sq. ft.
IV	((224)) <u>325</u> sq. ft.
V	((190)) <u>325</u> sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See ~~((the))~~ board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;
- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;

- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;

- The core and inner zones contain no stream adjacent parallel roads;

- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75-))~~ seventy-five foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);

- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than ~~((25%))~~ twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;

- Not more than ~~((10%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in

WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hundred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percent-

age of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory

to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.
- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of ~~((75))~~ seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.
- The number of residual conifer trees per acre in the inner zone will equal or exceed ~~((57))~~ fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			IV	110'	50'	23'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ((+0)) ten feet wide and RMZs in site class I and II for streams greater than ((+0)) ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within ((30)) thirty feet of the core zone for streams less than or equal to ((+0)) ten feet wide and harvest is not permitted within ((50)) fifty feet of the core zone for streams greater than ((+0)) ten feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of ((20)) twenty conifers per acre, with a minimum ((+2-)) twelve inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be counted or considered towards meeting applicable stand requirements nor can the number be reduced below ((20)) twenty for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ((+0)) ten trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in

addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ((+0)) ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ~~((20))~~ twenty riparian leave trees per acre after harvest. **"Outer zone riparian leave trees"** are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ~~((20))~~ twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ~~((12))~~ twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of ~~((12"))~~ twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;

(V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological or historical sites registered with the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(g); or

(VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of ~~((12))~~ twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((10))~~ ten trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

*** (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30-))~~ thirty foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((10%))~~ ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((50-))~~ fifty foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ~~((50%))~~ fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of ~~((100))~~ one hundred feet in length. If an operating area is located more than ~~((500))~~ five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ~~((1,000))~~ one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional ~~((2))~~ two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than ~~((20%))~~ twenty percent in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

- (i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.
- (ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ~~((the))~~ board manual section 7 for riparian design and layout guidelines.

***1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See ~~((tables for))~~ management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the ~~((inner zone))~~ RMZ rules. See ~~((the))~~ board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed ~~((in))~~ within the fifty-foot core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option as described in this section. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions~~((-- The following table defines basal area targets when the stand is 140 years old.~~

Site Class	Desired future condition target basal area per acre (at 140 years)
I	285 sq. ft.
H	275 sq. ft.

Site Class	Desired future condition target basal area per acre (at 140 years)
III	258 sq. ft.
IV	224 sq. ft.
V	190 sq. ft.

~~Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See the board manual section 7.) of three hundred twenty-five square feet per acre for all site classes at age one hundred forty. The growth modeling program provided by the department must be used to calculate whether a particular stand meets the stand requirement and is on a trajectory towards the desired future condition basal area target.~~

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the ~~((combined core and))~~ inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;
- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75--))~~ seventy-five foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than ~~((25%))~~ twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;

- Not more than ~~((10%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hundred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	((Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	((Combined core and inner zone width (measured from outer edge of ((core zone)) bankfull width or outer edge of CMZ)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	((83')) <u>133'</u>
II	170'	50'	((63')) <u>113'</u>	((78')) <u>128'</u>	57'	42'
III	140'	50'	((43')) <u>93'</u>	((55')) <u>105'</u>	47'	35'
IV	110'	50'	((23')) <u>73'</u>	((33')) <u>83'</u>	37'	27'
V	90'	50'))	((10')) <u>60'</u>	((18')) <u>68'</u>	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise

would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.
- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of ~~((75))~~ seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed ~~((57))~~ fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) Option 2. Leaving trees closest to the water.

((Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to 10-foot wide and RMZs in site class I and II for streams greater than 10-foot wide. Harvest must comply with the following:))

- Harvest is not permitted within 30 feet of the core zone for streams less than or equal to 10-foot wide and harvest is not permitted within 50 feet of the core zone for streams greater than 10-foot wide;

- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of 20 conifers per acre, with a minimum 12-inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be counted or considered towards meeting applicable stand requirements nor can the number be reduced below 20 for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of 10 trees per acre.)) The objective of this option is to retain an RMZ width that will maintain current riparian functions. The stand must provide sufficient residual conifer trees in the combined core and inner zones to reach the target basal area of three hundred twenty-five square feet per acre at age one hundred forty.

Inner zone harvest may occur under option 2 if the projected future basal area within the combined width of the core and inner zones exceeds the target basal area. The combined core and inner zone width must be determined using the leaving trees closest to the water table below; the future basal area must then be calculated using the growth model program provided by the department. The model will produce a minimum inner zone floor width. (The minimum floor width extends outward from the outer edge of the fifty-foot core zone.)

Harvest is permitted under option 2 in the following order:

- If the projected basal area within the combined core and inner zones exceeds the target basal area, an even-age harvest may occur starting at the outermost portion of the inner zone and progressing to the inner zone floor edge.

In any portion of the inner zone where an even-age harvest method occurs, at least twenty conifer trees per acre with a minimum dbh of twelve inches must be retained. The basal area of these trees will be counted towards meeting applicable stand requirements.

- If the projected basal area within the combined core and inner zones still exceeds the target basal area, the conifer trees otherwise required to be left in the outer zone may be harvested on a basal-area-for-basal-area basis; however, only a maximum of ten conifer trees per acre may be harvested in the outer zone. (Tree counts, minimum size and placement of outer zone trees are specified below in (c) of this subsection.)

