

WSR 09-12-010**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF HEALTH**

[Filed May 21, 2009, 11:39 a.m.]

This memo serves as notice that the department is withdrawing the CR-102 for WAC 246-918-990 which was filed January 20, 2009, and published in WSR 09-03-090. The original proposal amended the impaired physician program surcharge to return the fee to the amount listed in statute, RCW 18.71A.020(3).

Since the filing of WSR 09-03-090, the 2009 legislature passed SHB 1765 that increases the impaired physician program fee to \$50.00 for physicians and physician assistants. For this reason, the CR-102 for WAC 246-918-990 is no longer valid. The department must submit a new CR-102 to address the fee changes for both professions.

Individuals requiring information on this rule should contact Julie Kitten, Medical Commission Program Manager, at (360) 236-2757.

Mary C. Selecky
Secretary

WSR 09-12-016**PROPOSED RULES
BOARD OF ACCOUNTANCY**

[Filed May 21, 2009, 4:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-13-024.

Title of Rule and Other Identifying Information: WAC 4-25-830 What are the CPE requirements for individuals? and 4-25-831 What are the program standards for CPE?

Hearing Location(s): The Doubletree Hotel Seattle Airport, 18740 International Boulevard, Cascade 12 Room, SeaTac, WA, on July 28, 2009, at 9:00 a.m.

Date of Intended Adoption: July 28, 2009.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail cheyls@cpaboard.wa.gov, fax (360) 664-9190, by July 21, 2009.

Assistance for Persons with Disabilities: Contact Cheryl Sexton by July 21, 2009, TTY (800) 833-6384 or (360) 664-9194.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

WAC 4-25-830:

- Subsections (1)(a) and (7): To clarify continuing professional education (CPE) requirements for individuals. CPE taken prior to initial licensure cannot be used for licensing or renewal purposes. This proposal aligns the rule with WAC 4-25-831(7).
- Subsection (8): To require CPE extension requests be submitted no later than December 31 of the year preceding the year of renewal.

WAC 4-25-831:

- Subsection (8): To clarify that credit for self-study CPE is allowed for initial licensure as well as for renewal.
- Subsection (12): To correct a reference to WAC 4-25-830(9). Subsection (9) no longer exists. The correct reference should be to WAC 4-25-830(8).
- Subsection (12): To align the language with WAC 4-25-830 that refers to "extensions" and with the current practice for imposing sanctions.

Reasons Supporting Proposal:

WAC 4-25-830:

- Subsections (1)(a) and (7): WAC 4-25-830(7) requires individuals applying for a Washington state certified public accountant (CPA) license via reciprocity to complete CPE (one hundred twenty hours) within the thirty-six month period immediately preceding the date the application is received. WAC 4-25-831(7) states "CPE credit is allowable only for those programs taken after the issuance of the CPA license." The board intends WAC 4-25-831(7) to apply to all CPAs, including those requesting a license via reciprocity and proposes changes to ensure WAC 4-25-830 (1)(a) and (7) are clear.
- Subsection (8): CPAs request additional time to complete their CPE requirements (extensions) well after the individual hardship caused the need, sometimes up to a year later. The board believes if a situation causes the need for additional time, the request should closely follow the need. The board proposes language to clarify that the board will consider requests for CPE extensions by the end of their CPE reporting periods.

WAC 4-25-831:

- Subsection (8): This subsection currently implies that a CPA may only use self-study CPE for renewal. However, a certificateholder converting to a license, an out-of-state licensee applying for a Washington license, or a person applying to reinstate a license may also use self-study CPE. The board proposes language to clarify this potential ambiguity. This revised language correlates to the language in Board Policy 2000-1 Continuing Professional Education under Acceptable Evidence Supporting Eligibility for CPE.
- Subsection (12):
 - This subsection currently refers to subsection (9) of WAC 4-25-830. In 2001, the board removed WAC 4-25-830(8) (the twenty hour per year requirement) and renumbered WAC 4-25-830 accordingly. The board proposes correcting the reference for accuracy.
 - WAC 4-25-830(8) refers to "CPE extension request." The board proposes adding the word "extension" to align the two rules.
 - When imposing sanctions, the board may allow a CPA to carry-back CPE hours to a prior reporting period. The board proposes aligning the language with current practice for clarity.

Statutory Authority for Adoption: RCW 18.04.055(7), 18.04.215(5).

Statute Being Implemented: RCW 18.04.055(7), 18.04.215(5).

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

Name of Proponent: Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, P.O. Box 9131, Olympia, WA 98507-9131, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328.

May 2009

Richard C. Sweeney
Executive Director

AMENDATORY SECTION (Amending WSR 08-18-016, filed 8/25/08, effective 9/25/08)

WAC 4-25-830 What are the CPE requirements for individuals? (1) The following CPE is required for individuals during the three calendar year period prior to renewal:

(a) An individual licensed to practice in this state must complete a total of 120 CPE ((credit)) hours ((which is limited to 24 CPE credit hours in nontechnical subject areas and must include)), including 4 CPE credit hours in an approved Washington ethics and regulations course meeting the requirements of subsection (3) of this section. The total 120 CPE hours requirement is limited to no more than 24 CPE credit hours in nontechnical subject areas. All qualifying CPE hours must be taken after the date your initial CPA license was issued;

(b) A CPA-Inactive certificateholder or a resident non-licensee firm owner must complete 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section; and

(c) Individuals holding practice privileges are exempt from the CPE requirements of this section.

(2) **CPE requirements for renewal of a license that was issued less than three years before the end of a CPA-Inactive certificate renewal cycle:** When you convert your status from a CPA-Inactive certificateholder to a licensee, your CPE reporting period (the three calendar year period prior to renewal) and renewal cycle will remain the same. The CPE requirements for renewal are as follows:

(a) If your license was issued during the first calendar year of your CPE reporting period, you must have completed 80 CPE credit hours which is limited to 16 CPE credit hours in nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(b) If your license was issued during the second calendar year of your CPE reporting period, you must have completed 40 CPE credit hours which is limited to 8 CPE credit hours in

nontechnical subject areas and must include 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(c) If your license was issued during the third calendar year of your CPE reporting period, you must have completed 4 CPE credit hours in ethics meeting the requirements of subsection (3) of this section.

(3) **Ethics and regulations applicable to practice in Washington state:** During each CPE reporting period all individuals licensed in this state, individual CPA-Inactive certificateholders in this state, and resident nonlicensee firm owners are required to complete 4 CPE credit hours in approved ethics and regulations with specific application to the practice of public accounting in Washington state. In order to be approved by the board, the CPE sponsor or instructor must submit documentation associated with the ethics and regulations CPE to the board for approval and the sponsor or instructor must obtain written approval from the board. The ethics and regulations CPE must cover all of the following topics, and the ethics and regulations CPE must substantially address these topics:

(a) Chapter 18.04 RCW and chapter 4-25 WAC. The CPE must include general level information on the Public Accountancy Act, the board's rules, policies, and the rule-making process.

(b) WAC 4-25-521 How can I contact the board?

(c) WAC 4-25-550 Do I need to notify the board if I change my address?

(d) WAC 4-25-551 Must I respond to inquiries from the board?

(e) WAC 4-25-600 Series—Ethics and prohibited practices. The CPE must include detailed information on each rule and all related board policies.

(f) WAC 4-25-800 Series—Continuing competency. The CPE must include detailed information on each rule and all related board policies.

(g) WAC 4-25-910 What are the bases for the board to impose discipline?

(h) AICPA Code of Conduct: The CPE must include general level information on the AICPA Code of Conduct.

(i) Variances or key differences between Washington state law (chapter 18.04 RCW and chapter 4-25 WAC) and the AICPA Code of Conduct.

(j) Other topics or information as defined by board policy.

(4) **CPE requirements to renew a retired license or CPA-Inactive certificate:**

(a) In order to renew a retired license you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the renewal application is received by the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your renewal application was received by the board.

(b) In order to renew a retired CPA-Inactive certificate, you must meet the CPE requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your renewal application was received by the board.

(5) **CPE requirements for a CPA-Inactive certificate-holder to either qualify to apply for a license or return to their previously held status as a licensee:** If you hold a valid CPA-Inactive certificate and you wish to apply for a license or you want to return to your previously held status as a licensee, you must meet the CPE requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date your application is received by the board.

(6) **Reinstatement of a lapsed, suspended, or revoked license, certificate, or registration as resident nonlicensee firm owner:**

(a) If you seek to reinstate a lapsed, suspended, or revoked license, you must satisfy the requirements of subsection (1)(a) of this section within the thirty-six month period immediately preceding the date the application for reinstatement was received by the board; however, the four CPE hours in ethics meeting the requirements of subsection (3) of this section must be completed within the six-month period immediately preceding the date your application for reinstatement was received by the board.

(b) If you seek to reinstate a lapsed, suspended, or revoked CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must satisfy the requirements of subsection (1)(b) of this section within the six-month period immediately preceding the date your application for reinstatement was received by the board.

(7) **Reciprocity:** If you are applying for an initial Washington state CPA license under the reciprocity provisions of the act, you must satisfy the requirements in subsection (1)(a) of this section, after you were licensed as a CPA and within the thirty-six month period immediately preceding the date your application was received by the board. For purposes of initial licensure, you do not need to satisfy the ethics requirements of subsection (1)(a) of this section. Thereafter, in order to renew your Washington state license, you must comply with all the renewal requirements in subsection (1)(a) of this section.

(8) **CPE extension request:** In order to renew your license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner, you must complete the required CPE by the end of the CPE reporting period preceding your renewal unless you can demonstrate your failure to meet the CPE requirements was due to reasonable cause. The board may provide limited extensions to the CPE requirements for reasons of individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment. You must request such an extension in writing by the end of the CPE reporting period. The request must include justification for the request and identify the specific CPE you plan to obtain to correct your CPE deficiency.

A form useful for this purpose is available from the board's web site or will be provided to you upon request.

AMENDATORY SECTION (Amending WSR 05-01-137, filed 12/16/04, effective 1/31/05)

WAC 4-25-831 What are the program standards for CPE? (1) **Qualifying program:** A program qualifies as acceptable CPE for purposes of RCW 18.04.215(5) if it is a

formal program of learning which contributes to the CPA's professional knowledge and competence. A formal program means:

- The program is at least fifty minutes in length;
- Attendance is recorded;
- Participants sign in to confirm attendance and, if the program is greater than four credit hours, participants sign out during the last hour of the program; and
- Attendees are provided a certificate of completion.

(2) **Undergraduate and graduate courses:** A graduate or undergraduate course qualifies for CPE credit if it meets the standards in subsections (1) and (5) of this section. For both undergraduate and graduate courses one quarter credit equals 10 CPE credit hours and one semester credit equals 15 CPE credit hours.

(3) **Committee meetings:** Generally, CPE credit is not allowed for attending committee meetings. A meeting qualifies for CPE credit only if it meets the standards in subsections (1) and (5) of this section.

(4) **CPE credit hours for volunteer service on the board and its committees and volunteer service on board approved peer review committees:** You may receive up to thirty-two hours of technical CPE credit each calendar year for actual time spent on board, board committee, or board approved peer review committee activities.

(5) **Subject areas:** Programs dealing with the following general subject areas are acceptable so long as they meet the standards in subsection (1) of this section:

- (a) **Technical subjects include:**
- (i) Auditing standards or procedures;
 - (ii) Compilation and review of financial statements;
 - (iii) Financial statement preparation and disclosures;
 - (iv) Attestation standards and procedures;
 - (v) Projection and forecast standards or procedures;
 - (vi) Accounting and auditing;
 - (vii) Management advisory services;
 - (viii) Personal financial planning;
 - (ix) Taxation;
 - (x) Management information services;
 - (xi) Budgeting and cost analysis;
 - (xii) Asset management;
 - (xiii) Professional ethics (other than those programs used to satisfy the requirements of WAC 4-25-830(3));
 - (xiv) Specialized areas of industry;
 - (xv) Human resource management;
 - (xvi) Economics;
 - (xvii) Business law;
 - (xviii) Mathematics, statistics, and quantitative applications in business;
 - (xix) Business management and organization;
 - (xx) General computer skills, computer software training, information technology planning and management; and
 - (xxi) Negotiation or dispute resolution courses;
- (b) **Nontechnical subjects include:**
- (i) Communication skills;
 - (ii) Interpersonal management skills;
 - (iii) Leadership and personal development skills;
 - (iv) Client and public relations;
 - (v) Practice development;
 - (vi) Motivational and behavioral courses; and

(vii) Speed reading and memory building.

Subjects other than those listed above may be acceptable provided you can demonstrate they contribute to your professional competence. You are solely responsible for demonstrating that a particular program is acceptable.

(6) **Group programs:** You may claim CPE credit for group programs such as the following so long as the program meets the standards in subsections (1) and (5) of this section:

(a) Professional education and development programs of national, state, and local accounting organizations;

(b) Technical sessions at meetings of national, state, and local accounting organizations and their chapters;

(c) Formal in-firm education programs;

(d) Programs of other organizations (accounting, industrial, professional, etc.);

(e) Dinner, luncheon, and breakfast meetings which are structured as formal educational programs;

(f) Firm meetings for staff and/or management groups structured as formal education programs. Portions of such meetings devoted to communication and application of general professional policy or procedure may qualify, but portions devoted to firm administrative, financial and operating matters generally will not qualify.

(7) **CPE credit:** CPE credit is allowable only for those programs taken after the issuance of the CPA license. Credit is not allowed for programs taken to prepare an applicant for the ethics examination as a requirement for initial licensure. CPE credit is given in half-hour increments only after the first full CPE credit hour has been earned. A minimum of fifty minutes constitutes one CPE credit hour and, after the first fifty-minute segment has been earned, twenty-five minutes constitutes one-half CPE credit hour. For example:

- Twenty-five minutes of continuous instruction counts as zero CPE credit hour;

- Fifty minutes of continuous instruction counts as one CPE credit hour; and

- Seventy-five minutes of continuous instruction counts as one and one-half CPE credit hours.

Attendees obtain CPE credit only for time spent in instruction; no credit is allowed for preparation time.

(8) **Self-study programs:** Credit for self-study programs is allowed ~~((in the renewal period in which))~~ for reporting purposes on the date you completed the program as established by the evidence of completion provided by the program sponsor.

(a) **Interactive self-study programs:** The amount of credit allowed for interactive self-study is that which is recommended by the program sponsor on the basis of the average completion time under appropriate "field tests." In order to claim CPE credit for interactive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor.

(b) **Noninteractive self-study programs:** The amount of credit allowed for noninteractive self-study is one-half the average completion time as determined by the program sponsor on the basis of appropriate "field tests." To claim CPE credit for noninteractive self-study programs, you must obtain evidence of satisfactory completion of the course from the program sponsor.

(9) **Instructor, discussion leader, or speaker:** If you serve as an instructor, discussion leader or speaker at a program which meets the standards in subsections (1) and (5) of this section, the first time you present the program you may claim CPE credit for both preparation and presentation time. One hour of credit is allowed for each fifty minutes of instruction. Additionally, you may claim credit for actual preparation time up to two times the presentation hours. No credit is allowed for subsequent presentations. A maximum of seventy-two CPE credit hours are allowed for preparation and presentation during each CPE reporting period.

(10) **Published articles, books:** You may claim CPE credit for published articles and books, provided they contribute to your professional competence. Credit for preparation of such publications may be claimed on a self-declaration basis for up to thirty hours in a CPE reporting period. In exceptional circumstances, you may request additional credit by submitting the article(s) or book(s) to the board with an explanation of the circumstances that justify a greater credit. The amount of credit awarded for a given publication will be determined by the board.

(11) **Carry-forward:** CPE credit hours you complete during one period cannot be carried forward to the next period.

(12) **Carry-back:** As specified in WAC 4-25-830~~((9))~~ (8), CPE credit hours you complete during one period can be carried back to the previous reporting period only after the board has approved your extension request ~~((to carry back CPE credit hours))~~ or has required the carry-back as part of sanctions for failure to complete required CPE.

(13) **Credential examination:** You may not claim CPE credit for preparing for or taking a credential examination unless you complete a formal review course and receive a certificate of completion meeting the requirements of WAC 4-25-833. CPE credit may not be claimed for CPA examination review courses.

WSR 09-12-022

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed May 22, 2009, 3:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-048.

Title of Rule and Other Identifying Information: WAC 220-16-026, 220-16-102, and 220-16-12505, fishing net definitions.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on July 10-11, 2009, at 8:45 a.m.

Date of Intended Adoption: August 7-8, 2009.

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 June 29, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by June 29, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Commercial fisheries in the Columbia River are primarily conducted under emergency rules and adopted by the Columbia River compact. This proposal defines a type of net that has been used in managing the fishery under emergency rules. It also defines gill nets as drift nets.

Reasons Supporting Proposal: The Oregon department of fish and wildlife and the Washington department of fish and wildlife have developed reciprocal rules for fishers on the concurrent waters of the Columbia River. This rule proposal will mirror Oregon's for the definitions of unslackened net and slackers.

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: Cindy LeFleur, 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 same definitions proposed in this rule have been used in emergency rules and are known in the industry. This proposal will simply formally adopt the definitions to be consistent with Oregon's definitions, since both states are member[s] of the Columbia River compact. The rule change will not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

May 22, 2009

Lori Preuss
Rules Coordinator

NEW SECTION

WAC 220-16-026 Definition—Columbia River non-Indian drift net. "Drift net" includes drift gill nets, floater gill nets, diver gill nets, and tangle nets. A drift net is a monofilament or multifilament mesh net that has a cork and lead line and drifts with the tide or current at all times while it is being fished. There must be sufficient buoyancy in the corks or the floats on the cork line to allow the net to drift with the current.

NEW SECTION

WAC 220-16-102 Definition—Slacker. "Slacker" means a single piece of material or cord that is not webbing or mesh but that is connected vertically or woven into the mesh of the net between the cork and lead lines. A slacker is used to shorten netting to give the net surface flexibility.