Option 2. Leaving trees closest to water.

Site class	Total RMZ width	((Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Combined core and inner zone width (measured from outer edge of bankfull width or outer edge of CMZ)				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
			core and inner zone width	minimum floor ((distance)) width	core and inner zone width	minimum floor ((distance)) width		
			((measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone))		
I	200'	50'	((84')) 134'	((30')) 80'	((84')) 134'	((50')) 100'	66'	66'
II	170'	50'	((64')) 114'	((30')) 80'	((70')) 120'	((50')) 100'	56'	50'
III	140'	50'))	((44')) 94'	((30')) 80'	((**)) 105'	((**)) 80'	46'	((**)) 35'
IV	110'		74'		83'	80'	36'	27'
V	90'		61'		68'		29'	22'

((**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.))

(iii) Where the basal area components of the stand requirement cannot be met within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ((10)) ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activi-

ties. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) Outer zones. Timber harvest in the outer zone must leave ((20)) twenty riparian leave trees per acre after harvest. "Outer zone riparian leave trees" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ((20)) twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) Dispersal strategy. Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ((12)) twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of ((12")) twelve inches dbh or greater are

not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;

(V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological or historical sites registered with the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(g); or

(VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of ~~((+2))~~ twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((+0))~~ ten trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((+0"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((+0"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

*** (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30-))~~ thirty foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((+0%))~~ ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((50-))~~ fifty foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the

upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least (~~(50%)~~) fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of (~~(100)~~) one hundred feet in length. If an operating area is located more than (~~(500)~~) five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than (~~(1,000)~~) one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional (~~(2)~~) two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than (~~(20%)~~) twenty percent in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

WSR 09-09-133
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed April 22, 2009, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-06-044.

Title of Rule and Other Identifying Information: WAC 232-28-285 2010 Pilot cougar hunting seasons with the aid of dogs and 220-55-115 Recreational license dealer's fees.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515, on June 5 - 6, 2009, at 8:00 a.m.

Date of Intended Adoption: July 10 - 11, 2009.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by Friday, May 15, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by June 4, 2009, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **WAC 232-28-285**, the amendment establishes pilot cougar hunting with the aid of dogs for 2010 in Chelan, Okanogan, Ferry, Stevens, Pend Oreille, and Klickitat counties, plus other Washington counties that meet opt-in requirements from ESHB 2438. The proposed changes to the existing rule include: (1) Allowing anyone to apply for participation in the hunt, not just people that own dogs; (2) conduct a second drawing (if needed) from all unselected applicants, not just residents of participating counties; (3) change permit season to January 5 to March 15 [31], 2010; and (4) routine calendar date changes. This filing serves as a public notice that other coun-

ties may request inclusion in the pilot cougar program up until rule action by the fish and wildlife commission in July 2009. Columbia County has expressed interest in participating in the pilot cougar program, but they have not officially request[ed] inclusion in the program at the date of this filing. The anticipated effects of the pilot cougar hunt are stable cougar populations and maintaining the current low level of human-cougar interactions.

WAC 220-55-115, the amendment would allow license dealers to charge \$0.50 for issuing a migratory bird hunting authorization (including harvest report).

Reasons Supporting Proposal: **WAC 232-28-285**, this change is necessary to implement ESHB 2438 to test the use of dogs to enhance public safety and better manage cougar populations and to maintain sustainable cougar populations while maximizing recreational opportunities and enhancing public safety.

WAC 220-55-115, this change is necessary to add migratory bird hunting authorizations to the list of documents issued by the WILD licensing system. The authorizations are currently issued by agency personnel, and this change will save staff and mailing costs.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.040, 77.12.010.

Statute Being Implemented: RCW 77.12.047, 77.12.-020, 77.12.570, 77.12.210, 77.12.040, 77.12.010.

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

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

April 22, 2009

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 04-216, filed 8/17/04, effective 9/17/04)

WAC 220-55-115 Recreational license dealer's fees.

License dealers may charge a license issuance fee as follows:

(1) Two dollars for the issuance of any of the following fishing licenses:

- (a) A combination license.
- (b) A saltwater license.
- (c) A freshwater license.
- (d) A two-day temporary fishing license.
- (e) A family fishing weekend license.
- (f) A shellfish and seaweed license.
- (g) A razor clam license.

(2) Two dollars for the issuance of any of the following hunting licenses:

- (a) A big game combination license.
- (b) A small game license.
- (c) A three-consecutive day small game license.

(3) Two dollars for the issuance of a fish and wildlife lands vehicle use permit when issued separately from an annual freshwater, saltwater or combination fishing license, or separately from an annual small game hunting license, big game combination license, or trapping license.

(4) Notwithstanding the provisions of this section, if any two or more licenses are issued at the same time, or the fish and wildlife lands vehicle use permit is issued with any recreational license, the license issuance fee for the document is two dollars.

(5) Fifty cents for the issuance of any of the following:

- (a) A deer, elk, bear, cougar, mountain goat, mountain sheep, moose, or turkey transport tag.
- (b) A state of Washington migratory bird stamp.
- (c) A Western Washington pheasant permit.
- (d) An application for a special permit hunt.
- (e) A migratory bird hunting authorization (including harvest report card).

AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

WAC 232-28-285 ((2008-2009)) 2010 Pilot cougar hunting seasons with the aid of dogs. As used in this section and in the context of pilot cougar hunting seasons, the following definitions apply:

"Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained or starting a cougar track.

"Pursue" or "pursuit" means dogs are:

- Not on a leash or restrained; or
- Starting a cougar track; or
- In the act of tracking a cougar; or
- At a treed cougar.

Transporting dogs in a motorized vehicle or walking a dog on a leash is not pursuit.

"Dog ~~((owner))~~ handler" means a person that owns ~~((and))~~ or hunts with dogs that are capable of detecting, tracking and treeing a cougar.

"Quota" means the targeted harvest goal. The actual harvest level may exceed the quota.

"Kill permit" allows a hunter to pursue or kill cougar.

"Pursuit permit" allows a hunter to pursue cougar.

(1) The pilot cougar-hunting season will allow use of dogs to hunt cougar. The hunts will consist of pursuit-or-kill seasons and pursuit-only seasons ~~((and are allowed only in Kliekitat, Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties))~~.

(2) Pursuit-or-kill seasons:

Cougar may be pursued or killed with the aid of dogs from ~~((December 1, 2008))~~ January 5, 2010, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ~~((2009))~~ 2010, whichever occurs first ~~((EXCEPT GMUs 101 and 204 where cougar may be pursued or~~

killed from January 1, 2009, until the female zone quota has been killed, the total zone quota has been killed, or March 31, 2009, whichever occurs first).

(3) Pursuit-only seasons:

(a) If a zone quota is killed prior to March 31, ~~((2009))~~ 2010, cougar may be pursued with dogs in all or portions of that zone until March 31, ~~((2009))~~ 2010. Hunters may only pursue cougars in designated pursuit only areas identified on their kill or pursuit-only permit. Hunters may not kill cougar during pursuit-only seasons.

(b) Hunters selected for the pursuit-or-kill season (accompanied by up to three of their identified handlers) may participate in a pursuit-only season. Permit hunters that harvest a cougar under a kill permit may continue to pursue cougars until March 31. If a zone quota is killed, the department may also issue pursuit-only permit to hunters drawn at random from the unselected pool of applicants. The director will identify the number of pursuit-only hunters selected.

(4) Hunt areas and kill quotas:

Cougar seasons will be based on a quota system, where permit hunters ~~((using dogs))~~ may hunt and kill cougar until the allotted numbers of cougar have been killed from each hunt zone or March 31, ~~((2009))~~ 2010, whichever occurs first.

(a) Kill quotas start September 1 and will include all cougar killed during seasons with and without the aid of dogs, including cougar seasons under this section, cougar seasons without the aid of dogs authorized under WAC 232-28-272 and 232-28-287, depredation permits, landowner kill permits, and WDFW depredation authority.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, landowner kill permits, and WDFW depredation authority even if these kills result in exceeding a zone quota.

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
East Cascades North	9001	Okanogan	Those portions of GMUs 203, 209, 215, 218, 233, 224, 231, 239, and 242 within Okanogan County	17	7
	9002	Chelan	Those portions of GMUs 243, 244, 245, 246, 247, 249, 250, and 251 within Chelan County	6	2
Northeastern	9003	Ferry-Okanogan	GMUs 101, 204	16	6
	9004	Stevens-Pend Oreille	Those portions of GMUs 105, 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	23	9
East Cascades South	9005	Klickitat	Those portions of GMUs 382, 388, 578 within Klickitat County	6	2

(5) Quota hotline:

Permit hunters participating in a pursuit-or-kill season must call the toll free cougar quota hotline within twenty-four hours prior to each day hunting cougar to determine if the zone quota has been killed and the zone is closed. Hunters who hunt more than one consecutive day must call the quota hotline once daily to determine if the zone quota is killed. Hunters who harvest a cougar with the aid of dogs must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar, with proof of sex naturally attached, must be sealed by an authorized department employee within five days of the notification of kill. Any person who takes a cougar must present the cougar skull in such a manner that teeth and biological samples can be extracted to an authorized department employee at the time of sealing.

(6) Kill or pursuit-only permit eligibility:

~~((To apply for a kill or pursuit-only permit under this section, individuals must sign an affidavit provided by the department, certifying under penalty of false swearing under RCW 9A.72.040 that they are a dog owner. The affidavit must be mailed to WDFW by the date and time identified by the director. Individuals not registered as a dog owner will not be issued a permit.~~

~~((b))~~ To apply for a kill or pursuit-only permit under this section, individuals must purchase a cougar permit application and submit the application in compliance with WAC 232-28-291 by a date and time identified by the director.

~~((c))~~ (b) To be eligible for a permit, the participant must be a Washington resident who at the time of application for a permit possesses a valid big game license with cougar as a species option. The permit holder ~~((must))~~ may use dogs while participating in a cougar hunt under this section.