NEW SECTION

WAC 220-16-12505 Definition—Unslackened net. "Unslackened net" is defined as a net that is hung evenly, with no strings, slackers, trammels, or rip lines used to slacken the net. Rip lines are allowed on an unslackened net, provided they do not slacken the net.

**WSR 09-12-023
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed May 22, 2009, 3:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-06-077.

Title of Rule and Other Identifying Information: WAC 220-32-057 Seasons—Sturgeon and 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on July 10-11, 2009, at 8:45 a.m.

Date of Intended Adoption: August 7-8, 2009.

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 June 29, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by June 29, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Columbia River compact adopted new measurement criteria for white sturgeon, based on fork length versus total length. The size limits in the WAC will reflect the new criteria.

Reasons Supporting Proposal: As a member of the Columbia River compact, the agency should change its rules to reflect those of other compact members, for consistency and ease of enforceability, if the rule change makes sense. This one does because it mirrors a change in the industry standard for measuring sturgeon.

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: Cindy LeFleur, 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 new method of measuring sturgeon does not change the size of sturgeon that

are legal to possess. Therefore, the rule change will not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

May 22, 2009

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 06-301, filed 12/27/06, effective 1/27/07)

WAC 220-20-020 General provisions—Lawful and unlawful acts—Food fish other than salmon. (1) It is unlawful to fish for or possess for commercial purposes any round, undressed sturgeon less than ~~((48))~~ 43 inches in fork length or greater than ~~((60))~~ 54 inches in fork length.

(2) It is unlawful to fish for, possess, or retain green sturgeon taken with commercial gear. Any green sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(3) It is unlawful to fish for or possess for commercial purposes or possess aboard a commercial fishing vessel for any purpose any species of halibut (*Hippoglossus*) unless permitted by the current regulations of the International Pacific Halibut Commission.

(4) It is unlawful to fish for or possess for commercial purposes sturgeon taken from any of the waters of Puget Sound or tributaries ~~((and))~~. Any sturgeon taken with any type of commercial gear incidental to a lawful fishery shall immediately be returned to the water unharmed.

(5) It is unlawful to fish for food fish for commercial purposes in the waters of Shilshole Bay, inland and inside a line projected in a southwesterly direction from Meadow Point to West Point.

(6) It is unlawful to fish for or possess for commercial purposes any starry flounder less than 14 inches in length taken by any commercial gear, in all Puget Sound Marine Fish-Shellfish Areas.

(7) It ~~((shall be))~~ is unlawful to harvest herring eggs naturally deposited on marine vegetation or other substrate ~~((;))~~ unless a person has a permit issued by the director.

(8) It is unlawful to fish for or possess carp taken for commercial purposes except as authorized by written permit from the director. However, ~~((except that))~~ carp taken incidental to a commercial fishery for other species may be retained for commercial purposes. Failure to comply with the provisions of the carp permit constitutes unlawful use of the carp commercial fishery license and may result in revocation of the carp permit.

(9) It is unlawful to fin sharks in Washington state waters, and it is unlawful to possess shark fins in the field unless the carcass of the shark is retained ~~((; except that))~~. However, once a commercially taken shark carcass has been delivered to a licensed wholesale dealer or a person acting in that capacity, and the sale of the shark has been recorded on a fish receiving ticket, the shark fins need not be retained with the shark carcass.

AMENDATORY SECTION (Amending Order 00-146, filed 8/17/00, effective 9/17/00)

WAC 220-32-057 Season—Sturgeon. (1) It is unlawful to take, fish for or possess sturgeon taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H except individuals possessing treaty fishing rights pursuant to the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for sturgeon with setline gear from January 1 through January 31, and during seasons opened under emergency rule by the department and as provided in this section.

(2) During the open season, it is unlawful to:

(a) ~~((It is unlawful to))~~ Retain for commercial or subsistence purposes sturgeon less than ~~((48))~~ 38 inches in fork length or greater than ~~((60))~~ 54 inches in fork length in Columbia River Salmon Management and Catch Reporting Area (SMCRA) 1F. It is unlawful to retain for commercial or subsistence purposes sturgeon less than 43 inches in fork length or greater than 54 inches in fork length in Columbia River SMCRA 1G and 1H;

(b) ~~((To))~~ Sell, barter, or attempt to sell or barter sturgeon eggs that have been removed from the body cavity of a sturgeon prior to the sale of the sturgeon to a wholesale dealer licensed under chapter 75.28 RCW, or to sell or barter sturgeon eggs at retail; or

(c) ~~((To))~~ Deliver to a wholesale dealer licensed under chapter 75.28 RCW any sturgeon that are not in the round with the head and tail intact.

(3) Gear:

(a) Maximum 100 hooks per setline;

(b) Minimum hook size 9/0;

(c) Treble hooks prohibited; and

(d) Visible buoys required, with operator name and tribal identification clearly marked on the buoy.

WSR 09-12-024

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed May 26, 2009, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-24-064.

Title of Rule and Other Identifying Information: WAC 308-56A-420 Delivery of vehicle on dealer temporary permit.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on July 14, 2009, at 10:00 a.m.

Date of Intended Adoption: July 24, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822.

Assistance for Persons with Disabilities: Contact Dale R. Brown by July 13, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is

required to comply with SHB 3029 that was passed by the legislature in 2008.

Reasons Supporting Proposal: To allow dealers to deliver a vehicle by obtaining an electronic copy of a dealer permit.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Jennifer Dana, 1125 Washington Street S.E., Olympia, WA, (360) 902-3673.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

May 21, 2009

Mykel D. Gable

Assistant Director

Driver and Vehicle Services

AMENDATORY SECTION (Amending WSR 05-14-092, filed 6/30/05, effective 7/31/05)

WAC 308-56A-420 Delivery of vehicle on dealer temporary permit. How do I deliver a vehicle ~~((on))~~ using a dealer temporary permit?

(1) A vehicle dealer properly licensed pursuant to chapter 46.70 RCW may deliver a vehicle not currently registered or that does not bear valid Washington state license plates or tabs by utilizing ~~((a))~~ an electronic dealer temporary permit or a hard copy dealer temporary ~~((license))~~ permit.

Note: Effective July 1, 2011, an electronic dealer permit (e-permit) will replace a hard copy dealer permit. A hard copy dealer temporary permit will only be issued after July 1, 2011, in the instance of "system unavailability" and an electronic permit cannot be issued.

(2) The application for title portion of the permit form must be properly and completely filled out by the selling/leasing dealer, including the dealer's report of sale and the date on which the vehicle is physically delivered to the ~~((customer/))~~ purchaser/lessee. If license based on gross weight is required, the amount of gross weight purchased must be clearly shown. The application must be signed by the registered owner(s) or lessee.

(3) The dealer ~~((shall))~~ must collect all fees required for titling and registration of a vehicle.

(4)(a) For e-permit, the permit printed by the system must display the expiration date and e-permit number. The date of expiration is forty-five calendar days from the date the vehicle is physically delivered to the purchaser/lessee.

(b) For hard copy permits, the dealer ~~((shall))~~ must detach the hard copy of the dealer permit and ~~((shall))~~ must record the date of expiration in dark, bold letters and numbers

on the permit side of that copy. Date of expiration ~~((will be))~~ is forty-five calendar days ~~((after))~~ from the date ~~((on which))~~ the vehicle is physically delivered to the ~~((customer/))~~ purchaser/lessee.

(5) The application copies ~~((shall))~~ must be used by the dealer to apply for title and to complete licensing of the vehicle. Except as provided in RCW 46.70.180(8), when a second temporary permit is authorized; the selling dealer must submit the application and all title/licensing fees to the department of licensing or an authorized licensing agent within forty-five calendar days from the date ~~((on which))~~ the vehicle is physically delivered to the ~~((customer/))~~ purchaser/lessee. The date ~~((on which))~~ that the selling or leasing dealer physically delivers the vehicle to the ~~((customer/))~~ purchaser/lessee ~~((shall commence))~~ will start the forty-five day interval ~~((in which the selling or leasing dealer must make))~~ of an application for a certificate of title in the purchaser's or lessee's name. Additionally, the director may excuse late applications only in situations where applications are delayed, for reasons beyond the control of the dealer.

(6) The electronic or hard copy ~~((of the))~~ dealer temporary permit, temporary vehicle registration, and a purchase order identifying the vehicle and the date ~~((on which))~~ that the vehicle was physically delivered to the ~~((customer/))~~ purchaser/lessee must be carried in the vehicle or the towing vehicle at all times the vehicle is operated on the temporary permit.

(7) The electronic or hard copy ~~((of the))~~ dealer temporary ~~((license))~~ permit ~~((shall))~~ must be displayed on the inside of the rear window in the lower left corner, or enclosed in a moisture proof protective case securely attached in the rear license plate holder, with the expiration date visible to one standing ~~((or following at the rear of))~~ behind the vehicle.

(8) The electronic or hard copy dealer temporary ~~((license))~~ permit is valid for not more than forty-five calendar days ~~((commencing))~~ starting with the date ~~((on which))~~ that the vehicle is physically delivered to the ~~((customer/))~~ purchaser/lessee.

(9) The electronic or hard copy dealer temporary ~~((license))~~ permit ~~((shall))~~ will not be issued:

(a) ~~((Be issued))~~ For a dealer inventoried vehicle or a dealer or dealer-employee operated vehicle;

(b) ~~((Be issued))~~ As a demonstration permit;

(c) ~~((Be issued))~~ For a vehicle processed as a courtesy delivery.

(10) Fees paid for an electronic or hard copy dealer temporary ~~((license))~~ permit application forms are not refundable unless the dealer ceases doing business as a vehicle dealer. A credit, in the amount of ~~((the permit form fee))~~ the fifteen dollar permit fee paid, will be provided when the permit is used by the vehicle dealer to make application for a vehicle title.

(11) The dealer ~~((shall))~~ must maintain a record of each dealer temporary permit ~~((form))~~ acquisition and distribution including the following:

(a) Date and location of purchase of each permit and the permit number;

(b) Identification of vehicles delivered on temporary permits;

(c) Dates of vehicle sales, leases and deliveries.

WSR 09-12-028
PROPOSED RULES
GAMBLING COMMISSION

[Filed May 26, 2009, 4:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-110.

Title of Rule and Other Identifying Information: WAC 230-10-380 Relief reduction for minimum annual adjusted cash flow.

Hearing Location(s): Inn at Gig Harbor, 3211 56th Street N.W., Gig Harbor, WA 98335, (253) 858-1111, on August 14, 2009, at 9:00 a.m.

Date of Intended Adoption: August 14, 2009.

Submit Written Comments to: Susan Arland, Rules Coordinator and Public Information Officer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail Susana@wsgc.wa.gov, (360) 486-3466, fax (360) 486-3625, by August 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate by August 1, 2009, TTY (360) 486-3637 or 1-800-345-2529.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner is requesting that bingo licensees have the ability to apply up to 49% of gambling taxes paid to local governments as a credit when computing expenses for adjusted cash flow requirements.

Staff recommends a housekeeping amendment to change "license" year to "calendar" year to reflect current agency practice.

The purpose of the change is to help bingo licensees that maintain a positive cash flow throughout the year to remain in compliance, when gambling taxes paid to local governments push them out of compliance.

The petitioner verbally stated to staff that last year he paid \$78,000 in gambling taxes. In contrast, some jurisdictions do not charge charitable/nonprofit organizations a gambling tax. Mr. Bock stated that his organization pays 10% gambling tax on pull-tab net receipts and 2.5% on bingo net receipts. Until recently, he was paying 5% tax on bingo net receipts. The petitioner stated the rule change allows him to receive some recognition for taxes paid and brings his cash flow requirements more in line with bingo licensees that do not pay gambling taxes.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: None.

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

Name of Proponent: Clyde Bock, licensed bingo manager, public.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Lacey, Washington, (360) 486-3466; Implementation: Rick Day, Lacey, Washington, (360) 486-3446; and Enforcement: Mark Harris, Lacey, Washington, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared because the rule 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.

May 26, 2009

Arlene K. Dennistoun

Staff Attorney

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

WAC 230-10-380 Relief reduction for minimum annual adjusted cash flow. (1) If a bingo licensee fails to meet the minimum annual adjusted cash flow requirements for any ~~((license))~~ calendar year and has maintained a positive cash flow, the licensee may apply as a credit up to forty-nine percent of gambling taxes paid to local governments when computing expenses for adjusted cash flow.

(2) If the licensee is still out of compliance, the director automatically grants relief, allowing ~~((a))~~ up to twenty-five percent reduction to the annual dollar amount of required adjusted cash flow for the year in which the licensee is out of compliance.

~~((2))~~ (3) No licensee granted relief is eligible to receive relief for any of the four license years following the ~~((license))~~ calendar year for which the director granted the relief.

WSR 09-12-049

PROPOSED RULES

**BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Filed May 28, 2009, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-060.

Title of Rule and Other Identifying Information: Chapter 196-09 WAC, Board practices and procedures.

Hearing Location(s): Courtyard Marriott, Salon A, 31910 Gateway Center Boulevard South, Federal Way, WA 98003, on July 29, 2009, at 6:00 p.m.

Date of Intended Adoption: July 30, 2009.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by July 27, 2009.

Assistance for Persons with Disabilities: Contact Kim King, Administrative Assistant, by July 27, 2009, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the type of board meetings the board currently holds from "regular" board meetings to "special" board meetings.

Reasons Supporting Proposal: To allow the board some flexibility in changing/scheduling board and committee meeting dates.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no economic impact to licensees.

May 28, 2009

George A. Twiss
Executive Director

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-120 Meetings and officers. The Washington state board of registration for professional engineers and land surveyors shall hold its ~~((regular public))~~ annual special board meeting ~~((annually))~~ in June of each year. All special ~~((public))~~ meetings ~~((may be))~~ of the board are held at such times and places as the board may deem necessary. All special board meetings are open to the public. Notice of all ~~((public))~~ special board meetings shall be ~~((issued))~~ made as required by the Open Public Meetings Act, chapter 42.30 RCW.

At the ~~((regular))~~ annual special board meeting the board shall elect a chair and vice-chair to hold office for one year commencing July 9. The executive director of the board shall serve as secretary. ~~((A))~~ Any vacancy in ~~((any office))~~ positions held by members of the board shall be filled for the remainder of the term by special election of a quorum of the board at the next special ~~((public))~~ board meeting.

WSR 09-12-050
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed May 28, 2009, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-005.

Title of Rule and Other Identifying Information: Chapter 196-25 WAC, Business practices.

Hearing Location(s): Courtyard Marriott, Salon A, 31910 Gateway Center Boulevard South, Federal Way, WA 98003, on July 29, 2009, at 6:00 p.m.

Date of Intended Adoption: July 30, 2009.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by July 27, 2009.

Assistance for Persons with Disabilities: Contact Kim King, Administrative Assistant, by July 27, 2009, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To better define the language regarding direct supervision of engineers and land surveyors.

Reasons Supporting Proposal: The original definition of direct supervision was broad-based, and the board determined that a more specific definition was needed to guide the licensees in their business practices.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no economic impact to licensees.

May 28, 2009

George A. Twiss
Executive Director

AMENDATORY SECTION (Amending WSR 06-22-033, filed 10/25/06, effective 11/25/06)

WAC 196-25-070 Providing direct supervision. **Direct supervision** ~~((is a combination of activities))~~ means the actions by which a licensee maintains control over those decisions that are the basis for the findings, conclusions, ~~((analysis))~~ analyses, rationale, details, and judgments ~~((that are embodied in the development and))~~ required for the preparation of engineering or land surveying plans, specifications, plats, reports, and related activities. ~~((Direct supervision requires providing personal direction, oversight, inspection, observation and supervision of the work being certified.~~

~~Communications between the licensee and those persons who are performing the work))~~ These actions may include, but are not limited to ~~((, use of any of the following ways))~~: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology ~~((= Provided, That the licensee retains, maintains, and asserts continuing control and judgement))~~. Contractual or employment relations must be in place between the licensee and unlicensed preparer to qualify as direct supervision. Mentoring is not direct supervision. Drawing or other document review after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.

WSR 09-12-054
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed May 28, 2009, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-06-075 on March 3, 2009.

Title of Rule and Other Identifying Information: WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on July 10-11, 2009, at 8:45 a.m.

Date of Intended Adoption: August 7-8, 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 June 30, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by June 30, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule implements a program to recover lost or abandoned commercial crab gear after the close of the coastal commercial fishery season through permits issued to licensed commercial crab fishers.

Reasons Supporting Proposal: Lost or abandoned crab gear can continue to entrap crabs and other marine species and contribute to habitat degradation [degradation]. The proposed program allows commercial crab fishers to reduce these negative effects on marine life and habitat by removing derelict crab gear from the ocean.

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: Lorna L. Wargo, 1111 Washington Street, Olympia, (360) 753-2600; Implementation: Lisa Veneroso, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not impose any costs. Participation by commercial fishers in the proposed lost and abandoned gear recovery program is voluntary.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

May 28, 2009

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 07-285, filed 11/20/07, effective 12/21/07)

WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts. (1) **Net fishing boats shall not have crab (~~aboard~~) on board.** It is unlawful for any (~~vessel geared or equipped with commercial net fishing gear~~) person to ((have aboard)) possess any quantity of crab on board a vessel geared or equipped with commercial net fishing gear while ((it is)) fishing with the net gear for commercial purposes or ((when it has other)) while there are commercial quantities of food fish or shellfish ((aboard for commercial purposes)) on board. Violation of this section is punishable under RCW 77.15.550(1), violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2).

(2) **Area must be open to commercial crabbing.** (~~Unless otherwise~~) Except when acting lawfully under the authority of a valid permit as provided in (a) and (c) of this subsection, it is unlawful for any person to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes in any area or at any time when the location is not ((opened)) open for ((taking crabs for)) commercial ((purposes)) crabbing by permanent rule or emergency rule of the department ((- Provided, That)). Violation of this section is punishable under RCW 77.15.550(1), violation of commercial fishing area or time. However, if such crab are taken or possessed in amounts that constitute a violation of commercial fishing area or time in the first degree, the violation is punishable under RCW 77.15.550(2).