~~((d))~~ (c) A permit will not be issued to any person who has been convicted of unlawful use of dogs under RCW 77.15.245 within the five-year period prior to December 1, 2004. Any person issued a permit and who is subsequently convicted of any wildlife offense while participating in a pursuit-or-kill or pursuit-only season, or who violates any condition of the permit, will have the permit revoked and will be ineligible to participate in the remainder of the pilot program.

(7) Permit issuance procedure:

(a) The number of kill permits ~~((for a pursuit-or-kill season with the aid of dogs))~~ may be established by the director, but will not exceed two times the total cougar quota for each hunt zone.

(b) The department will issue kill or pursuit-only permits to the persons whose applications are drawn at random. Indi-

viduals selected will be notified by telephone or mail. Kill and pursuit-only permits may not be sold or reassigned.

(c) If a female zone quota or total zone quota is not killed in a hunt zone by ~~((January))~~ February 15 (or sooner as identified by the director), then the department may issue kill permits to additional hunters. Hunters will be drawn at random from the unselected pool of applicants ~~((and must be a resident of one of the participating counties))~~.

(8) Qualifications for participation and requirements:

In addition to the provisions applicable to all cougar hunters:

(a) Successful applicants must complete a training program prior to participating in a pursuit-or-kill season or pursuit-only season with the aid of dogs.

(b) Participants must have their permit issued by the department in their possession while hunting cougar.

(c) Individuals selected for a kill permit may kill and possess one cougar per permit and only the permittee may kill the cougar~~((s))~~.

(d) Individuals selected for a cougar kill or pursuit-only permit may use dog handlers. However, no more than three handlers may accompany the permittee while hunting or pursuing cougar. Dog handlers may not pursue cougar when the permit hunter is not present at the time the dogs are released from a leash or unrestrained. Dog handlers must have a dog handler identification card, issued by the department, in their possession while participating in a pursuit-or-kill season or pursuit-only season.

(e) Dog handlers must ~~((be a Washington resident and))~~ possess a valid Washington hunting license.

(f) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(g) Participants must have a vehicle placard issued by the department. The vehicle placard must be placed in the permittee's and dog handler's vehicles and be visible from outside the vehicles at all times while hunting or pursuing cougar.

(h) Kill and pursuit-only permit hunters are required to report their hunting activity, whether they harvest a cougar or not, using the toll free cougar quota hotline. Unsuccessful hunters must report their hunting activity by April 10, 2009. A violation of this requirement under this subsection is punishable as an infraction under RCW 77.15.160.

(9) The permit belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

WSR 09-09-137
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed April 22, 2009, 11:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-03-034 on January 12, 2009.

Title of Rule and Other Identifying Information: WAC 220-47-302, 220-47-307, 220-47-311, 220-47-325, 220-47-401, 220-47-411, 220-47-427, 220-47-428 and 220-47-500, rules for commercial salmon fishing in Puget Sound.

Hearing Location(s): Natural Resources Building, Room 682, 1111 Washington Street S.E., Olympia, WA 98504, on Friday, June 5, 2009, at 1:30 p.m. - 2:30 p.m.

Date of Intended Adoption: June 19, 2009.

Submit Written Comments to: Rules Coordinator, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by May 22, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by May 22, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

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: Jeromy Jording, 1111 Washington Street, Olympia, (360) 902-2171; Implementation: Jim Scott, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Record-keeping, and Other Compliance Requirements of the Proposed Rule:

These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. They include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: None - these rule changes clarify dates for

anticipated open periods, areas closed in Puget Sound to commercial harvest methods, and legal gear requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: Less than \$400.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the 10% of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

It is unknown how many employees are associated with 10% of businesses that are the largest businesses required to comply, as most commercial gillnet fishermen operate as single fishermen. Therefore the cost per hour of labor is also difficult to determine. The less than \$400 cost cannot be compared with an amount per one hundred dollars of sales as this is an expected one-time initial cost for commercial fishermen to bring their gear into compliance with the associated rules. Number 3 implies that they have ownership of a natural resource, guaranteeing them a percentage of catch for which they then sale [sell] for profit, which is not the case.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department issues an annual pamphlet and mails it out to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department cosponsors the annual North of Falcon process, which consists of a series of public meetings over a period of several months from February through April to allow constituents to supply input on the rules contained in this filing.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers using legal commercial gear types seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound.

A copy of the statement may be obtained by contacting Lori Preuss, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

April 22, 2009
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-006, filed 9/20/07, effective 10/21/07)

WAC 220-47-302 Puget Sound—Lawful gear—Gill net. (1) It is unlawful to use drift gill net salmon gear in Puget Sound that exceeds 1,800 feet in length or contains meshes of a size less than 5 inches (~~(, except in Area 9A, where gill nets may not exceed 600 feet in length, or be more than 60 mesh deep, or contain mesh size less than 5 inches)~~).

(2) It is unlawful to use skiff gill net salmon nets in Puget Sound that exceed ~~((300))~~ 600 feet in length ~~((or)),~~ 90 meshes in depth, or that contain meshes of a size less than 5 inches, except in Area 9A, where skiff gill nets ~~((may not exceed 600 feet in length, or be))~~ are further restricted by not being more than 60 meshes deep ~~((, or contain mesh size less than 5 inches))~~. It is unlawful to retrieve skiff gill nets by any means except by hand (no hydraulics may be used). It is unlawful to fail to attend to skiff gill nets at all times.