(a) Following the close of a commercial crab season, ((permission)) an emergency coastal crab gear recovery permit may be granted by the director or his or her designee. These emergency permits will be considered on a case-by-case basis ((for)) to allow crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful season opening. Crab fishers must notify and apply to ((department)) the department's enforcement program for such ((permission)) emergency permits within twenty-four hours prior to the close of the commercial crab season.

(b) It is unlawful to fail to follow the provisions of an emergency coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

(c) Fifteen days after the close of the primary coastal commercial crab season, a coastal crab gear recovery permit may be granted by the director or his or her designee for licensed coastal Dungeness crab fishers to recover crab pots belonging to state licensed fishers that remain in the ocean.

(d) It is unlawful to fail to follow the provisions of a coastal crab gear recovery permit. Violation of this section is punishable under ESHB 1516.

(3) **Crabs must be male and 6-1/4 inches across the back.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back of the crab's

shell immediately in front of the shell's tips. Violation of this section is punishable under RCW 77.15.550 (1)(c).

(4) Each person and each Puget Sound license is limited to 100 pots. It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district if he or she is using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person ~~((holding))~~ who holds two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130. Violation of this section is punishable under RCW 77.15.520.

(5) Additional area gear limits. ~~((The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel and))~~ It is unlawful for any person to use, maintain, operate, or control crab pots or ring nets in excess of the ~~((following))~~ limits ~~((:))~~ prescribed in each of the following Marine Fish-Shellfish Management and Catch Reporting Areas. Violation of this section is punishable under RCW 77.15.520.

(a) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E~~((:))~~;

(b) 10 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula~~((:))~~;

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek, and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay~~((:))~~; and

(d) 10 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the 177 Rayonier Dock.

(6) Groundline gear is unlawful. ~~((No crab pot or ring net may be attached))~~ It is unlawful to attach or ~~((connected))~~ connect a crab pot or ring net to ~~((other))~~ another crab pot or ring net by a common groundline or any other means that connects crab pots together. Violation of this section is punishable under RCW 77.15.520.

(7) Crab buoy~~((s))~~ and pot~~((s))~~ tagging requirements.

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without an attached buoy and pot tag~~((s))~~ that meet~~((s))~~ the requirements of this subsection except as provided for in (b) of this subsection. Violation of this section is punishable under RCW 77.15.520.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys missing tags or bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

~~((b))~~ (c) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

~~((e))~~ (d) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with state law.

~~((d))~~ (e) Crab buoy tags: The department will issue crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee ~~((of seventy cents))~~ per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

~~((e))~~ (f) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration under penalty of perjury in the presence of an authorized department employee. The declaration shall state the number of buoy tags lost, the location and date where the lost gear or tags were last observed, and the presumed cause of the loss.

~~((f))~~ (g) Coastal replacement crab buoy tags: Coastal crab license holders with a 300-pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags after March 15th of each season. Coastal crab license holders with a 500-pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis, issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) No person can possess or use gear with ~~((other))~~ another person's crab pot tag or crab buoy tag. ~~((No))~~ It is unlawful for any person ~~((may))~~ to possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except ~~((that))~~ under the following circumstances:

(a) An alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(b) Persons operating under a valid coastal gear recovery permit issued by the department may possess crab pots or buoys bearing the tags of another license holder, provided that the permittee adheres to provisions of the permit.

(c) Violation of this section is punishable under ESHB 1516.

~~((c))~~ (9) **Cannot** **No person can tamper with pot tags.** ~~((No))~~ It is unlawful for any person ~~((shall))~~ to remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots. However, persons operating under a valid coastal gear recovery permit or emergency gear recovery permit, issued by the department and who adheres to the permit's

provisions may possess crab pots or buoys bearing the tags of another license holder. Violation of this section is punishable under RCW 77.15.180 (3)(b).

(10) ~~((Thirty-day period))~~ **When it is unlawful to buy or land crab from the ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, the Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel ~~((which))~~ that has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and that are properly licensed for commercial crab fishing if no Dungeness crabs are ~~((aboard))~~ on board. ~~((Inspections will be performed by))~~ Authorized department personnel will perform inspections not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

(11) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (catch area 60B) with more than 200 shellfish pots in the aggregate. It shall be unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots.

(12) Coastal crab pot limit.

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless a ~~((shellfish))~~ crab pot limit has been assigned to the Dungeness crab~~(-)~~coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person, and it is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy ~~((shellfish))~~ crab pots unless the person is in possession of valid documentation issued by the department that specifies the ~~((shellfish))~~ crab pot limit assigned to the license.

(13) Determination of coastal crab pot limits.

(a) The number of ~~((shellfish))~~ crab pots assigned to a Washington Dungeness crab~~(-)~~coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon, and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, ~~((that))~~ which show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria shall be used to determine and assign a ~~((shellfish))~~ crab pot limit to a Dungeness crab~~(-)~~coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997~~((;))~~; from December 1, 1997, through September 15, 1998~~((;))~~; and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to a license with landings that total 36,000 pounds of crab or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a ~~((shellfish))~~ crab pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon Department of Fish and Wildlife and/or the California Department of Fish and Game. Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a ~~((shellfish))~~ crab pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A ~~((shellfish))~~ crab pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license shall be assigned more than one ~~((shellfish))~~ coastal crab pot limit.

(14) **Appeals of coastal crab pot limits.** An appeal of a ~~((shellfish))~~ crab pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

(15) **Coastal - Barging of crab pots by undesignated vessels.** It is ~~((lawful))~~ unlawful for a vessel not designated on a Dungeness crab~~(-)~~coastal fishery license to be used to deploy ~~((shellfish))~~ crab pot gear ~~((provided that))~~ except as prescribed below:

(a) Such a vessel may not carry ~~((aboard))~~ on board more than 250 ~~((shellfish))~~ crab pots at any one time.

(b) Such a vessel may deploy ~~((shellfish))~~ crab pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

(c) The ~~((lawful owner))~~ primary or alternate operator of the ~~((shellfish))~~ crab pot gear named on the license associated with the gear must be ~~((aboard))~~ on board the vessel when the gear is being deployed. Violation of this section is punishable under RCW 77.15.500.

(16) **Coastal crab buoys - Registration and use of buoy brands and colors.**

(a) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder shall be allowed to register with

the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one state license ((state)) shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph. Violation of this section is punishable under RCW 77.15.520.

(b) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department. Violation of this section is punishable under RCW 77.15.520.

WSR 09-12-055
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed May 28, 2009, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-073.

Title of Rule and Other Identifying Information: Chapter 196-29 WAC, Professional practices.

Hearing Location(s): Courtyard Marriott, Salon A, 31910 Gateway Center Boulevard South, Federal Way, WA 98003, on July 29, 2009, at 6:00 p.m.

Date of Intended Adoption: July 30, 2009.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551 by July 27, 2009.

Assistance for Persons with Disabilities: Contact Kim King, Administrative Assistant, by July 27, 2009, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a new section regarding the federal employee exemption.

Reasons Supporting Proposal: There have been questions from federal employees regarding who can perform engineering and/or land surveying on lands adjoining government property. This rule will help define who can perform work being done on federally owned property or on property adjoining federal land.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. There is no economic impact to licensees.

May 28, 2009

George A. Twiss
Executive Director

NEW SECTION

WAC 196-29-200 Federal employee exemption. (1) Under RCW 18.43.130(6) the provisions of the act shall not be construed to prevent or affect the practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for the government of the United States; provided:

(a) That all work performed is for the exclusive use of the federal government; and

(b) That all work performed is wholly contained within the confines of lands held by the federal government (federal enclave).

(2) Any engineering work that is performed and/or constructed for the benefit of a private citizen or business entity, even if directly adjoining lands held by the federal government, must be performed by or under the direct supervision of an engineer licensed in accordance with the requirements of chapter 18.43 RCW.

(3) Any surveying work that is performed for boundaries between lands held by the federal government and lands held by a private citizen or business entity, must be performed by or under the direct supervision of a land surveyor licensed in accordance with the requirements of chapter 18.43 RCW.

WSR 09-12-059
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed May 28, 2009, 1:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-068.

Title of Rule and Other Identifying Information: The department is amending WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on July 7, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 8, 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 July 7, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by June 23, 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: This proposed rule amends the eligibility dates for converting state-only residential allowances to SSP when there is an ongoing need for a residential allowance.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.10.020, 74.04.057.

Statute Being Implemented: Title 71A RCW, 20 C.F.R. Part 416.

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: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation: Meredith Kelly, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail LunsfLL@dshs.wa.gov, (360) 725-3440, fax (360) 404-0955; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail clintdl@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has analyzed the rules and determined there is no impact to small business.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(vii), cost-benefit analyses are not required for DSHS rules that relate only to client medical or financial eligibility.

May 26, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-24-030, filed 11/28/07, effective 12/29/07)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,

- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,
- (b) Family support;
- (c) One or more of the following residential services:
 - (i) Adult family home,
 - (ii) Adult residential care facility,
 - (iii) Alternative living,
 - (iv) Group home,
 - (v) Supported living,
 - (vi) Agency attendant care,
 - (vii) Supported living or other residential service allowance,
 - (viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

- (a) Adult residential care facility;
- (b) Alternative living;
- (c) Group home;
- (d) Supported living;
- (e) Agency attendant care;
- (f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, 2009 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

- (a) Alternative living;
- (b) Supported living; or
- (c) Companion homes.

WSR 09-12-060

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed May 28, 2009, 1:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-138.

Title of Rule and Other Identifying Information: The department is amending chapter 388-828 WAC, Division of developmental disabilities (DDD) assessment.

Washington Administrative Code	Effect of Rule
388-828-1020 Amended	Housekeeping changes to add definition for necessary supplemental accommodation representative and remove the definition for plan of CARE.
388-828-1440 Amended	Housekeeping change to update terminology from family support to individual and family services per chapter 388-832 WAC.
388-828-1460 Amended	Housekeeping change to remove outdated reference "DDD intends to assess all clients by June 30, 2008."
388-828-1520 Amended	Clarifies language regarding where DDD assessments and reassessments are conducted.

Washington Administrative Code	Effect of Rule
388-828-5640 Amended	Housekeeping change to correct the terminology for caregiver assistance scoring to reflect the computerized assessment.
388-828-8065 New	Adds language to clarify process.
388-828-8070 New	Adds language to clarify when your individual support plan is effective.
388-828-8075 New	Adds language to clarify when a change to your individual support plan is effective.
388-828-8080 New	Adds language to clarify who signs or gives consent for the individual support plan.
388-828-8085 New	Adds language to clarify how long an individual support plan is effective.
388-828-8090 New	Adds language to clarify the process when there is not consent for the individual support plan.
388-828-8095 New	Adds language to clarify when you may request a review of your individual support plan.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on July 7, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 8, 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 DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 7, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by June 23, 2009, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules add language to clarify the individual support plan process and amend sections to complete housekeeping changes. See Title of Rule above.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Statute Being Implemented: Title 71A 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: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail roberdx@dshs.wa.gov, (360) 725-3400, fax (360) 404-0955; Implementation and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail ClintDL@dshs.wa.gov, (360) 725-3421, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has analyzed these rules and concluded that they do not impact small businesses or small nonprofits.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, phone (360) 725-3400, fax (360) 404-0955, e-mail roberdx@dshs.wa.gov.

May 26, 2009

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

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

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

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

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

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

"Adult family home" or "AFH" means a residential home in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services (see RCW 70.12.010).

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

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

(1) Calculation of assessed information to identify a client's relative level of need;

(2) Determination regarding which assessment modules a client receives as part of his/her DDD assessment; and

(3) Assignment of a service level to support a client's assessed need.

"Authorization" means DDD approval of funding for a service as identified in the individual support plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter ((71A.16 RCW)) 388-823 WAC.

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

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

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

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

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

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

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

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

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

"LOC score" means a score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/MR level of care.

"Modules" refers to three sections of the DDD assessment. They are: The support assessment, the service level assessment, and the individual support plan (ISP).

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of

DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

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

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

"Raw score" means the numerical value when adding a person's "Frequency of support," "Daily support time," and "Type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

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

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

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD). The SIS is in the support assessment module of the DDD assessment.

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

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

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

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

"Waiver personal care" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations per chapter 388-106 WAC to individuals who are authorized to receive services available in the Basic, Basic Plus, and Core waivers per chapter 388-845 WAC.

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

"You/Your" means the client.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

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

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

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

- (a) Person to person; or
- (b) Individual employment; or
- (c) Group supported employment; or
- (d) Prevocational/specialized industries; or
- (e) Community access; or
- (f) Individual and family assistance.

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

(4) Residence in a state operated living alternative (SOLA) program; or

(5) Authorization of ~~(family support services)~~ individual and family services per chapter 388-832 WAC within the last twelve months ~~(per chapter 388-825 WAC)~~; or

(6) Documentation of DDD approval of your absence from DDD paid services for more than ninety days with available funding for your planned return to services; or

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

(8) Payment of services using Form A-19 state of Washington invoice voucher for receipt of:

- (a) Dangerous mentally ill offender funds;
- (b) Crisis stabilization services;
- (c) Specialized psychiatric services; or
- (d) Diversion bed services.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1460 When will you receive an initial DDD assessment? ~~((DDD intends to assess all clients per WAC 388-828-1100 by June 30, 2008.))~~ DDD must administer an initial DDD assessment when:

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

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

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

(4) You are approved for funding of a DDD paid service and an assessment must be performed prior to the authorization of services; or

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

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

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-1520 Where ~~((is the))~~ are DDD assessments and reassessments ~~((administered))~~ conducted? ~~((The))~~ DDD assessments and reassessments ~~((are administered))~~ are face-to-face interviews conducted in your place of residence with you and your respondent(s).

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

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

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

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

NEW SECTION

WAC 388-828-8065 What if I need assistance to understand my individual support plan? If you are unable to understand your individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDD will take the following steps:

- (1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your individual support plan.
- (2) Continue your current DDD paid service(s).
- (3) If the office of the attorney general or a court determines that you do not need a legal representative, DDD will continue to try to provide necessary supplemental accommodations in order to help you understand your individual support plan.

NEW SECTION

WAC 388-828-8070 When is my individual support plan effective? Your individual support plan is effective:

- (1) After a signature or verbal consent is obtained from you and/or your guardian; and
- (2) On the date it is approved and signed by DDD.

NEW SECTION

WAC 388-828-8075 May a change in my individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, DDD may sign the individual support plan and approve it prior to receiving your signature.

- (1) Your individual support plan will be mailed to you for signature.
- (2) You retain the same appeal rights as if you had signed the individual support plan.

NEW SECTION

WAC 388-828-8080 Who is required to sign or give verbal consent to my individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the individual support plan.

(3) If you need assistance to understand your individual support plan, DDD will follow the steps outlined in WAC 388-828-8065 (1) and (3).

NEW SECTION

WAC 388-828-8085 How long is my plan effective? Your individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

NEW SECTION

WAC 388-828-8090 What happens if I do not sign or verbally consent to my individual support plan (ISP)? If DDD is unable to obtain the necessary signature or verbal consent for an initial, reassessment or review of your individual support plan (ISP), DDD will take one or more of the following actions:

(1) If this individual support plan is an initial plan, DDD will be unable to provide DDD paid services. DDD will not assume consent for an initial plan and will follow the steps described in WAC 388-828-8065 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

- (a) DDD will continue providing services as identified in your most current individual support plan until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, DDD will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-828-8065(2).

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, DDD will continue your existing services and take the steps described in WAC 388-828-8065.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

NEW SECTION

WAC 388-828-8095 What if my support needs change? You may request a review of your individual support plan at any time by contacting your case manager.

**WSR 09-12-069
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed May 29, 2009, 11:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-040.

Title of Rule and Other Identifying Information: Special, unavoidable circumstance appeals, WAC 392-501-600 through 392-501-602.

Hearing Location(s): Superintendent of Public Instruction, Brouillet Conference Room, 600 Washington Street, Olympia, WA 98504-7200, (360) 725-6130, on July 16, 2009, at 9:15 a.m.

Date of Intended Adoption: July 17, 2009.

Submit Written Comments to: Michael Middleton, P.O. Box 47200, Olympia, WA 98504-7200, e-mail michael.middleton@k12.wa.us, fax (360) 725-6333, by July 15, 2009.

Assistance for Persons with Disabilities: Contact Penny Coker by July 15, 2009, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Existing WAC language does not address matters where panel members might be subject to bias (i.e., student case being reviewed is from the panel member's school or district). Further, the proposal adds a district level review of the application to check for completeness and accuracy, and details other matters related to the application submission process.

Reasons Supporting Proposal: Adapt process revisions that clarify processes and purpose.

Statutory Authority for Adoption: RCW 28A.655.061, 28A.655.065, and 28A.155.045.

Statute Being Implemented: WAC 392-501-600 through 392-501-602.

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, Implementation and Enforcement: Michael Middleton, OSPI, (360) 725-6434.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not have a business-related economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. Was not interpreted to need a cost-benefit analysis under governing law.

May 29, 2009
Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-600 General description. RCW 28A.655.065 directs the superintendent of public instruction to develop guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and RCW 28A.155.045 pertaining to the certificate of individual achievement for students who have special, unavoidable circumstances.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-601 Eligibility and application requirements. (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year, from successfully demonstrating his or her skills and knowledge on the Washington assessment of student learning (WASL), on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to students eligible for special education services.

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and severe medical condition. The condition must be documented by a medical professional and included with the application; or

(iii) Another unavoidable event of a similarly compelling magnitude that reasonably prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act, as amended.

or in a plan required ~~((in))~~ under Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district; or

(f) Students who transfer from an out-of-state or out-of-country school to a Washington public school in the twelfth grade year after March 1.

(3) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction.

(4) The application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student during his or her high school years, the medical condition report (if applicable), and the student's transcript. The principal of the school shall review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

~~((4))~~ (5) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the school district's assessment coordinator who will conduct an independent review for completeness prior to transmitting the application to the state superintendent of public instruction.

~~((5))~~ (6) Applications must be received by the superintendent of public instruction on or before May 1 or ~~((August))~~ October 1. ~~((The May 1 deadline is intended primarily for students who were not able to participate in the spring assessment, while the August deadline is intended primarily for students who decide to file an appeal after receiving their scores in June.))~~

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-602 (~~High school graduation certificate~~) Special, unavoidable circumstance appeal(s) review board and approval criteria. (1) The ~~((high school graduation certificate))~~ special, unavoidable circumstance appeal(s) review board shall be created to review and make recommendations to the superintendent of public instruction on all special, unavoidable circumstance appeal applications.

(2) The superintendent of public instruction shall appoint ~~((five))~~ seven members total to the board, five voting members and two alternates (for cases of unanticipated absenteeism or potential conflict of interest on the part of a regular voting member). The board shall be chaired by a current or former high school principal and shall consist of current or former teachers, department heads, and/or school district assessment directors with experience and expertise in the Washington essential academic learning requirements. Each member shall be appointed for a three-year term, provided that the initial terms may be staggered as the superintendent deems appropriate.

(3) The high school graduation certificate appeals review board shall review applicable special, unavoidable circum-

stance appeal applications submitted to it by the superintendent of public instruction. The board shall:

(a) Review the written information submitted to the superintendent to determine whether sufficient evidence was presented that the student has the required knowledge and skills; and

(b) Make a recommendation to the superintendent, based on the criteria in subsection (6) of this section, regarding whether or not the appeal should be granted.

(4) Staff from the office of ~~((the))~~ superintendent of public instruction (OSPI) shall coordinate and assist the work of the board. In this capacity, staff from the OSPI shall prepare a preliminary analysis of each application and accompanying information that evaluates the extent in which the criteria in subsection (6) of this section have been met.

(5) If the board determines that additional information on a particular student is needed in order to fulfill its duties, the chair of the board shall contact the OSPI staff to request the information.

(6) The board shall recommend to the superintendent of public instruction that the appeal be granted if it finds that:

(a) The student, due to special, unavoidable circumstances as defined in WAC 392-501-601(2), was not able to successfully demonstrate his or her skills on the WASL, on an objective alternative assessment, or on a Washington alternate assessment available to students eligible for special education services;

(b) No other recourse or remedy exists to address the special, unavoidable circumstance prior to the student's expected graduation date;

(c) The student has met, or is on track to meet, all other state and local graduation requirements; and

(d) After considering the criteria below, in the board's best judgment, the student more likely than not possesses the skills and knowledge required to meet the state standard. The board shall consider the following criteria:

(i) Trends indicated by prior WASL or alternate assessment results;

(ii) How near the student has been in achieving the standard;

(iii) Scores on other assessments, as available;

(iv) Participation and successful completion of remediation courses and other academic assistance opportunities;

(v) Cumulative grade point average;

(vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and

(vii) Other available information deemed relevant by the board.

(7) Based upon the recommendation of the high school graduation appeals board and any other information that the superintendent deems relevant, the superintendent of public instruction shall decide, based on the criteria established in subsection (6) of this section, whether to:

(a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;

(b) Deny the appeal and not waive the certificate; or

(c) Remand the appeal back to the appeals board for further information or deliberation.

(8) The superintendent of public instruction shall act upon the student's application and notify the student, the stu-

dent's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of the deadline for receiving the recommendation from the certificate appeals review board. This deadline for acting on the application may be extended if additional information is required from the student or the school district.

(9) If approved, the student's transcript shall indicate that the applicable certificate was waived.

(10) School staff shall include a copy of the application, supporting information, and the superintendent's decision in the student's cumulative folder.

WSR 09-12-070
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 29, 2009, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-027.

Title of Rule and Other Identifying Information: Special, unavoidable circumstance appeals, WAC 392-501-700.

Hearing Location(s): Superintendent of Public Instruction, Brouillet Conference Room, 600 Washington Street, Olympia, WA 98504-7200, (360) 725-6130, on July 16, 2009, at 9:00 a.m.

Date of Intended Adoption: July 17, 2009.

Submit Written Comments to: Michael Middleton, P.O. Box 47200, Olympia, WA 98504-7200, e-mail michael.middleton@k12.wa.us, fax (360) 725-6333, by July 15, 2009.

Assistance for Persons with Disabilities: Contact Penny Coker by July 15, 2009, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establish a permanent set of rules specific to the case of a select portion of special education students, designated as "awareness level" that are not appropriately served by the existing state assessment tools. The new rules provide for an alternative process to fulfill graduation requirements. Without the associated alternative, numbers of students in successive graduating classes will be denied diplomas due to an inability to access the state testing tools. Emergency rule adoption last spring and this spring ensured students in the Class of 2008 and 2009 were provided due process to allowing consideration of circumstances associated with the student's severity of disability.

Reasons Supporting Proposal: Establish a unique set of rules to govern graduation requirements of this specific student population.

Statutory Authority for Adoption: RCW 28A.655.061, 28A.655.065, and 28A.155.045.

Statute Being Implemented: WAC 392-501-700.

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, Implementation and Enforcement: Michael Middleton, OSPI, (360) 725-6434.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not have a business-related economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. Was not interpreted to need a cost-benefit analysis under governing law.

May 29, 2009
Randy I. Dorn
Superintendent of
Public Instruction

NEW SECTION

WAC 392-501-700 General description. RCW 28A.155.045 authorizes the superintendent of public instruction to develop guidelines for waiving specific requirements in RCW 28A.655.061 pertaining to the graduation requirements and the state assessment system, and to determine appropriate assessment alternatives through which to assess identified students.

NEW SECTION

WAC 392-501-705 Eligibility and application requirements. (1) A student, or a student's parent or guardian, may initiate a waiver request to the superintendent of public instruction if a student's cognitive development is identified at the awareness level. The waiver request can cover one or all state assessed content areas of study. Students with cognitive development at the awareness level exhibit behaviors that include, but are not limited to, the following:

(a) Having limited intentionality and being unable to communicate using presymbolic strategies.

(b) Reactions to environmental stimuli are limited to crying, opening eyes, movement, etc.

(c) Behavior not under the student's control but reflects a general physical state (e.g., hungry, wet, sleepy).

(d) Being conscious (awake) during limited times each day.

(e) Requiring parents, teachers, or other adults to interpret the child's state from behaviors such as sounds, body movements, and facial expressions.

(f) Other criteria as defined by the superintendent of public instruction's guidelines posted to the agency web site.

(2) For a student requesting a waiver under this section, the student must have the following documented in his or her records:

(a) The student is in high school and is designated as being in the 11th or 12th grade.

(b) The individualized education program (IEP) team as identified under WAC 392-172A-03095, through an evaluation of the student's behaviors and educational history, determines that the student is functioning at the awareness level (as defined in subsection (1) of this section).

(3) Filing a waiver request requires the use of a specific form developed by the superintendent of public instruction. Completing the waiver request requires:

(a) The special education teacher responsible for the IEP of the student to complete and sign the awareness waiver application and document the student's nonparticipation in the state assessment system in the student's IEP.

(b) The waiver application is submitted to the district's special education director for review, verification, and signature.

(c) Upon verification, the district special education director files the waiver application form with the district assessment coordinator.

(d) The district assessment coordinator reviews, signs, and transmits the waiver application to the superintendent of public instruction per instruction listed on the form.

(e) Staff from the office of superintendent of public instruction shall record a status of "waived" in the state data base, then transmit a confirmation e-mail to the student's high school principal and the district assessment coordinator.

(f) The school shall complete all necessary school and district documentation, including but not limited to, IEP documentation.

Reasons Supporting Proposal: More equitable and fair process to fulfill the state's graduation requirements.

Statutory Authority for Adoption: RCW 28A.655.061, 28A.655.065, and 28A.155.045.

Statute Being Implemented: WAC 392-501-510.

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, Implementation and Enforcement: Michael Middleton, OSPI, (360) 725-6434.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Does not have a business-related economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. Was not interpreted to need a cost-benefit analysis under governing law.

May 29, 2009

Randy I. Dorn

Superintendent of

Public Instruction

WSR 09-12-071

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed May 29, 2009, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-150 [09-08-025].

Title of Rule and Other Identifying Information: Access to alternative assessments, WAC 392-501-510.

Hearing Location(s): Superintendent of Public Instruction, Brouillet Conference Room, 600 Washington Street, Olympia, WA 98504-7200, (360) 725-6130, on July 16, 2009, at 9:30 a.m.

Date of Intended Adoption: July 17, 2009.

Submit Written Comments to: Michael Middleton, P.O. Box 47200, Olympia, WA 98504-7200, e-mail michael.middleton@k12.wa.us, fax (360) 725-6333, by July 15, 2009.

Assistance for Persons with Disabilities: Contact Penny Coker by July 15, 2009, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Certain students in each graduating class may be negatively impacted by existing rules within the affected WAC. Emergency rule adoption last spring ensured students in the Class of 2008 were provided due process for allowing review of and waiver appeal (where appropriate) of graduation requirements, associated with the state's assessments. The intent of this rule change of the access to alternative assessment protocols ensures students can access alternatives to the state graduation requirements that are more relevant to their specific situation.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

WAC 392-501-510 Access to alternative assessment.

(1) Students who transfer into a public school from out-of-state or from out-of-country in the eleventh or twelfth grade year may utilize an objective alternative assessment for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the Washington assessment of student learning.

(2) Students who transfer into a public school from within the state and are entering the 12th grade may individually be granted permission to utilize an objective alternative assessment for meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the Washington assessment of student learning. The superintendent of public instruction shall develop timelines and an application form for this purpose, and shall grant or deny the request based upon consideration of the unique circumstances of the student and any hardships or unavoidable hindrances that may be caused by the student's participating in the Washington assessment of student learning.

WSR 09-12-084

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 1, 2009, 11:49 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 98-70-010.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on July 10, 2009, at 2:00 p.m.

Date of Intended Adoption: July 14, 2009.

Submit Written Comments to: Sherri Lonsbery, P.O. Box 9012, Olympia, WA 98507, e-mail slonsbery@dol.wa.gov, fax (360) 664-1495, by July 9, 2009.

Assistance for Persons with Disabilities: Contact Erica Hansen by July 9, 2009, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will increase license fees in order to fund implementation and ongoing costs of [the] 2009 decision package passed by the legislature and maintain a balanced budget for the cemetery licensing program.

Reasons Supporting Proposal: The proposed rule change will increase license fees in order to fund implementation and ongoing costs of [the] 2009 decision package passed by the legislature and maintain a balanced budget for the cemetery licensing program.

Statutory Authority for Adoption: RCW 68.05.205.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dennis McPhee, Olympia, (360) 664-1551; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is not one of the named agencies to which this rule applies. Agencies not named can apply this rule to themselves voluntarily. Department of licensing has chosen not to do this.

May 29, 2009
Ralph Osgood
Assistant Director

AMENDATORY SECTION (Amending WSR 07-11-088, filed 5/15/07, effective 6/15/07)

WAC 98-70-010 Fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Certificate of authority	
Application	\$300.00
Renewal	((\$3.20)) \$6.20
Charge per each interment, entombment and inurnment during preceding calendar year	
Crematory license/endorsement	
Application	((\$140.00)) \$210.00

Title of Fee	Fee
Renewal	
((\$3.20)) Charge per cremation performed during the preceding calendar year	\$9.20
Prearrangement sales license	
Application	((\$140.00)) \$250.00
Renewal	((\$70.00)) \$200.00
Exemption from prearrangement sales license	
Application	\$70.00
Renewal	\$35.00
Cremated remains disposition permit or endorsement	
Application	\$70.00
Renewal	\$35.00

WSR 09-12-085
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed June 1, 2009, 11:51 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 308-48-800.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on July 14, 2009, at 9:00 a.m.

Date of Intended Adoption: July 14, 2009.

Submit Written Comments to: Sherri Lonsbery, P.O. Box 9012, Olympia, WA 98507, e-mail slonsbery@dol.wa.gov, fax (360) 664-1495, by July 13, 2009.

Assistance for Persons with Disabilities: Contact Erica Hansen by July 13, 2009, TTY (360) 664-8885 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will increase license fees in order to fund implementation and ongoing costs of [the] 2009 decision package passed by the legislature and maintain a balanced budget for the funeral director and embalmer licensing program.

Reasons Supporting Proposal: The proposed rule change will increase license fees in order to fund implementation and ongoing costs of [the] 2009 decision package passed by the legislature and maintain a balanced budget for the funeral director and embalmer licensing program.

Statutory Authority for Adoption: RCW 18.39.050.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dennis McPhee, Olympia, (360) 664-

1551; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is not one of the named agencies to which this rule applies. Agencies not named can apply this rule to themselves voluntarily. Department of licensing has chosen not to do this.

May 29, 2009
 Ralph Osgood
 Assistant Director

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	\$100.00
Renewal	((70.00)) <u>140.00</u>
Late renewal penalty	35.00
Duplicate	((15.00)) <u>25.00</u>
Embalmer intern:	
Intern application	((75.00)) <u>125.00</u>
Application for examination	100.00
Intern renewal	((45.00)) <u>90.00</u>
Duplicate	((15.00)) <u>25.00</u>
Funeral director:	
State examination or reexamination	100.00
Renewal	((70.00)) <u>140.00</u>
Late renewal penalty	35.00
Duplicate	((15.00)) <u>25.00</u>
Funeral director intern:	
Intern application	((75.00)) <u>125.00</u>
Application for examination	100.00
Intern renewal	((45.00)) <u>90.00</u>
Duplicate	((15.00)) <u>25.00</u>
Funeral establishment:	

Title of Fee	Fee
Original application	((300.00)) <u>400.00</u>
Renewal	((150.00)) <u>300.00</u>
Branch registration	((250.00)) <u>350.00</u>
Branch renewal	((150.00)) <u>300.00</u>
Preneed application	((140.00)) <u>250.00</u>
Preneed renewal:	<u>200.00</u>
(0-25 sales	25.00 st
26-99 sales	75.00
100 or more sales-	125.00))
Crematory endorsement registration	((140.00)) <u>210.00</u>
Crematory endorsement renewal	<u>9.20</u>
((3.20)) Charge per cremation performed during previous calendar year.	
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00

**WSR 09-12-086
 PROPOSED RULES
 DEPARTMENT OF LICENSING**

[Filed June 1, 2009, 12:03 p.m.]

Original Notice.
 Exempt from preproposal statement of inquiry under RCW 34.05.310(4).
 Title of Rule and Other Identifying Information: WAC 308-13-150.
 Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2209, Olympia, WA 98502, on July 9, 2009, at 9:00 a.m.
 Date of Intended Adoption: July 9, 2009.
 Submit Written Comments to: Sherri Lonsbery, P.O. Box 9045, Olympia, WA 98507, e-mail slonsbery@dol.wa.gov, fax (360) 664-1495, by July 8, 2009.
 Assistance for Persons with Disabilities: Contact Erica Hansen by July 8, 2009, TTY (360) 664-8885 or (360) 664-6597.
 Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will increase license fees in order to fund implementation and ongoing costs of legislative changes resulting from the passage of SSB 5273 and maintain a balanced budget for the landscape architect licensing program.
 Reasons Supporting Proposal: The proposed rule change will increase license fees in order to fund implementation and ongoing costs of legislative changes resulting from

the passage of SSB 5273 and maintain a balanced budget for the landscape architect licensing program.

Statutory Authority for Adoption: RCW 18.96.080, 18.96.090, 18.96.100, 18.96.110.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lorin Doyle, Olympia, (360) 664-1387; and Enforcement: Joe Vincent Jr., Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is not one of the named agencies to which this rule applies. Agencies not named can apply this rule to themselves voluntarily. Department of licensing has chosen not to do this.

May 29, 2009
 Ralph Osgood
 Assistant Director

AMENDATORY SECTION (Amending WSR 07-05-039, filed 2/15/07, effective 3/18/07)

WAC 308-13-150 Landscape architect fees and charges. The following fees will be collected:

Title of Fee	Fee
Application fee	((\$50.00)) <u>\$250.00</u>
Reexamination administration fee	((50.00)) <u>250.00</u>
Renewal (2 years)	((200.00)) <u>450.00</u>
Late renewal penalty	((100.00)) <u>150.00</u>
Duplicate license	25.00
Initial registration (2 years)	((200.00)) <u>450.00</u>
Reciprocity application fee	((200.00)) <u>450.00</u>
Replacement wall certificate	20.00

**WSR 09-12-093
 PROPOSED RULES
 PROFESSIONAL EDUCATOR
 STANDARDS BOARD**

[Filed June 1, 2009, 3:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-16-099.

Title of Rule and Other Identifying Information: WAC 181-79A-257, deletes subsection (1)(d) to remove confusion regarding out-of-state candidates for certification and Washington state endorsements. Candidates who complete an out-of-state educator preparation course in a subject area will receive a Washington state endorsement in the subject area per chapter 181-82 WAC.

Hearing Location(s): St. Martin's Pavilion, Norman Worthington Conference Center, 5300 Pacific Avenue S.E., Lacey, WA 98503, on July 22, 2009, at 8:30 a.m.

Date of Intended Adoption: July 22, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548 by July 17, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by July 17, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rule provides policy guidance for issuance of endorsement area certificates for out-of-state teacher candidates. Rule change would remove confusion regarding out-of-state candidates with subject area training and closest matching endorsement would be issued.