(3) Drift gill nets and skiff gill nets shall be operated substantially in a straight line. It is unlawful to set such nets in a circle or to set them in other than a substantially straight line.

(a) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, two red or orange polyform size A-3 buoys, marking the visible end of the cork line portion of the net. One of the two buoys shall be marked in a visible, legible, and permanent manner with the name and gill-net license number of the fisher.

(b) The cork line portion of the net shall be marked every 50 fathoms of the net with polyform size A-2 buoys.

(4) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A sockeye or pink salmon fisheries unless said gill net gear is constructed so that the first 20 meshes below the cork line are composed of five-inch mesh, white opaque, minimum 210/30d (#12) diameter, nylon twine.

(5) It is unlawful to take or fish for salmon with gill net gear when recovery box(es) are required in areas ((7 or 7A between the dates of September 30 and October 20)) defined under WAC 220-22-030 unless the gill net vessel has aboard and uses said operable recovery box(es) as described in this subsection.

(a) Dimensions and capacities of required recovery boxes:

(i) Recovery boxes must have two chambers, if one box, or one chamber in each box, if two boxes.

(ii) Each recovery box chamber must have an inside length measurement of 48 inches, an inside width measurement of 10 inches, and an inside height measurement of 16 inches.

(iii) Each chamber of the recovery box must have an inlet hole measuring between 3/4 inch and 1 inch in diameter. The inlet hole must be centered horizontally across the door or wall of the chamber, and the bottom of the hole must be located 1-3/4 inches above the floor of the chamber.

(iv) Each chamber of the recovery box must include a water outlet hole on the opposite wall from the inlet hole, and the outlet hole must be at least 1-1/2 inches in diameter, with the bottom of the outlet hole located 12 inches above the floor of the chamber.

(v) Flow of water through each chamber of the recovery boxes must be not less than 16 gallons per minute, nor more than 20 gallons per minute.

(b) Each box and chamber must be operating during any time that the net is being retrieved or picked.

(c) The vessel operator must demonstrate to department employees, upon request, that the pumping system is delivering the proper volume of fresh seawater into each chamber.

(d) All salmon not to be retained must be released immediately with care and with the least possible injury to the fish, or placed into the operating recovery box.

(e) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

(f) All fish placed in the recovery boxes must be released within the same catch area as the area of capture, and the release must occur prior to landing or docking.

(6) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

AMENDATORY SECTION (Amending Order 08-167, filed 7/8/08, effective 8/8/08)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass,

and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - (1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) Additional coho seasonal closure: Those waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W) and then southeastward along that line to Fish Point.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D.

(2) Additional pink and coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional coho seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Four-mile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and

those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspout marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending Order 08-167, filed 7/8/08, effective 8/8/08)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
(7, 7A:	7AM-7PM-	- 10/10)

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- ((10/15) 10/12, 10/13, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31
	7AM - 5PM	- 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

7B, 7C:	6AM - ((8PM)) 9PM	- ((8/20, 8/27, 9/3)) 8/12
	6AM - 8PM	= 8/19, 8/26, 9/2
7B:	7AM - 8PM	- ((9/10)) 9/9
	7AM - 7PM	- ((9/15)) 9/14, 9/16, 9/18
	7AM ((9/21)) 9/20	- 6PM ((11/4)) 10/31
	7AM ((11/3)) 11/2	- 4PM ((11/7)) 11/6
	7AM ((11/10)) 11/9	- 4PM ((11/14)) 11/13
	7AM ((11/17)) 11/16	- 4PM ((11/21)) 11/20
	7AM ((11/24)) 11/23	- 4PM ((11/28)) 11/27
	8AM ((12/1)) 11/30	- 4PM ((12/5)) 11/4

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	((7AM-5PM)) 6AM - 8PM	- ((11/4, 11/11, 11/18)) 8/17, 8/19, 8/25, 8/27
	((7AM-4PM	- 11/25))
8A:	((7AM-7PM)) 6AM - 8PM	- ((Limited participation - two boats (9/29, 10/6-)) 8/18, 8/20, 8/24, 8/26
	7AM - ((6PM)) 7PM	- ((10/13, 10/20, 10/27, 10/29)) Limited participation - two boats (9/28, 10/5).
	7AM - ((5PM)) 6PM	- ((11/5, 11/11,)) 11/13((- 11/19))
	((7AM-4PM	- 11/24, 11/26))
8D:	7AM - 7PM	- ((9/22, 9/29, 10/6)) 9/21, 9/28, 10/5
	7AM - 6PM	- ((10/13, 10/20, 10/27, 10/29)) 10/12, 10/19, 10/26, 10/28
	7AM - 5PM	- ((11/5, 11/11, 11/13, 11/19)) 11/4, 11/10, 11/12, 11/18
	7AM - 4PM	- ((11/24, 11/26)) 11/23, 11/25
10((-11):	((7AM-6PM)) 6AM - 8PM	- ((10/20, 10/27, 10/29)) Limited participation - two boats (8/25, 8/27, 8/31).
10, 11:	7AM - 6PM	= 10/20, 10/26, 10/28
	7AM - 5PM	- 11/3, ((11/10, 11/12)) 11/9, 11/11, 11/17
	7AM - 4PM	- ((11/24)) 11/23

Note: In Area 10 during any open period occurring from 8/25 through 8/31 it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon with department observers on board.