Reasons Supporting Proposal: Addresses confusion in aligning teacher subject area preparation with Washington state endorsements per chapter 181-82 WAC.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educators standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

June 1, 2009
 David Brenna
 Legislative and
 Policy Coordinator

AMENDATORY SECTION (Amending WSR 07-20-047, filed 9/26/07, effective 10/27/07)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Initial and residency certificates. The initial certificate (residency certificate for teachers after August 31, 2000,) shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who passes the WEST-B and meets one of the following:

(a) Qualifies under provisions of the interstate compact.

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state approved preparation program at a regionally accredited college or university in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4).

(c) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) or (b) of this subsection, an initial/residency certificate shall be issued to a candidate who holds an appropriate degree from a regionally accredited college or university and also holds or has held a certificate in the role, comparable to an initial/residency certificate, issued by another state and has practiced at the P-12 level in that respective role outside the state of Washington for three years: Provided further, That the teacher preparation program through which the teacher earned their teaching certificate included a supervised classroom-based internship.

~~(d) ((Provided further, That if a candidate for a teacher's certificate would qualify under (b) of this subsection, but for the fact that he or she has completed an approved teacher preparation program in a subject area that is not listed in chapter 181-82 WAC as a Washington endorsement, the candidate shall be issued a certificate that bears the out of state area of program preparation. It shall be noted on the certificate so issued that the subject area listed is not a Washington state endorsement.~~

(e)) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

((~~¶~~)) (e) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

(2) Continuing certificate. The continuing certificate shall be issued to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

(3) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

WSR 09-12-096

WITHDRAWAL OF PROPOSED RULES EMPLOYMENT SECURITY DEPARTMENT

(By the Code Reviser's Office)

[Filed June 2, 2009, 8:16 a.m.]

WAC 192-16-009 and 192-150-170, proposed by the employment security department in WSR 08-23-024 appearing in issue 08-23 of the State Register, which was distributed on December 3, 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 09-12-098

PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed June 2, 2009, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-10-065.

Title of Rule and Other Identifying Information: WAC 296-127-01322 Electronic technicians scope of work.

Hearing Location(s): Department of Labor and Industries, Tukwila Service Location, 12806 Gateway Drive, Tukwila, WA, on July 8, 2009, at 10:00 a.m.; and at the Department of Labor and Industries, Spokane Service Location, 901 North Monroe Street, Suite 100, Tukwila, WA, on July 14, 2009, at 10:00 a.m.

Date of Intended Adoption: August 18, 2009.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by July 14, 2009.

Assistance for Persons with Disabilities: Contact Sally Elliott by July 1, 2009, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prevailing wage rates on public work projects are determined and enforced

according to the trade or occupation or "classification" of work. These classifications are described in the "scopes of work" rules. The electronic technician regulation is a pre-existing scope of work rule. Electronic technicians work with low voltage electrical systems. Under the current rule, electronic technicians may pull low voltage wire through metallic conduit that is no longer than ten feet nor larger than one inch. The purpose of this rule making is to allow electronic technicians to pull low voltage wire through any length or width of conduit, with the exception of wire for fire alarm systems. The proposed rule will clear up ambiguities raised by stakeholders.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 39.12 RCW and RCW 43.22.270.

Statute Being Implemented: Chapter 39.12 RCW and RCW 43.22.270.

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: David Soma, Tumwater, Washington, (360) 902-5330; Implementation and Enforcement: Steve McLain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because the proposed rule will not impose more than minor costs on businesses (see RCW 19.85.030 (1)(a)). Wage rates already exist for each of these job classifications. Through this rule making, the department provides greater clarity to all affected parties as to when and to which activities the wage rates apply on public works projects.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail yous235@lni.wa.gov.

June 2, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 00-15-077, filed 7/19/00, effective 7/19/00)

WAC 296-127-01322 Electronic technicians. (1) For the purpose of the Washington state public works law, chapter 39.12 RCW, ~~((the scope of work for))~~ electronic technicians ~~((is as follows:~~

~~(1) The installation, operation, inspection, maintenance,))~~ install, operate, inspect, maintain, repair, and service ~~((of):~~

(a) Radio, television and recording systems and devices~~((:))~~;

(b) Systems for paging, intercommunication, public address, wired music, clocks, security and surveillance systems and mobile radio systems~~((:))~~; and

(c) Fire alarm and burglar systems.

~~(2) When installed for the specific purpose of carrying low voltage wiring, the ((installation)) work identified in subsection (1) of this section includes:~~

~~(a) Installing unlimited lengths of nonmetallic conduit((s and));~~

~~(b) Installing incidental ((shielded)) metallic conduits of no longer than ten feet nor larger than one inch((, when installed for the specific purpose of carrying low voltage wiring));~~

~~((3)) (c) Pulling wiring through ((the type of)) conduit ((described under subsection (2) of this section, when the wiring is installed for the specific purpose of carrying low voltage electricity.)), except as provided in subsection (3) of this section; and~~

~~((4)) (d) All the cleanup required in connection with electronic technician's work.~~

(3) The work identified in subsection (1) of this section does not include pulling wiring through conduit that exceeds ten feet in length for the purpose of installing fire alarm systems.

WSR 09-12-099

PROPOSED RULES

DEPARTMENT OF LABOR AND INDUSTRIES

[Filed June 2, 2009, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-133.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for worker's compensation insurance.

Hearing Location(s): Tumwater L&I Building, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on July 7, 2009, at 10:00 a.m. to 12:00 a.m. [p.m.]

Date of Intended Adoption: August 4, 2009.

Submit Written Comments to: Ronald Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail MOOA235@lni.wa.gov, fax (360) 902-4729, by 5:00 p.m., July 7, 2009.

Assistance for Persons with Disabilities: Contact Bill Moomau at (360) 902-4774 or office of information and assistance at TTY (360) 902-5797 by July 6, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has conducted a review of various classifications and determined that certain classifications are in need of revision for purposes of clarification. Revisions are being considered for the following classification: WAC 296-17A-0516 Building repair and carpentry NOC, 296-17A-1109 Towing services, 296-17A-4002 Dairy products manufacturing, 296-17A-4910 Property management, and 296-17A-6103 Schools.

WAC 296-17A-0516 Building repair and carpentry NOC, clarify reporting requirements for remodeling businesses and propose creating a new subclassification in 0516 to track remodelers who want to report in 0516 and keep records of hours worked in other phases of construction.

WAC 296-17A-1109 Towing services, amending text to clarify that 1109, towing services, is the classification for the entire business and subject to general inclusions by eliminating language that limits the classification to drivers and their assistants. We also propose removing the reference to the "secondary business" in WAC 296-17A-1109 as it does not apply.

WAC 296-17A-4002 Dairy products manufacturing, adding internal instruction permitting only classifications services staff to assign classification 4002, dairy product manufacturing, to insure consistent classification application for this industry.

WAC 296-17A-4910 Property management, clarifying 4910 property management rule by removing the word "clerical" from the text as it has caused confusion in the past regarding where to report clerical employee hours (4910 is entitled to separately report clerical workers in 4904). Also, propose adding the word "residential" to 4910 property management to allow builders to report the upkeep and maintenance of their completed vacant homes in this classification.

WAC 296-17A-6103 Schools, creating a subclassification of 6103 to accommodate the classroom training time for maritime businesses while not subject to longshore exposure. This proposal is the result of a compromise following a protest to the board of industrial insurance appeals (BIIA).

Reasons Supporting Proposal: Classifications will be more clear and easier to administer and understand.

Statutory Authority for Adoption: RCW 51.16.035 and 51.16.100.

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Bill Moomau/Jo Anne Smith, Tumwater, (360) 902-4774/4777; Implementation: Ronald C. Moore, Tumwater, (360) 902-[4748]; and Enforcement: Robert Malooly, Tumwater, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement (SBEIS) since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules is specifically dictated by statute described in RCW 34.05.328 (5)(b)(v). Preparation of a SBEIS and the evaluation of probable costs is required when a rule proposal has the potential of placing a more than minor economic impact on business. There are no significant costs as part of this rule making.

A cost-benefit analysis is not required under RCW 34.05.328. The agency is exempt from conducting a cost-benefit analysis since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules is specifically dictated by statute described in RCW 34.05.328 (5)(b)(v). Preparation of a SBEIS and the evaluation of probable costs is required when a rule proposal has the potential

of placing a more than minor economic impact on business. There are no significant costs as part of this rule making.

June 2, 2009

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0516 Classification 0516.

0516-00 Building repair, remodeling and carpentry(~~(N.O.C.)~~)

This subcode applies to a firm that chooses to report all construction phases in one classification. This is to simplify recordkeeping.

Applies to contractors engaged in building repair, remodeling and carpentry work(~~(, not covered by another classification (N.O.C.))~~).

This classification applies to:

- Remodeling and carpentry-related framing work on concrete, brick and steel buildings(~~(, and to)~~).
- Wood framed building renovation and remodeling projects (where the structure) when the skeleton framework is not being modified or altered.

Typical projects include, but are not limited to:

- Interior building demolition ("strip outs") involving only the removal of interior walls, partitions, interior trim, cabinetry, doors, flooring and related construction materials;
- Converting a room from one use to another, such as a bedroom to a study, or a garage to a family room;
- Enlarging or ((changing the configuration of) reconfiguring a room by removing or adding an interior wall;
- Upgrading a kitchen or bathroom; ((ø))
- Adding structures such as a wooden deck to an existing building, screening a porch, installing a wood patio cover, or assembling sheet metal tool or garden sheds.

Contractors subject to this classification use a variety of dimensional lumber and wood products (~~((as well as)), light weight metal studs and plastic and fiber reinforced boards,~~ metal fasteners (nails, screws and bolts), and metal reinforcing or support straps such as joist hangers and post brackets. ~~((Technological changes have produced new materials which are replacing wood and wood products. These materials include, but are not limited to, light weight metal studs and plastic and fiber reinforced boards.))~~

This classification includes ~~((the framing of private residences with light weight metal studs and the installation of earthquake tie downs on residential buildings. This classification also includes specialty service providers or contractors engaged in providing general repair services (handyman) on buildings and dwellings. Classification 0516-00 can be used for these businesses to simplify recordkeeping and reporting if they provide general carpentry work and at least two of the following types of repair work; electrical, plumbing, cabinet, interior alteration, painting, drywall, masonry, carpet/linoleum/laminate, glazing, or appliance repair.~~

~~This classification excludes roofing or roof work which is to be reported separately in classification 0507);~~

- Framing of wood structures with light weight metal studs.

• Installation of earthquake tie downs on residential buildings.

• Specialty service providers or contractors engaged in providing general repair services or performing remodeling projects on buildings and structures.

Contractors who alter, remodel or repair existing structures are to be assigned classification 0516-00 exclusively. No other construction classifications can be assigned to an account with the exception of roofing or roof work which is to be reported in 0507-05.

Special note: Businesses assigned to this classification are distinguishable from those assigned to classification 0516-02, in that 0516-02 requires each phase of construction to be reported separately in the appropriate construction classification(s).

Contractors that build new structural additions as part of a remodeling contract must also report each phase separately. They must use classification 0510-00 to report the new framing. All other phases of the construction must be reported separately in the appropriate classification(s) as noted in the text of classification 0516-02.

Contractors that build new structural additions and also repair and remodel existing structures will be assigned both 0510-00 and 0516-02 in addition to any other appropriate classification. 0516-00 will not be assigned to these employers.

Subclassifications 0516-00 and 0516-02 cannot be active on an account at the same time.

0516-01 Wood playground equipment: Installation and/or repair

Applies to contractors engaged in the installation and/or repair of wood playground equipment. Work contemplated by this classification begins after the area of land has been excavated and/or cleared and includes installing wood playground equipment at private residences and in public settings such as, but not limited to, schools, parks, day care centers, churches, and hotels. This classification usually includes a variety of playground equipment comprised of treated wood beams, poles, posts, and a variety of dimensional lumber used in building swings, forts, stationary and swinging bridges, balance beams, climbing towers, slides, and rope and tire walks. Generally, the process involves setting poles or posts with use of a post hole digger, backhoe or tractor equipped with an auger. The poles or posts may be set in concrete. Depending on the piece of equipment being built, use of beams, planks, dimensional lumber, rope, chains, tires, and metal bars or rings, are securely attached with nails, screws, bolts or eye hooks. This classification includes the building of borders surrounding the playground equipment area with beams or railroad ties and the spreading of pea gravel, sand or wood chips underneath the equipment.

This classification excludes the installation of metal playground equipment which is to be reported separately in classification 0603, and the excavation or clearing of land which is to be reported separately in classification 0101.

0516-02 Building repair, remodeling and carpentry, N.O.C.

This subcode applies to a firm that chooses to report all construction phases into separate construction classifications.

Applies to contractors engaged in building repair, remodeling and carpentry work, not covered by another classification (N.O.C.).

This classification applies to:

• Remodeling and carpentry-related framing work on the interior of concrete, brick and steel buildings.

• Wood framed building renovation and remodeling projects when the skeleton framework is not being modified or altered.

Typical projects include, but are not limited to:

• Interior building demolition ("strip outs") involving only the removal of interior walls, partitions, interior trim, cabinetry, doors, flooring and related construction materials.

• Converting a room from one use to another, such as a bedroom to a study, or a garage to a family room.

• Enlarging or reconfiguring a room by removing or adding an interior wall.

• Upgrading a kitchen or bathroom.

• Adding structures such as a wooden deck to an existing building, screening a porch, installing a wood patio cover, or assembling sheet metal tool or garden sheds.

Contractors subject to this classification use a variety of dimensional lumber and wood products, light weight metal studs and plastic and fiber reinforced boards, metal fasteners (nails, screws and bolts), and metal reinforcing or support straps such as joist hangers and post brackets.

This classification includes:

• Framing of wood structures with light weight metal studs.

• Installation of earthquake tie downs on residential buildings.

• Specialty service providers or contractors engaged in providing general repair services or performing remodeling projects on buildings and structures.

Except for interior demolition, framing and drywall which are to be reported in classification 0516-02, each phase must be reported separately in the appropriate classification noted below, but not limited to:

<u>Concrete foundations/slabs</u>	<u>0217</u>
<u>Interior painting</u>	<u>0521</u>
<u>Counter tops</u>	<u>0302/0502</u>
<u>Metal siding/gutters</u>	<u>0519</u>
<u>Drywall</u>	<u>0550/0551</u>
<u>Plumbing</u>	<u>0306</u>
<u>Electrical</u>	<u>0601</u>
<u>Roofing</u>	<u>0507</u>
<u>Exterior painting</u>	<u>0504</u>
<u>Wood framing/sheathing/windows/nonmetal siding</u>	<u>0510</u>
<u>Floor coverings</u>	<u>0502</u>
<u>Interior finish carpentry</u>	<u>0513</u>
<u>Window installation (not part of a framing contract)</u>	<u>0511</u>
<u>Insulation</u>	<u>0512</u>

Reference: WAC 296-17-31013 and 296-17-31017.

Contractors performing remodeling or alteration projects which involve new structural additions must report that activity in classification 0510-00 and any other applicable classification(s) noted above.

Contractors who alter, remodel or repair existing structures can choose to report all hours in classification 0516-00. This classification excludes roofing or roof work which is to be reported in 0507-05. This method can simplify recordkeeping.

Special note: Proper reporting in multiple construction classifications requires special care in maintaining required records. If these records have not been maintained as required, all worker hours for which the records were not maintained will be reassigned to the highest rated classification applicable to the work that was performed.

Reference: WAC 296-17-31013.

Averages, estimates or percentages are not allowed.

Reference: WAC 296-17-31017.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-1109 Classification 1109.

1109-00 Automobile or truck towing services, N.O.C.

Applies to establishments engaged in providing towing services for hire to others which are not covered by another classification (N.O.C.). Operations contemplated by this classification are limited to tow truck drivers and their assistants who are engaged in towing services for hire. For purposes of this classification "towing services for hire" means, but is not limited to, the towing of disabled vehicles to a shop (that is unrelated to the towing service) for repair(⊖), the recovery of repossessed vehicles for others by tow truck(⊖), roadside assistance during snow, ice or flooding to recover or free stuck vehicles(⊖), and the towing in of disabled vehicles to a secured yard for insurance or law enforcement agencies. It is common for towing companies to also operate a vehicle repair garage or service center in conjunction with the towing service. Auto service centers and repair garages, auto body shops and wrecking yard operations are to be reported separately in the applicable service or repair classification provided that the conditions of the general reporting rules covering ~~((the operation of a secondary business and))~~ the division of worker hours have been met. Tow truck dispatchers who have no other duties may be reported separately in classification 4904 provided that the conditions of the standard exception general reporting rules have been met.

Special note: Towing is common to many classifications. Employers offering towing services should be contacted to verify whether the towing service they provide is only in connection with their auto repair, auto body or wrecking yard (*towing service not for hire*), or provided as a general service unrelated to their repair garage (*towing services for hire*). Only towing services for hire are to be assigned to classification 1109. If a business provides both towing services for hire and not for hire, worker hours for drivers and their assistants may be divided between this classification and the applicable repair garage classification provided that the conditions of the general reporting rule covering the divi-

sion of worker hours has been met. Otherwise, all driver and assistant hours are to be assigned to the highest rated classification applicable to the business.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4002 Classification 4002.

4002-00 Dairy products, N.O.C.: Manufacturing

To be assigned only by classification services staff

Applies to establishments engaged in the manufacture of dairy products not covered by another classification (N.O.C.) such as, but not limited to, whole, low fat, skim, powdered, flavored and condensed milk, buttermilk, cream, half-and-half, and eggnog. Raw milk may be purchased from others or furnished by the manufacturer's own dairy operation. Other ingredients usually purchased elsewhere include, but are not limited to, flavorings, sweeteners, nutrients, bacteria and yogurt cultures, and paper, glass or plastic containers for packaging finished products. Raw milk is delivered by insulated tanker trucks after it is tested for antibiotics, bacteria and microorganism counts, temperature, and fat content. The raw milk is pumped from the trucks into refrigerated silos or tanks; the cream is skimmed from the top and pumped into separate storage tanks for further blending to ensure the correct fat and nutrient content. The remaining milk may be evaporated, homogenized, pasteurized, cooled, tested for quality, and further processed into various milk products which are filled into gallons, half gallons, quarts, pints and half-pint containers and packaged for shipping. This classification includes the incidental manufacture of butter, ice cream, or cheese products when done by employees of an employer subject to this classification.

This classification excludes establishments primarily engaged in the manufacture of butter, cheese, ice cream and ice cream mixes which are to be reported separately in classification 4002-01 and dairy farming operations which are to be reported separately in classification 7301.

4002-01 Butter, cheese, ice cream and ice cream mix: Manufacturing

To be assigned only by classification services staff

Applies to establishments engaged in the manufacture of dairy products such as, but not limited to, butter, natural or processed cheeses, cottage cheese, cheese dips or spreads, custards, whipped topping, ice cream, milkshake or ice cream mixes, ice milk, sherbet. Raw milk may be purchased from others or furnished by the manufacturer's own dairy operation. Other raw materials usually purchased elsewhere include, but are not limited to, flavoring, coloring agents, salts, additives and preservatives, plastic or oiled wrappings, and paper, glass or plastic containers for packaging finished product. Raw milk is delivered by insulated tanker trucks and pumped from the trucks into refrigerated silos or tanks. Initial processes are similar for products manufactured in this classification, but end processes vary, depending on the product being made. To make cheese, raw milk is heat treated and pasteurized, cooled, moved through separators which adjust fat composition by skimming the milk or adding cream, then pumped into vessels or cheese vats. Lactic acid and enzymes

are added to purify and clot the milk and form a gel which is cut into tiny cubes. Other additives, preservatives, or flavorings may be added at this point. The mixture of curds and whey (the liquid by-product lost from curds after cutting) is heated by allowing steam to enter the outer jacket of the vat. The mixture is stirred, whey is drained from curds and transported to evaporators and spray dryers which condense the whey into a powder form. Aside from salting, little more is done to curds to make unripened cheeses such as cream cheese or cottage cheese. When making firmer cheeses, the next step involves knitting or stretching the drained curds for texture. This process will vary according to the type of cheese being produced, but activities commonly involve preliminary packing, pressing or pulling of the curds in hot water, or turning curd blocks (called "cheddaring"). The curd blocks are milled (cut into finger-sized pieces) and moved through a trough or air block through tubing to other vats for further processing. In other processes, curds are collected in hoops (metal containers lined with cloth or plastic) and pressed into blocks or molds, or barrels. Hydraulic presses are used to press cheese, and vacuum chambers may be used to remove air. Cured cheese blocks may be packaged in corrugated cartons, or cut into smaller blocks, vacuum sealed in plastic, then packaged in boxes, or cut or shredded prior to packaging.

This classification excludes establishments primarily engaged in the manufacture of milk and other related dairy products not covered by another classification which are to be reported separately in classification 4002-00; establishments engaged in the manufacture of cheese-based salad dressings which are to be reported separately in classification 3902; and dairy farming operations which are to be reported separately in classification 7301.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4910 Classification 4910.

4910-00 Property management services

Applies to establishments engaged in managing their own (~~rental~~) property or properties owned by others. Properties include, but are not limited to, privately owned residential or commercial buildings, malls, apartment or condominium complexes, mobile home parks, halls, and conference rooms. Typical operations contemplated by this classification include, but are not limited to, management (~~or clerical~~) duties, advertising, showing vacant units to prospective tenants, collecting rent, providing security, and normal maintenance and repair when conducted by employees of employers subject to this classification. Normal maintenance and repair contemplated by this classification includes replacing parts on existing fixtures or equipment, repairing existing structures, normal cleaning or janitorial activities, maintaining existing landscaping, and shoveling snow from driveways or walkways. Construction, alteration, or improvements to the properties are *not* considered normal maintenance and are *not* contemplated by this classification. Major repair work is usually performed by contractors who are not employees of the property management business. *Apartment or condominium complexes and mobile home parks* may have common

areas such as, but not limited to, laundry facilities, community rooms, tennis courts, exercise rooms, swimming pools, saunas or hot tubs, and playgrounds or small park areas. Common areas are maintained by employees of the complex or park owner or by the property management service. Residents of mobile home parks are usually responsible for maintaining their own mobile homes and their immediate space.

This classification includes homeowners' associations where residents in a housing development pay annual fees which cover the maintenance of lawns, paths, sprinkler systems, and common areas such as pools, activity centers, and tennis courts by employees of the homeowners' association.

This classification excludes employees engaged exclusively in clerical duties who are to be reported separately in classification 4904; employees engaged exclusively in sales duties such as collecting rents, showing and advertising the facility, conducting auctions, or in a combination of clerical and sales duties who are to be reported separately in classification 6303; establishments providing janitorial services exclusively which are to be reported separately in classification 6602; contractors engaged in mobile home set up or removal who are to be reported separately in classification 0517; any new construction or alteration work performed by employees of employers subject to this classification which is to be reported separately in the applicable construction classification; establishments that contract to perform maintenance or repair, but have no responsibilities in the management of the property, which are to be reported separately in the applicable classification; and lodging or food serving operations which are to be reported separately in the applicable classification.

4910-01 Chimney cleaning - residential buildings

Applies to establishments engaged in providing chimney cleaning services to residential customers. Workers who perform chimney cleaning services are commonly referred to as "chimney sweeps" and usually work alone or as a two-person team. When working as a team, one "sweep" works inside the house and the other works on the roof. The methods of cleaning vary. To protect the floors and furniture, drop cloths are placed in front of the fireplace and taped over the opening. The vertical drop cloth may have a "boot" or slit in it which allows rods to be pushed through. Various brushes, usually wire, are attached to extension rods and worked up and down the flue to dislodge the soot and creosote. Creosote deposits may be removed also with a chimney bar, which is a pipe-like instrument with a chisel end, or by using metal scrapers. Where the chimney top is protected from the rain by a hood or cap, it may not be possible to insert the brushes into the opening; a chain or weight may be lowered and swung back and forth inside the chimney. Some sweeps have custom-made vacuum trucks with large collection chambers to collect the soot. In addition to cleaning the chimney flue and fireplace, some sweeps clean oil, gas and coal burning furnaces, repair chimney and flue linings, remove animals from chimneys, and offer other related services. Repairs included in this classification are limited to such activities as caulking around the flashing and sealing brickwork.

This classification excludes establishments engaged in industrial or commercial chimney or smokestack cleaning services which are to be reported separately in classification

0508; contractors engaged in chimney reconstruction or new construction made of masonry or brick who are to be reported separately in classification 0302; contractors engaged in the installation of sheet metal stove pipe who are to be reported separately in classification 0307; and the installation of a new lining in the chimney which is to be reported separately in the applicable classification.

4910-02 Mini-storage warehouse

Applies to establishments engaged in operating mini-storage facilities. Mini-storage facilities are usually fenced and entry is through a locking gate through which owners and renters of units are provided access. The units range from lockers to rooms of various sizes; once the unit is rented, the tenant or owner has sole access to it. Typical operations include, but are not limited to, management or clerical duties, renting or selling storage units to others, providing security, and normal maintenance and repair when performed by employees of employers subject to this classification. Normal maintenance and repair contemplated by this classification includes replacing parts on existing fixtures or equipment, repairing existing structures, normal cleaning of public areas, controlling rodents and other pests, maintaining existing landscaping, and shoveling snow from driveways or walkways. Construction, alteration, or improvements to the properties are *not* considered normal maintenance and are *not* contemplated by this classification. Major repair work is usually performed by contractors who are not employees of the storage facilities.

This classification excludes employees engaged exclusively in clerical duties who are to be reported separately in classification 4904; employees engaged exclusively in sales duties or in a combination of clerical and sales duties who are to be reported separately in classification 6303; and new construction or alteration work which is to be reported separately in the applicable construction classification.

4910-03 Temporary signs - placement or removal

Applies to establishments engaged in placing or removing temporary yard signs such as, but not limited to, real estate signs for real estate offices or property management firms and campaign signs. The smaller signs are usually mounted on a metal rod which is pounded into the ground to a depth of about 18". A post hole digger may be used to dig holes for larger signs that require a more sturdy post.

This classification excludes all other types of sign installation, painting or repair which are to be reported separately in the applicable classification.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6103 Classification 6103.

6103-01 Schools: Academic, K-12 - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as principals, assistant principals, receptionists, secretaries, counselors, school nurses, payroll and bookkeeping personnel, and teachers or teachers' aides of establishments engaged in operating public or private aca-

demical school facilities, K-12 (kindergarten level through grade 12) and the state schools for the blind and deaf.

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to, cooks, bus drivers, custodians, maintenance personnel and grounds keepers, and teachers or teachers' aides who are exposed to machinery hazards such as a wood shop, metal shop, print shop, auto shop, and driver training instructors who are to be reported separately in classification 6104.

6103-02 Schools: Trade or vocational - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as deans, directors, assistant directors, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and professors or instructors of establishments engaged in operating trade or vocational school facilities. These types of schools provide specialized training and instruction to prepare students for occupations in the chosen fields. Often these facilities will coordinate on-the-job training with employers as well as assist students in finding employment.

This classification excludes all other types of employees in connection with the school facilities such as, but not limited to, cooks, drivers, custodians, maintenance personnel and grounds keepers, and professors or instructors who are exposed to machinery hazards such as a wood shop, metal shop, print shop and auto shop who are to be reported separately in classification 6104.

6103-03 Libraries, N.O.C. - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as librarians, assistant librarians, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating library facilities not covered by another classification (N.O.C.). These types of facilities maintain a wide selection of reading materials such as books, journals, articles, magazines, publications, newspapers, and audio-visual or micrographic materials.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers, drivers, and storage room workers who are to be reported separately in classification 6104.

6103-04 Churches - clerical office, sales personnel, teachers, N.O.C. and administrative employees Bell ringers

Applies to clerical office, sales personnel and administrative employees such as pastors, priests, reverends, clergymen, ushers, receptionists, secretaries, counselors, payroll and bookkeeping personnel, and instructors of establishments engaged in operating church facilities for members of a religious congregation to meet and worship on a daily or weekly basis. Other services provided include, but are not limited to, sermons, rites, counseling, baptisms, weddings, funerals, bible school, and child care during church services and events. When a church is also operating a school facility, the church classifications are to be assigned for both operations.

This classification also applies to bell ringers for charitable organizations.

This classification excludes all other types of employees in connection with the church facilities such as, but not limited to, custodians, maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

6103-05 Museums, N.O.C. - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel and administrative employees such as directors, assistant directors, buyers, coordinators, tour guides, receptionists, secretaries, and payroll and bookkeeping personnel of establishments engaged in operating museum facilities not covered by another classification (N.O.C.). Museums maintain a wide variety of artifacts, art, statues, sculptures, and other exhibit works.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers (including exhibit set-up), drivers, packers, and warehousemen who are to be reported separately in classification 6104.

6103-06 Day nurseries or child day care centers - clerical office, sales personnel, teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel, and administrative employees such as teachers, teachers' aides and nurses of establishments engaged in operating day nurseries or day care centers for infants, toddlers, and children, or in providing baby-sitting services. Employees will instruct children in activities designed to promote social, physical, and intellectual growth in preparation for primary school. Most day care centers provide breakfast and lunch.

This classification excludes all other types of employees such as, but not limited to, custodians, cooks, maintenance personnel and grounds keepers, and drivers who are to be reported separately in classification 6104.

6103-10 Flight instructors - clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees

Applies to clerical office, sales personnel, classroom instructors, and administrative employees of establishments engaged in providing classroom instruction to student pilots in flight procedures and techniques. Flight instructors explain various aircraft components and instruments for controlling aircraft during maneuvers, and, using flight simulators, demonstrate procedures such as, but not limited to, take-offs and landings.

This classification excludes all other types of employees such as, but not limited to, custodians, maintenance personnel and grounds keepers and drivers who are to be reported separately in classification 6104 and in-air flight instructors outside the classroom who are to be reported separately in the classification 6803.

Special note: Reporting rules are outlined in the division of worker hours provision in the general rules.

6103-11 Schools: N.O.C. - clerical office, sales personnel, classroom teachers, N.O.C. and administrative employees

Applies to classroom instructors, clerical office, sales personnel and administrative employees such as directors and assistant directors, coordinators, instructors, receptionists, secretaries, counselors, payroll and bookkeeping personnel of establishments engaged in providing specialized classroom instruction to students in schools which are not covered by another classification (N.O.C.). Schools include, but are not limited to, dance, modeling, music, driving, cooking, first aid, and schools for coaches. Modeling and dance schools emphasize poise, balance, facial gestures, self-confidence, and counseling in wardrobe and make-up. Music schools emphasize the disciplines of playing various instruments. Driving schools concentrate on the rules, principles, and coordination needed to drive safely, using textbooks, audio-visuals, and driving simulators.

This classification excludes all other types of employees in connection with the specialized school facilities such as, but not limited to, custodians, maintenance personnel, grounds keepers, and ballet dancers and instructors who perform activities not as part of a classroom environment who are to be reported separately in classification 6104 and driving instructors outside of the classroom who are to be reported separately in classification 6301.

6103-12 Officials for amateur athletic or cultural events, N.O.C. - clerical office, teachers, N.O.C. and administrative employees

Applies to clerical office employees, administrative employees, and event officials of establishments engaged in providing officials such as, but not limited to, umpires or referees for amateur athletic or cultural events sponsored by schools or communities. Events include, but are not limited to, sports, spelling bees, debates, and musical competitions.

6103-13 Longshore and stevedore trainees, N.O.C

Applied to clerical office employees, administrative employees, and stevedore trainees of an establishment engaged in training longshore and stevedore trainees in a classroom environment.

Special note: Any longshore or stevedore activities conducted outside of the classroom on a dock, or ship, or adjacent to navigable waters will almost always be covered by the Longshore Harbor Workers' Compensation Act (LHWCA) and will not be covered by the state fund.

**WSR 09-12-100
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed June 2, 2009, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-08-102.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system for workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): Tumwater L&I Building, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on July 7, 2009, at 1:00 p.m. - 2:00 p.m.

Date of Intended Adoption: August 4, 2009.

Submit Written Comments to: Department of Labor and Industries, Ronald C. Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail mooa235@lni.wa.gov, fax (360) 902-4729, by 5 p.m. on July 7, 2009.

Assistance for Persons with Disabilities: Contact Bill Moomau at (360) 902-4774 or office of information and assistance at TTY (360) 902-5797 by July 6, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes changes be made to:

WAC 296-17-870 Evaluation of actual losses, revise evaluation of actual losses to include reserve amounts for PPD and Vocational Option 2 claims. Rule to become effective January 1, 2010.

WAC 296-17A-5307 State government, create a sub-classification to separate some DSHS institution staff from 5307-00 to track counselors with high risk. Rule to become effective October 1, 2009.

Reasons Supporting Proposal: This rule making is being proposed to maintain the accuracy and integrity of the rates and risk classification rules for workers' compensation.

Statutory Authority for Adoption: RCW 51.16.035 and 51.16.100.

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: JoAnne Smith, Tumwater, Washington, (360) 902-4777; Implementation: Ronald C. Moore, Tumwater, Washington, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case the agency is exempt from conducting a small business economic impact statement (SBEIS) since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f) and because the content of the rules is specifically dictated by statute described in RCW 34.05.310 (4)(e).

A cost-benefit analysis is not required under RCW 34.05.328. Preparation of a SBEIS and the evaluation of probable costs is required when a rule proposal has the potential of placing a more than minor economic impact on business. There are no significant costs as part of this rule making.

June 2, 2009
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-5307 Classification 5307.

5307-00 State government employees - N.O.C.

Applies to state government employees not covered by another classification (N.O.C. - not otherwise classified). This is the basic state agency classification which covers employees who have duties that support the mission of the agency and have field or hazardous exposure. For purposes of this classification field or hazardous exposure is defined as any work which involves "hands on" work. Employees reported in this classification may have jobs that include, but are not limited to, performing manual labor or supervising a work crew performing manual labor, work in the trades, construction-type work or maintenance/repair work, operating machinery or equipment, stores/stock clerks, warehouse, supplies, deliveries, food services, facilities, recreational, or general security staff with no law enforcement duties. This classification also includes, but is not limited to, personnel such as engineers, inspectors, and biologists, who have field exposure. This classification includes supervisors who work at a field site and perform supervision duties in the field. This classification includes nonpatient care employees in state operated homes, schools, detention or correctional facilities not described in another classification.

This classification excludes:

- Employees who have law enforcement power in any capacity, who are to be reported separately in classification 7103;

- Juvenile rehabilitation custody staff at institutions or homes who are to be reported in 5307-01;

- Administrative employees with field duties who are to be reported separately in classification 5300;

- Clerical and administrative office personnel who are to be reported separately in classification 4902;

- Employees who work in state hospitals, homes, schools, detention or correctional facilities who are not otherwise classified and provide care and treatment for patients or residents who are to be reported separately in classification 7201;

- Employees who provide patient or health care at state-operated mental health or acute care hospitals with a fully implemented safe patient handling program who are to be reported in classification 7200;

- Employees who provide patient or health care at state-operated mental health or acute care hospitals that do not have a fully implemented safe patient handling program who are to be reported in classification 7400; ((administrative field employees, who are to be reported separately in classification 5300; and clerical and administrative office personnel, who are to be reported separately in classification 4902.))

- Volunteers are to be reported in classification 6901((;)); and

- Law enforcement volunteers in classification 6906.

This classification may be assigned to all departments, agencies, boards, commissions and committees of either the executive, legislative or judicial branches of state government.

5307-01 State government employees - juvenile rehabilitation custody

Applies to employees of the department of social and health services (DSHS) at juvenile institutions and juvenile residential community facilities. Employees in this risk clas-

sification may preserve order, provide security, and have the authority to detain, revoke privileges, or impose sanctions. Other work may include, but is not limited to, providing counseling, conducting assessments, rehabilitation, coordination of services, evaluations, and transporting detainees.