AREA	TIME	DATE
12, 12B:	7AM - 6PM ((use of recovery box required))	- 10/20, ((10/27, 10/29)) <u>10/26, 10/28</u>
	7AM - 5PM	- 11/3, ((11/10, 11/12)) <u>11/9, 11/11, 11/17</u>
<i>((Note: In Areas 12 and 12B, it is unlawful to take or fish for salmon during any open period occurring from 10/19 through 11/1 with purse seine gear unless purse seine fishers are using a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).))</i>		
12C:	7AM - 5PM	- ((11/10)) <u>11/9, 11/17</u>
	7AM - 4PM	- ((11/24)) <u>11/23</u>

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October ~~((26))~~ 25 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, ~~((and))~~ prior to September ~~((7))~~ 6 in Area 7B ~~((, and wild coho in Areas 12, 12B, and 12C)), and during September in those waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy south-east of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W) and then southeastward along that line to Fish Point.~~

Chum salmon - prior to October 1 in Areas 7 and 7A.

All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 08-167, filed 7/8/08, effective 8/8/08)

WAC 220-47-325 Purse seine—Release of incidentally caught fish. (1) It is unlawful for any purse seine vessel operator landing salmon to do so directly into the hold. All salmon must be landed onto the deck or sorting tray or table of the harvesting vessel with the hold hatch cover(s) closed until all salmon that cannot be retained are released; and additionally:

(2) In Areas 7 and 7A, and prior to ~~((September 14))~~ the Fraser Panel relinquishing management control in Areas 7B and 7C, it is unlawful for any purse seine vessel operator to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in this section prior to the seine net being removed from the water, unless otherwise provided for in this section.

(3) The brailer must be constructed in the following manner and with the following specifications:

(a) A bag of web hung on a rigid hoop attached to a handle;

(b) The bag must be opened by releasing a line running through rings attached to the bottom of the bag; and

(c) The web must be of soft knotless construction, and the mesh size cannot exceed 57 mm (2.25 inches) measured along two contiguous sides of a single mesh.

(4) Hand-held dip nets must be constructed of a shallow bag of soft, knotless web attached to a handle.

(5) Fish may be brought on board without using a brailer or dip net as specified in this section if the number of fish in the net is small enough that the crew can hand-pull the bunt onto the vessel without the use of hydraulic or mechanical assistance.

(6) In order for fishers to participate in openings where brailing is required, fishers must use a recovery box and operate the box in compliance with the provisions of WAC 220-47-301 (7)(a) through (f). It is unlawful to fail to do so.

AMENDATORY SECTION (Amending Order 08-167, filed 7/8/08, effective 8/8/08)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	((9/14 - 11/15)) <u>9/13 - 11/14</u>

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Jeromy Jording, Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia WA, 98501-1091.

(4) All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 08-167, filed 7/8/08, effective 8/8/08)

WAC 220-47-411 Gill net—Open periods. It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME		DATE(S)	MINIMUM MESH
6D: Skiff gill net only.	7AM	-	7PM <u>9/21, 9/22, 9/23, 9/24, 9/25, ((9/26)) 9/28, 9/29, 9/30, 10/1, 10/2, ((10/3)) 10/5, 10/6, 10/7, 10/8, 10/9, ((10/10)) 10/12, 10/13, 10/14, 10/15, 10/16, ((10/17)) 10/19, 10/20, 10/21, 10/22, 10/23((10/24))</u>	5 1/2"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum ~~(and 5 1/2-inch maximum)~~ mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM	-	Midnight; use of recovery box required ((10/10, 10/15)) <u>10/12, 10/13, 10/16, 10/17</u>	6 1/4"
	7AM	-	Midnight <u>10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13, 11/14</u>	6 1/4"

Note: In Areas 7 and 7A after September 28 but prior to October ~~((19))~~ 18, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

7B, 7C:	8PM	-	7AM NIGHTLY 8/10	7"
	7PM	-	8AM NIGHTLY ((8/18, 8/19, 8/21)) <u>8/17, 8/18, 8/20, 8/24, 8/25, ((8/26, 8/28)) 8/27, 8/31, 9/1, ((9/2, 9/4)) 9/3</u>	7"
7B:	12:01AM	-	Midnight ((9/7, 9/9, 9/11, 9/14, 9/16, 9/18)) <u>9/6, 9/8, 9/10, 9/13, 9/15, 9/17</u>	5"
	7AM ((9/21)) <u>9/20</u>	-	Midnight ((10/25)) <u>10/24</u>	5"
	12:01AM ((10/26)) <u>10/25</u>	-	Midnight ((11/4)) <u>10/31</u>	6 1/4"
	7AM ((11/3)) <u>11/2</u>	-	4PM ((11/7)) <u>11/6</u>	6 1/4"
	7AM ((11/10)) <u>11/9</u>	-	4PM ((11/14)) <u>11/13</u>	6 1/4"
	7AM ((11/17)) <u>11/16</u>	-	4PM ((11/21)) <u>11/20</u>	6 1/4"
	7AM ((11/24)) <u>11/23</u>	-	4PM ((11/28)) <u>11/27</u>	6 1/4"
	8AM ((12/1)) <u>11/30</u>	-	4PM ((12/5)) <u>12/4</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 6:00 PM on the first Friday in December.