This classification excludes:

- Employees who do not have custody or security duties;
- Employees who perform parole duties such as those performed by a regional office, which are away from a juvenile institution or a juvenile residential community facility who are to be reported in 5300; and
- Employees who direct athletic and recreational activities who are to be reported in 5307-00.

See classifications 4902, 5300, 5307, 7200, 7201, and 7400 for all state government operations.

AMENDATORY SECTION (Amending WSR 08-24-074, filed 12/1/08, effective 1/1/09)

WAC 296-17-870 Evaluation of actual losses. ~~(1)~~ Except as provided in ~~((the following))~~ subsections ~~((of this paragraph, actual losses shall include all payments as of the "valuation date" for each claim arising from an accident occurring during the experience period. Losses for claims open as of the valuation date may also include a reserve for future payments. Actual losses on claims for accidents occurring outside of the experience period shall not be included))~~ ~~(3) through (12) of this section, the actual losses for claims with a date of injury during the experience period will be evaluated on the "valuation date." Losses on claims occurring outside the experience period will not be included.~~ The actual losses for closed claims must include:

- (a) Accident and medical aid payments; and
- (b) Pension reserve amounts paid by the accident fund; and
- (c) Accident and medical aid benefits or payments that are scheduled to be paid; and
- (d) Reserve for other accident and medical aid benefits accessible by the worker while the claim is closed.

The actual losses for claims that are open may, in addition, also include a reserve for future payments.

~~((4))~~ **(2) Valuation date.** The valuation date shall be June 1, seven months immediately preceding the effective date of premium rates.

~~((2))~~ **(3) Retroactive adjustments - revision of losses between valuation dates.** No claim value shall be revised between valuation dates and no retroactive adjustment of an experience modification shall be made because of disputation concerning the judgment of the claims examiner or because of subsequent developments except as specifically provided in the following cases:

- (a) In cases where loss values are included or excluded through mistake other than error of judgment.
- (b) In cases where a third party recovery is made, subject to subsection ~~((4))~~ **(5)**(a) of this section.
- (c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.
- (d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to

be noncompensable (ineligible for benefits other than medical treatment).

(e) In cases where a claim is closed and is determined to be ineligible for any benefits.

In the above specified cases retroactive adjustment of the experience modification shall be made for each rating in which the claim was included. Retroactive adjustments will not be made for rating periods more than ten years prior to the date on which the claim status was changed.

~~((3))~~ **(4) Average death value.** Each fatality occurring to a worker included within the mandatory or elective coverage of Title 51 RCW shall be assigned the "average death value." The "average death value" shall be the average incurred cost for all such fatalities occurring during the experience period. The average death value is set forth in WAC 296-17-880 (Table II).

~~((4))~~ **(5) Third-party recovery - effect on experience modification.**

(a) For claims with injury dates prior to July 1, 1994, a potential claim cost recovery from action against a third party, either by the injured worker or by the department, shall not be considered in the evaluation of actual losses until such time as the third-party action has been completed. If a third-party recovery is made after a claim had previously been used in an experience modification calculation, the experience modification shall be retroactively adjusted. The department shall compute a percentage recovery by dividing the current valuation of the claim into the amount recovered or recoverable as of the recovery date, and shall reduce both primary and excess losses previously used in the experience modification calculation by that percentage.

(b) For claims with injury dates on or after July 1, 1994, if the department determines that there is a reasonable potential of recovery from an action against a third party, both primary and excess values of the claim shall be reduced by fifty percent for purposes of experience modification calculation, until such time as the third-party action has been completed. This calculation shall not be retroactively adjusted, regardless of the final outcome of the third-party action. After a third-party recovery is made, the actual percentage recovery shall be applied to future experience modification calculations.

(c) For third-party actions completed before July 1, 1996, the claim shall be credited with the department's net share of the recovery, after deducting attorney fees and costs. For third-party actions completed on or after July 1, 1996, the claim shall be credited with the department's gross share of the recovery, before deducting attorney fees and costs.

(d) Definitions:

(i) As used in this section, "recovery date" means the date the money is received at the department or the date the order confirming the distribution of the recovery becomes final, whichever comes first.

(ii) As used in this section, "recoverable" means any amount due as of the recovery date and/or any amount available to offset case reserved future benefits.

~~((5))~~ **(6) Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as

now or hereafter amended, shall be reduced by the percentage of relief granted.

~~((6))~~ **(7) Occupational disease claims.** When a claim results from an employee's exposure to an occupational disease hazard, the "date of injury," for the purpose of experience rating, will be the date the disability was diagnosed and that gave rise to the filing of a claim for benefits. The cost of any occupational disease claim, paid from the accident fund and medical aid fund and arising from exposure to the disease hazard under two or more employers, shall be prorated to each period of employment involving exposure to the hazard. Each insured employer who had employed the claimant during the experience period, and for at least ten percent of the claimant's exposure to the hazard, shall be charged for his/her share of the claim based upon the prorated costs.

~~((7))~~ **(8) Maximum claim value.** No claim shall enter an employer's experience record at a value greater than the "maximum claim value." The maximum claim value is set forth in WAC 296-17-880 (Table II).

~~((8))~~ **(9) Catastrophic losses.** Whenever a single accident results in the deaths or total permanent disability of three or more workers employed by the same employer, costs charged to the employer's experience shall be limited as required by RCW 51.16.130.

~~((9))~~ **(10) Acts of terrorism.** Whenever any worker insured with the state fund sustains an injury or occupational disease as a result of an incident certified to be an act of terrorism under the U.S. Terrorism Risk Insurance Act of 2002, the costs of the resulting claim shall be excluded from the experience rating computation of the worker's employer.

~~((10))~~ **(11) Claims filed by preferred workers.** The costs of subsequent claims filed by certified preferred workers will not be included in experience calculations, as provided in WAC 296-16-010.

~~((11))~~ **(12) Life and rescue phase of emergencies:** This provision applies to "emergency workers" of nongovernmental employers assigned to report in classification 7205 (WAC 296-17A-7205) who assist in a life and rescue phase of a state or local emergency (disaster). The life and rescue phase of an emergency is defined in RCW 51.16.130(3) as being the first seventy-two hours after a natural or man-made disaster has occurred. For an employer to qualify for this special experience rating relief, a state or local official such as, but not limited to, the governor; a county executive; a mayor; a fire marshal; a sheriff or police chief must declare an emergency and must request help from private sector employers to assist in locating and rescuing survivors. This special relief is only applicable to nongovernmental employers during this initial seventy-two hour phase of the declared emergency unless the emergency has been extended by the official who declared the emergency. The cost of injuries or occupational disease claims filed by employees of nongovernmental employers assisting in the life and rescue phase of a declared emergency will not be charged to the experience record of the nongovernmental state fund employer.

WSR 09-12-101
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed June 2, 2009, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-099.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system for workers' compensation insurance and chapter 296-17A WAC, Classifications for workers' compensation.

Hearing Location(s): Tumwater L&I Building, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on July 7, 2009, at 2:00 p.m. - 3:00 p.m.

Date of Intended Adoption: August 4, 2009.

Submit Written Comments to: Department of Labor and Industries, Ronald C. Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail mooa235@lni.wa.gov, fax (360) 902-4729, by 5 p.m. on July 7, 2009.

Assistance for Persons with Disabilities: Contact Bill Moomau at (360) 902-4774 or office of information and assistance at TTY (360) 902-5797, by July 6, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Minor housekeeping changes will be made to the following reporting rules: WAC 296-17-31002 General definitions, adding definitions from 296-17-35202 to ensure all definitions are in one rule, 296-17-31018 Exception classifications, specifying two classifications in the list of exception classes which had inadvertently been left out of list when the classifications were created, 296-17-35202 Definitions, repealing this rule and placing these definitions into the general definition rule, and 296-17-35203(6)(b) Special reporting instructions. Replaced an exclamation mark with a dash.

Minor housekeeping changes will be made to the following classifications: WAC 296-17A-0308 Landscaping, include snow blowers in description previously classed by analogy in this classification and 296-17A-3603 Painting in shop NOC, change reference from WAC 296-17-675 to 296-17A-5206.

Reasons Supporting Proposal: Housekeeping changes to existing rules.

Statutory Authority for Adoption: RCW 51.16.035 and 51.16.100.

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: JoAnne Smith, Tumwater, Washington, (360) 902-4777; Implementation: Ronald C. Moore, Tumwater, Washington, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case the agency is exempt from conducting a small business economic impact

statement (SBEIS) since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.310 (4)(f) and because the content of the rules is specifically dictated by statute described in RCW 34.05.310 (4)(e).

A cost-benefit analysis is not required under RCW 34.05.328. Preparation of a SBEIS and the evaluation of probable costs is required when a rule proposal has the potential of placing a more than minor economic impact on business. There are no significant costs as part of this rule making.

June 2, 2009
Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0308 Classification 0308.

0308-00 Chemical spraying and fumigating

Applies to establishments engaged in providing chemical spraying and fumigating services only to established residential landscaping and commercial properties. Work contemplated by this classification includes, but is not limited to, the application of various liquid and granular chemicals (fertilizers, herbicides, pesticides, insecticides, iron, nitrogen, slow release food stakes) for use on grass, plants, shrubs, flowers, trees, moss, ivy or weeds. Employees of establishments subject to this classification arrive at the location site in a tank truck equipped with a premixed solution that is dispensed with a spray hose, or by fertilizer spreaders, injection guns, and back pack dispensers.

This classification excludes chemical spraying of roadway median strips by nonmunicipal employees adjacent to state, city or town roadways which is to be reported separately in classification 0101; chemical spraying done in connection with forest roads or reforestation projects which is to be reported in the applicable forestry classification; pest and termite control which is to be reported separately in classification 6602; chemical spraying and fumigating by employees of cities, counties, state agencies, or other municipalities which is to be reported in the classification applicable to the type of municipality performing the work; chemical spraying of agricultural farms or orchards which *may* be reported separately in classification 4808 or in the agricultural classification applicable to the employer's operation; and crop dusting by aircraft which is to be reported separately in classification 6903.

0308-01 Lawn care maintenance

Applies to contractors engaged in maintenance of established lawns and gardens. Work contemplated by this classification includes, but is not limited to, mowing and thatching lawns, edging, weeding flower beds, raking, rototilling gardens, application of fertilizers, and spraying and trimming of shrubs. Also included is minor landscape renovation and/or restoration activities incidental to, and performed as part of, the lawn care maintenance contract for an existing lawn or landscape such as the removal and replacement of plants, turf repair or reseeded of grass, and the spreading of decorative rock, topsoil, or bark. This classification includes replace-

ment of sprinkler heads and cleaning of lawn type sprinkler systems only when performed in connection with and incidental to the lawn care maintenance contract. Firms providing snow blowing and snow removal services using hand-held or push-propelled equipment are included in this classification. Equipment used by contractors subject to this classification includes, but is not limited to, riding or power lawn mowers, power sweepers, edgers, thatchers, weed eaters, grass blowers, fertilizer spreaders, sprayers, gas or electric power tools, and hand tools.

This classification excludes new landscape construction which is to be reported separately in classification 0301; tree care and pruning services which are to be reported separately in classification 0101; grading, clearing, or contouring of land which is to be reported separately in classification 0101; installation, service or repair of lawn type sprinkler systems which is to be reported separately in classification 0301; and the installation, service or repair of above or below ground agricultural irrigation systems which is to be reported separately in classification 0301.

Special notes: Classifications 0308 and 0301 may be assigned to the same business provided that the conditions of the general reporting rule covering the operation of a secondary business have been met.

Care should be exercised in the assignment of this classification when tree services are included. Tree care service contracts generally call for the radical topping, pruning or cutting of tree limbs to remove or eliminate a hazard to buildings, property, or power lines. Tree trimming as part of this classification is only for the purpose of shaping and maintaining healthy trees and to control size for the visual relationship to other landscape material.

AMENDATORY SECTION (Amending WSR 07-12-045, filed 5/31/07, effective 7/1/07)

WAC 296-17-31002 General rule definitions. In developing the general reporting rules and classifications which govern Washington's workers' compensation classification plan, we have used certain words or phrases which could have several meanings. Many of these words or phrases are defined by law in the Revised Code of Washington (*Title 51 RCW*) and can be found in **Appendix A** of this manual. Some words, however, are not defined by law. To reduce the misunderstanding which can result by our use of certain words or phrases not defined in law (*Title 51 RCW*), we have developed definitions which will govern what these words and phrases mean for purposes of ~~(this)~~ these chapters (*chapters 296-17 and 296-17A WAC*).

The following words or phrases mean:

Account: A unique numerical reference that we assign to you that identifies your business or businesses and allows us to track exposure that you report to us and losses (*claims*) which we pay on your behalf.

Account manager: An individual who works in the underwriting section of the department of labor and industries and manages an employer's workers' compensation insurance account. An account manager is also referred to as an underwriter.

Actual hours worked: A worker's composite work period beginning with the starting time of day that the employee's work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by an employee. The following example is provided to illustrate how work hours are to be reported. If you have questions on reporting please contact our underwriting section at 360-902-4817.

Example: *A carpet installer arrives at the employer's place of business at 8:00 a.m. to pick up supplies, carpet, and the job assignment. The carpet installer arrives at the job site at 9:00 a.m. and works until 12 noon. The installer takes a half hour nonpaid lunch period and resumes working from 12:30 p.m. until 4:00 p.m. The installer then returns to the employer's premise to drop off supplies and carpet waste. The installer leaves the employer's premise at 5:30 p.m. The employer is to report nine hours of work time regardless of whether the employee is paid by the hour or by the number of yards of carpet installed.*

All: When a classification contains a descriptive phrase beginning with "all" such as in "all employees," "all other employees," "all operations," or "all work to completion," it includes all operations and employments which are normally associated with the type of business covered by the classification. This condition applies even if the operations or employments are physically separated or conducted at a separate location. Operations or employments are to be classified separately when the classification wording requires it, or when the operations or employments are not incidental to, and not usually associated with, the business described by the classification.

And: When this word is contained in any rule it is to be considered the same as the phrase "and/or."

Basic classification: A grouping of businesses or industries having common or similar exposure to loss without regard to the separate employments, occupations or operations which are normally associated with the business or industry. Basic classifications describe a specific type of business operation or industry such as mechanical logging, sawmills, aircraft manufacturing, or restaurants. In most business operations some workers are exposed to very little hazard, while others are exposed to greater hazard. Since a basic classification reflects the liability (*exposure to hazard*) of a given business or industry, all the operations and occupations that are common to an industry are blended together and included in the classification. The rate for a basic classification represents the average of the hazards within the classification. All classifications contained in this manual are considered basic classifications with the exception of classifications 4806, 4900, 4904, 5206, 6301, 6302, 6303, 7100, 7101, and temporary help classifications 7104 through 7122. Classification descriptions contained in WAC 296-17A-0101 through 296-17A-7400 establish the intended purpose or scope of each classification. These descriptions will routinely include types of businesses, operations, processes or employments which are either included or excluded from the classification. These references are not to be considered an all inclusive listing unless the classification wording so specifies.

Bone fide officer: Any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of such officer.

But not limited to: When this phrase is used in any rule in this manual it is not to be interpreted as an all inclusive list. Such a list is meant to provide examples of operations, employments, processes, equipment or types of businesses which are either included or excluded from the scope of the classification.

Excludes or excluding: When a classification contains a descriptive phrase beginning with "excludes" or "excluding" such as "excluding drivers or delivery," "excluding second hand appliance stores," or "excludes construction operations," you must report those operations in a separate classification. If a business fails to keep the records required in the auditing recordkeeping section of this manual and we discover this, we will assign all workers hours for which records were not maintained to the highest rated classification applicable to the work which was performed.

Exposure: Worker hours, worker days, licenses, material, payroll or other measurement which we use to determine the extent to which an employer's workers have been exposed to the hazards found within a particular business or industry classification.

Free from direction or control: The contracted individual has the responsibility to deliver a finished product or service without the contracting firm or individual either exercising direct supervision over the work hours or the methods and details of performance or having the right to exercise that authority under the contract.

Governing classification: Is the basic classification assigned to a business that produces the largest number of worker hours during a calendar year (*twelve months*). The governing classification rule applies only to situations where a business has been assigned two or more basic classifications and is used for the sole purpose of determining what classification applies to employees and covered owners who support two or more operations. The governing classification rule is not to be used to determine the basic classification of a business.

Includes or including: When a classification contains a descriptive phrase beginning with "includes" or "including" such as "including clerical office," "including meter readers," or "includes new construction or extension of lines," you must report these operations in that basic classification even though they may be specifically described by some other classification contained in this manual or may be conducted at a separate location.

Industrial insurance: Refer to the definition of "workers' compensation insurance."

N.O.C.: This abbreviation stands for not otherwise classified. Classifications are often worded in this way when there are many variations of the same general type of business and it would be nearly impossible to list all the variations. Before a classification designated with N.O.C. is used, all other related classifications must be reviewed to determine if the business or industry is specified in another classification.

Example: You operate a retail store that sells greeting cards. In our search to classify your business we come across a classification that covers retail stores N.O.C. Before our underwriter assigns this classification to your business, they would look at other retail store classifications to see if a more precise classification could be found. In our review we note several classifications such as grocery and department stores where greeting cards are sold. None of these classifications, however, specify that they include stores that exclusively sell greeting cards. Classification 6406 "Retail stores, N.O.C.," on the other hand, contains language in its description that states it includes stores that sell items such as greeting cards, table top appliances, tropical fish and birds, and quick print shops. We would assign classification 6406 "Retail stores, N.O.C." to your business.

Or: Refer to the definition of the word "and."

Premium: The total amount of money owed to the department of labor and industries as calculated by multiplying the assigned classification composite rate by the total units of exposure.

Principal place of business: The physical location of the business from which the contract of service is directed and controlled.