8:	((7AM)) <u>6AM</u>	-	((7PM)) <u>10PM</u> ((11/3, 11/5, 11/7, 11/10, 11/12, 11/14, 11/17, 11/19, 11/21)) <u>8/18, 8/20, 8/24, 8/26, 11/24, 11/26, 11/28</u>	((6 1/4")) <u>5" minimum and 5 1/2" maximum</u> <u>6 1/4"))</u>
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gill nets greater than 60 mesh maximum depth.

8A:	((6PM)) <u>6AM</u>	-	((8AM)) <u>10PM</u> ((NIGHTLY 10/7)) <u>8/17, 8/19, 8/25, 8/27</u>	5" minimum and 5 1/2" maximum
	((7AM))	-	8-PM <u>10/14, 10/16</u>	5"
	((7AM))	-	4PM <u>10/17</u>	5"))
	((8AM)) <u>6PM</u>	-	((8PM)) <u>8AM</u> ((10/21, 10/23, 10/28, 10/30)) <u>NIGHTLY 10/6</u>	((6 1/4")) <u>5"</u>
	((8AM)) <u>7AM</u>	-	((4PM)) <u>6PM</u> ((10/24, 10/31)) <u>10/12, 10/14</u>	((6 1/4")) <u>5"</u>
	((7AM))	-	7PM <u>11/4, 11/6, 11/10, 11/12, 11/18, 11/20</u>	6 1/4"
	((7AM))	-	6PM <u>11/25, 11/27</u>	6 1/4"
	((7AM))	-	4PM <u>11/7, 11/14, 11/21, 11/28</u>	6 1/4"))

AREA	TIME		DATE(S)	MINIMUM MESH
8D:	6PM	-	8AM NIGHTLY ((9/21, 9/23, 9/25, 9/28, 9/30, 10/2, 10/5, 10/7, 10/9)) 9/20, 9/27, 10/4	5"
	7AM	-	((8PM)) 9PM ((10/16)) 9/22, 9/23, 9/29, 9/30, 9/6, 9/7	5"
	7AM	-	((4PM)) 8PM ((10/17)) 10/15, 10/22, 10/29	5"
	((8AM	-	8PM 10/23	5"
	8AM	-	4PM 10/24	5"
	8AM	-	8PM 10/30	6 1/4"
	8AM	-	4PM 10/31	6 1/4"
	7AM	=	4PM 10/16, 10/23, 10/30	5"
	7AM	-	7PM ((11/6, 11/13, 11/)) 11/11, 11/19	6 1/4"
	7AM	-	6PM ((11/27)) 11/26	6 1/4"
	7AM	-	4PM ((11/7, 11/14, 11/21, 11/28)) 11/13, 11/20, 11/27	6 1/4"
9A: Skiff gill net only.	((7PM)) 7AM	-	((7AM)) 7PM ((NIGHTLY 8/26, 8/27, 8/28)) 8/24, 8/25, 8/26	5"
	6AM	-	8PM ((11/4)) 10/31	5"
	((8/31)) 8/30			

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish. Legal gear defined in WAC 220-47-302.

10	6AM	=	10PM Limited participation - two boats (8/24, 8/25, 8/31)	5" minimum and 5 1/2" maximum
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Note: In Area 10 during September coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

10, 11:	((4PM)) 5PM	-	((7AM)) 9AM NIGHTLY ((10/19, 10/28, 11/2)) 10/18, 10/29	6 1/4"
	5PM	-	((9AM)) 8AM NIGHTLY ((10/30)) 10/21	6 1/4"
	((3PM)) 4PM	-	((7AM)) 8AM NIGHTLY ((11/9, 11/16)) 11/1, 11/10, 11/12, 11/15	6 1/4"
	((2PM)) 3PM	-	((7AM)) 8AM NIGHTLY ((11/23)) 11/22	6 1/4"
	4PM	-	Midnight NIGHTLY ((10/22, 11/5, 11/13, 11/19, 11/26)) 10/21, 11/4, 11/18, 11/25	6 1/4"
12A: Skiff gill net only.	7AM	-	7PM ((9/2, 9/9, 9/16, 9/23, 9/30)) 9/1, 9/8, 9/15, 9/22, 9/31	5"
12, 12B:	((8AM)) 7AM	-	8PM ((10/22, 10/23, 10/28, 10/30)) 10/19, 10/21, 10/27, 10/29	6 1/4"
	7AM	-	7PM ((11/5, 11/6, 11/11, 11/13, 11/19, 11/20)) 11/2, 11/4, 11/10, 11/12, 11/16, 11/18	6 1/4"
12C:	7AM	-	7PM ((11/11, 11/13, 11/18, 11/20)) 11/10, 11/12, 11/16, 11/18	6 1/4"
	7AM	-	6PM ((11/25, 11/27)) 11/24, 11/26	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending Order 03-210, filed 8/20/03, effective 9/20/03)

WAC 220-47-427 Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear.

(1) The Puget Sound beach seine salmon fishery is designated as an emerging commercial fishery for which a vessel is required. An emerging commercial fishery license and an experimental fishery permit are required to participate in this fishery.

(2) The department will issue ((five)) two salmon beach seine experimental fishery permits.

(3) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department established a pool of applicants by drawing on August 13, 2002. The pool established by this

drawing will be maintained to replace any permit(s) which may be voided.

(4) Permit holders are required to participate in the salmon beach seine experimental fishery.

(a) For purposes of this section, "participation" means the holder of the salmon beach seine experimental permit being aboard the designated vessel in the open fishery (~~area~~ ~~two days each week during the open fishing period~~).

(b) If the salmon beach seine experimental permit holder fails to participate, the salmon beach seine experimental permit issued to that fisher will be void and a new salmon beach seine experimental permit will be issued through a random drawing from the applicant pool established in 2002.

(c) The department may require proof of participation by maintaining a department approved log book or registering with state officials each day the salmon beach seine experimental permit holder participates.

(d) Persons who participate, but violate conditions of a salmon beach seine experimental permit, will have the permit voided and a new salmon beach seine experimental permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) In Quilcene Bay, chum salmon may not be retained by a salmon beach seine experimental permit holder. Chum salmon in Quilcene Bay must be released alive (~~or, at the direction of federal or state officials, submitted for brood-stock purposes~~).

(6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a salmon beach seine experimental permit will have his or her name permanently withdrawn from the pools.

(7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed 600 feet in length or 100 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.

AMENDATORY SECTION (Amending Order 05-166, filed 8/3/05, effective 9/3/05)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas: (~~Closed~~.)

<u>AREA</u>	<u>TIME</u>		<u>DATE(S)</u>
12A:	7AM	=	7PM
			8/24, 8/25, 8/31, 9/1, 9/7, 9/8, 9/14, 9/15, 9/21, 9/22, 9/28, 9/29
12H:	7AM	=	7PM
			November (dates determined per agreement with tribal comanagers in-season if harvestable surplus of salmon remain).

It is unlawful to retain chinook taken with beach seine gear in all areas, and unlawful to retain chum from Area 12A.

AMENDATORY SECTION (Amending Order 92-47, filed 7/20/92, effective 8/20/92)

WAC 220-47-500 Limited participation salmon net fisheries. (1) When the director determines that a harvestable amount of salmon appears to be available, but that full-fleet fishing effort has an unacceptable risk of exceeding the available harvest or compromises other specific management objectives, the director may authorize a limited participation fishery in extreme terminal fishing areas in order to provide additional opportunities for net fisheries where they might not otherwise exist. Such a fishery may be authorized for experimental or developmental fisheries, fisheries necessary to refine run size data, fisheries necessary to provide biological information, or in cases where:

(a) Other specific management objectives have been stated for the species and area in question; or

(b) There is a reasonable expectation that foregone opportunity will be claimed and the harvestable surplus cannot be carried forward to the next year of harvest; and

(c) Full-fleet participation with time, space, or gear restrictions cannot achieve the harvest goal.

(2) Only licensed commercial salmon fishers may participate in a limited participation fishery. Only one listing is allowed per license. Fishers who wish to have their name placed on a limited participation register must mark the appropriate box on their license renewal application, or so notify the department, in writing, by July 31st. Interested fishers must provide a message phone number at which they may be contacted.

(3) Each year the department will, from the list of interested fishers, use random selection to create a priority list for gill net fishers and a priority list for purse seine fishers. Priority registers will be available for inspection at the department's Olympia office, or upon written request to the department. Once the priority lists have been created, sale or transfer of the license shall invalidate the receiver from participation in that year's limited participation fishery.

(4) The number of units of each gear type selected to participate in a limited participation fishery will reflect the most recent ratio of gear types in the full-fleet fishery directed at the species in question, except when conservation concerns, biological data collection needs, or specific management objectives dictate alternative ratios or use of a single gear type.

(5) When a limited participation fishery is authorized, the department will contact fishers from the priority register at least twenty-four hours prior to the opening of the fishery. When a fisher cannot be contacted after reasonable effort, the department will select the next name, until the maximum number of allowable units of gear is reached. If not reached, the fisher's name will remain at the priority position, but the fisher may not participate in that limited participation fishery. Agreement to participate, or declining to participate, will remove the fisher from the priority position, and place the name at the bottom of the priority list.

Agreement to participate in an authorized limited participation fisheries will require a department observer on board a participating vessel. An additional permit may be required by a participating vessel to allow for a department observer to

complete work associated with biological data collection needs meeting specific management objectives.

(6) Examples of specific management objectives include but are not limited to:

- (a) Reducing levels of incidental catch of wild salmon stocks;
- (b) Reducing incidental catch of nontarget salmon species originating from regions other than the fishing area; or
- (c) Specific recreational emphasis action.