Rate: The amount of premium due for each unit of exposure. All rates are composite rates per worker hour except as otherwise provided for by other rules in this manual.

Related by blood within the third degree: The degree of kinship as computed according to the rules of civil law.

Related by marriage: The union subject to legal recognition under the domestic relations laws of this state.

Risk: All insured operations of one employer within the state of Washington.

Temporary help: The term "temporary help" means the same as temporary service contractors defined in (*Title 19 RCW*) and applies to any person, firm, association or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary help basis to others.

Underwriter: Refer to the definition of an "account manager."

Within a reasonable period: Establishing an account with state agencies shall be the time prior to the first date on which the individual begins performance of service toward the contract or the date upon which the individual is required to establish an account with a state agency, as otherwise required by law, whichever event shall last occur.

Work day: Any consecutive twenty-four hour period.

Work hour: Refer to the definition of "actual hours worked."

Workers' compensation insurance: The obligation imposed on an employer by the industrial insurance laws (*Title 51 RCW*) of the state of Washington to insure the payment of benefits prescribed by such laws.

AMENDATORY SECTION (Amending WSR 07-12-045, filed 5/31/07, effective 7/1/07)

WAC 296-17-31018 Exception classifications. (1) What are exception classifications?

In *WAC 296-17-31012* we discussed our classification policy. We described the process used to classify risk and stated that we assign the basic classification or basic classifications that best describe the nature of your company's business. While this policy is modeled after the policy used by private insurance carriers and is geared to administrative ease for you, we recognize that there are some duties or operations where your employees do not share the same general workplace hazards that your other employees are exposed to. To provide for those operations that are outside the scope of a basic classification, we have created three types of exception classifications listed below:

- Standard exception classifications,
- Special exception classifications, and
- General exclusion classifications.

(2) What are the standard exception classifications?

Standard exception classifications cover those employments that are administrative in nature and common to many industries. Employees covered by a standard exception classification cannot be exposed to any operative hazard of the business. If the language of the basic classification assigned to your business does not include these employments, you may be able to report them separately. The standard exception classifications are:

- Classification 4904 (*WAC 296-17A-4904*) "clerical office employment." This classification includes clerical, administrative, and drafting employees.
- Sales personnel classifications 6301 (*WAC 296-17A-6301*), and 6303 (*WAC 296-17A-6303*) includes outside sales personnel and messengers.
- Classification 7101 (*WAC 296-17A-7101*) applies to corporate officers who have elected optional coverage. A corporate officer as used in these rules is a person who is an officer in the corporation, such as the president, who also serves on the corporation's board of directors and owns stock in the corporation.
- Classification 7100 (*WAC 296-17A-7100*) applies to members of a limited liability company who have elected optional coverage.

Clerical office employees are defined as employees whose duties are limited to: Answering telephones; handling correspondence; creating or maintaining financial, employment, personnel, or payroll records; composing informational material on a computer; creating or maintaining computer software; and technical drafting. Their work must be performed in a clerical office which is restricted to:

- A work area which is physically separated by walls, partitions, or other physical barriers, from all other work areas of the employer, and
- Where only clerical office work as described in this rule is performed.

A clerical office does not include any work area where inventory is located, where products are displayed for sale, or area where the customer brings products for payment. Clerical office employees can perform cashiering and telephone sales work if they do not provide any retail or wholesale customer service that involves handling, showing, demonstrating, or delivering any product sold by the employer. Clerical office employees can make bank deposits, pick up and

deliver mail at the post office, or purchase office supplies, if their primary work duties are clerical office duties as defined in this rule.

Sales personnel are defined as employees whose duties are limited to: Soliciting new customers by telephone or in person; servicing existing customer accounts; showing, selling, or explaining products or services; completing correspondence; placing orders; performing public relations duties; and estimating. Although some of sales person's duties may be performed in a clerical office, most of their work is conducted away from the employer's physical business location or in showrooms. We refer to work that takes place away from the employer's premises as "*outside sales*." Sales personnel whose duties include customer service activities such as, but not limited to, the delivery of product, stocking shelves, handling inventory, or otherwise merchandising products sold to retail or wholesale customers are excluded from all standard exception classifications. Sales personnel with duties such as delivery and stocking of shelves are to be reported in the basic classification applicable to the business unless the basic classification assigned to the business requires another treatment.

Messengers are defined as employees whose duties are delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business. Classification 6303 "messengers" does not include delivering mail or packages to the employer's customer or as a service to the public. If a messenger is engaged in delivering mail or packages as a service to the public they are to be assigned to the basic classification of the business or classification 1101 as applicable.

Corporate officers duties in classification 7101 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. To qualify for this classification, a corporate officer must:

- Be a shareholder in the corporation,
- Be elected as a corporate officer and empowered in accordance with the articles of incorporation or bylaws of the corporation,
- Serve on the corporation's board of directors,
- Not have any exposure to any operative hazard of the business, and
- Not directly supervise employees who have any exposure to any operative hazard of the business.

Members of a limited liability company (LLC) duties in classification 7100 must be limited to: Clerical duties; outside sales duties as described above; administrative duties such as hiring staff, attending meetings, negotiating contracts, and performing public relations work. This includes only those members who have duties and authority similar to the exemption criteria of corporate officers in RCW 51.12.020.

Classification 6303 may apply to a corporate officer or member of a limited liability company whose duties are limited to outside sales activities as described in the sales personnel section of this rule. Under no circumstance is classification 4904 to be assigned to any corporate officer or member of a limited liability company. You cannot divide the work

hours of an employee between a standard exception classification and a basic classification unless it is permitted by another rule. If an employee works part of their time in a standard exception classification and part of their time in your basic classification, then all exposure (hours) must be reported in the highest rated basic classification applicable to the work being performed.

(3) What are the special exception classifications?

Special exception classifications represent operations found within an employer's business that are allowed to be reported separately when certain conditions are met. Assuming the conditions noted under each exception below have been met, the following classifications may be used even if your basic classification includes the phrases "all operations" or "all employees." These special exceptions are subject to a division of worker hours in connection with all other basic classifications unless specifically prohibited in an individual classification WAC rule.

Farms: Hand harvesting crops - classification 4806 (WAC 296-17A-4806) will apply if the employee:

- Is hand harvesting crops such as nuts, berries, prunes, field flowers, or bulbs.
- Is harvesting by picking from trees while standing on the ground or harvesting from the ground while sitting, kneeling, bending, or stooping.

Security guards - classification 6601 (WAC 296-17A-6601) will apply if the security guard:

- Is an employee of an employer engaged in logging or construction,
- Is for the purpose of guarding the employer's logging or construction sites,
- Is employed at the site only during the hours the employer is not conducting any other operations at the site,
- Has no other duties during their work shift as a security guard.

If all of the above conditions are not met, the security guard is to be reported in the basic classification applicable to the construction or logging operation being conducted.

Janitors - classification 6602 (WAC 296-17A-6602) will apply if:

- The janitorial/cleaning activities being performed are limited to the employer's clerical office,
- The clerical office meets the criteria described earlier in this rule, and
- The employer's office employment is assigned to be reported in classification 4904.

Construction: Superintendent or project manager - classification 4900 (WAC 296-17A-4900) will apply if the superintendent or project manager:

- Is an employee of a licensed contractor engaged in construction,
- Has no direct control over work crews,
- Performs no construction labor at the construction site or project location.

If all of the conditions are not met, the superintendent or project manager is to be reported in the basic classification applicable to the construction project.

Construction: Estimator - classification 4911 (*WAC 296-17A-4911*) will apply if the estimator:

- Is the employee of a licensed contractor engaged in construction, and
 - Has no duties other than estimating during their work shift.
- If these conditions are not met, the estimator is to be reported in the basic classification applicable to their employer's business or the construction project.

Permanent yard or shop operations - classification 5206 (*WAC 296-17A-5206*) will apply if:

- The permanent yard or shop is maintained exclusively for the storage and maintenance of materials or equipment used in the business of logging, log hauling, construction, or trucking.

Log truck drivers - classification 5003 (*WAC 296-17A-5003*) will apply if the log truck driver has no other duties during their work shift that are subject to the logging classification 5001 (*WAC 296-17A-5001*).

(4) What are the general exclusion classifications?

General exclusion classifications represent operations that are so exceptional or unusual that they are excluded from the scope of all basic classifications. If you have these operations, we will assign a separate classification to cover them. You must keep accurate records of the work hours your employees work in these classifications. If you do not keep accurate time records for each employee performing work covered by a general exclusion classification, we will assign the work hours in question to the highest rated classification applicable to those hours. The general exclusion classifications are:

- Aircraft operations: All operations of the flying crew.
- Racing operations: All operations of the drivers and pit crews.
- Diving operations: All operations of diving personnel and ship tenders who assist in diving operations.
- New construction or alterations of the business premises.
- Musicians and entertainers.

A division of work time is permitted between a standard exception classification and flight crew operations, racing operations, or diving operations. If you fail to keep original time records that clearly show the time spent in the office or in sales work, we will assign all work hours in question to the highest rated classification applicable to the work hours in question.

Example: Assume a corporate officer performs duties which are described in classification 7101. Occasionally, the officer flies a plane to attend a meeting. You would report the flying exposure (hours) of the corporate officer in classification 6803. The remainder of the corporate officer's time would continue to be reported in classification 7101.

AMENDATORY SECTION (Amending WSR 08-20-133, filed 10/1/08, effective 11/1/08)

WAC 296-17-35203 Special reporting instruction. (1) Professional and semiprofessional athletic teams. Athletes assigned to a Washington-domiciled sports team are mandatorily covered by Washington industrial insurance: Provided, That a professional athlete who is under contract

with a parent team domiciled outside of the state of Washington while assigned to a team domiciled within Washington is subject to mandatory coverage by Washington industrial insurance unless the player and employer (parent team) have agreed in writing as to which state shall provide coverage in accordance with RCW 51.12.120(6).

The following rules shall apply to the written agreement:

(a) Agreement must be in writing and signed by the employer and the individual athlete.

(b) Agreement must specify the state that is to provide coverage. The state agreed upon to provide coverage must be a state in which the player's team, during the course of the season, will engage in an athletic event. For example, if the Washington-based team is a part of a league with teams in only Washington, Oregon, and Idaho, the player and the employer can agree to any of those three states to provide coverage. However, they could not agree to have California provide the coverage as this would not qualify as a state in which the player regularly performs assigned duties.

(c) The state agreed upon accepts responsibility for providing coverage and acknowledges such to the department by certified mail.

(d) Agreement and certification by the other state must be received by this department's underwriting section prior to any injury incurred by the athlete.

(e) Agreement will be for one season only commencing with the assigning of the player to a particular team. A separate agreement and certification must be on file for each additional season.

Failure to meet all of these requirements will result in the athlete being considered a Washington worker for premium and benefit purposes until such time as all requirements have been met.

Professional sports teams who are domiciled outside the state of Washington and who participate in sporting events with Washington-domiciled teams are not subject to Washington industrial insurance for their team members while in this state. These out-of-state teams are not considered employers subject to Title 51 on the basis that they are not conducting a business within this state.

(2) Excluded employments. Any employer having any person in their employ excluded from industrial insurance whose application for coverage under the elective adoption provisions of RCW 51.12.110 or authority of RCW 51.12.095 or 51.32.030 has been accepted by the director shall report and pay premium on the actual hours worked for each such person who is paid on an hourly, salaried-part time, percentage of profit or piece basis; or one hundred sixty hours per month for any such person paid on a salary basis employed full time. In the event records disclosing actual hours worked are not maintained by the employer for any person paid on an hourly, salaried-part time, percentage of profits or piece basis the worker hours of such person shall be determined by dividing the gross wages of such person by the state minimum wage for the purpose of premium calculation. However, when applying the state minimum wage the maximum number of hours assessed for a month will be one hundred sixty.

(3) **Special trucking industry rules.** The following subsection shall apply to all trucking industry employers as applicable.

(a) Insurance liability. Every trucking industry employer operating as an intrastate carrier or a combined intrastate and interstate carrier must insure their workers' compensation insurance liability through the Washington state fund or be self-insured with the state of Washington.

Washington employers operating exclusively in interstate or foreign commerce or any combination of interstate and foreign commerce must insure their workers' compensation insurance liability for their Washington employees with the Washington state fund, be self-insured with the state of Washington, or provide workers' compensation insurance for their Washington employees under the laws of another state when such other state law provides for such coverage.

Interstate or foreign commerce trucking employers who insure their workers' compensation insurance liability under the laws of another state must provide the department with copies of their current policy and applicable endorsements upon request.

Employers who elect to insure their workers' compensation insurance liability under the laws of another state and who fail to provide updated policy information when requested to do so will be declared an unregistered employer and subject to all the penalties contained in Title 51 RCW.

(b) Reporting. Trucking industry employers insuring their workers' compensation insurance liability with the Washington state fund shall keep and preserve all original time records/books including supporting information from drivers' logs for a period of three calendar years plus three months.

Employers are to report actual hours worked, including time spent loading and unloading trucks, for each driver in their employ. For purposes of this section, actual hours worked does not include time spent during lunch or rest periods or overnight lodging.

Failure of employers to keep accurate records of actual hours worked by their employees will result in the department estimating work hours by dividing gross payroll wages by the state minimum wage for each worker for whom records were not kept. However, in no case will the estimated or actual hours to be reported exceed five hundred twenty hours per calendar quarter for each worker.

(c) Exclusions. Trucking industry employers meeting all of the following conditions are exempted from mandatory coverage.

(i) Must be engaged exclusively in interstate or foreign commerce.

(ii) Must have elected to cover their Washington workers on a voluntary basis under the Washington state fund and must have elected such coverage in writing on forms provided by the department.

(iii) After having elected coverage, withdrew such coverage in writing to the department on or before January 2, 1987.

If all the conditions set forth in (i), (ii), and (iii) of this subsection have not been met, employers must insure their workers' compensation insurance liability with the Washington state fund or under the laws of another state.

(d) Definitions. For purposes of interpretation of RCW 51.12.095(1) and administration of this section, the following terms shall have the meanings given below:

(i) "Agents" means individuals hired to perform services for the interstate or foreign commerce carrier that are intended to be carried out by the individual and not contracted out to others but does not include owner operators as defined in RCW 51.12.095(1).

(ii) "Contacts" means locations at which freight, merchandise, or goods are picked up or dropped off within the boundaries of this state.

(iii) "Doing business" means having any terminals, agents or contacts within the boundaries of this state.

(iv) "Employees" means the same as the term "worker" as contained in RCW 51.08.180.

(v) "Terminals" means a physical location wherein the business activities (operations) of the trucking company are conducted on a routine basis. Terminals will generally include loading or shipping docks, warehouse space, dispatch offices and may also include administrative offices.

(vi) "Washington" shall be used to limit the scope of the term "employees." When used with the term "employees" it will require the following test for benefit purposes (all conditions must be met).

- The individual must be hired in Washington or must have been transferred to Washington; and
- The individual must perform some work in Washington (i.e., driving, loading, or unloading trucks).

(4) **Forest, range, or timber land services—Industry rule.** Washington law (RCW 51.48.030) requires every employer to make, keep, and preserve records which are adequate to facilitate the determination of premiums (taxes) due to the state for workers' compensation insurance coverage for their covered workers. In the administration of Title 51 RCW, and as it pertains to the forest, range, or timber land services industry, the department of labor and industries has deemed the records and information required in the various subsections of this section to be essential in the determination of premiums (taxes) due to the state fund. The records so specified and required, shall be provided at the time of audit in any representative of the department who has requested them.

Failure to produce these required records within thirty days of the request, or within an agreed upon time period, shall constitute noncompliance of this rule and RCW 51.48.030 and 51.48.040. Employers whose premium computations are made by the department in accordance with (d) of this subsection are barred from questioning, in an appeal before the board of industrial insurance appeals or the courts, the correctness of any assessment by the department on any period for which such records have not been kept, preserved, or produced for inspection as provided by law.

(a) General definitions. For purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Actual hours worked" means each workers' composite work period beginning with the starting time of day that the employees' work day commenced, and includes the entire work period, excluding any nonpaid lunch period, and ending with the quitting time each day work was performed by the employee.

(ii) "Work day" shall mean any consecutive twenty-four-hour period.

(b) Employment records. Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for three full calendar years following the calendar year in which the employment occurred:

- (i) The name of each worker;
- (ii) The Social Security number of each worker;
- (iii) The beginning date of employment for each worker and, if applicable, the separation date of employment for each such worker;
- (iv) The basis upon which wages are paid to each worker;
- (v) The number of units earned or produced for each worker paid on a piece-work basis;
- (vi) The risk classification(s) applicable to each worker;
- (vii) The number of actual hours worked by each worker, unless another basis of computing hours worked is prescribed in WAC 296-17-31021. For purposes of chapter 296-17 WAC, this record must clearly show, by work day, the time of day the employee commenced work, and the time of day work ended;

(viii) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each work day;

(ix) In the event a single worker's time is divided between two or more risk classifications, the summary contained in (b)(viii) of this subsection shall be further broken down to show the actual hours worked in each risk classification for the worker;

- (x) The workers' total gross pay period earnings;
- (xi) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld;
- (xii) The net pay earned by each such worker.

(c) Business, financial records, and record retention. Every employer is required to keep and preserve all original time records completed by their employees for a three-year period. The three-year period is specified in WAC 296-17-352 as the composite period from the date any such premium became due.

Employers who pay their workers by check are required to keep and preserve a record of all check registers and canceled checks; and employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(d) Recordkeeping - estimated premium computation. Any employer required by this section to make, keep, and preserve records containing the information as specified in (b) and (c) of this subsection, who fails to make, keep, and preserve such records, shall have premiums calculated as follows:

(i) Estimated worker hours shall be computed by dividing the gross wages of each worker for whom records were not maintained and preserved, by the state's minimum wage, in effect at the time the wages were paid or would have been paid. However, the maximum number of hours to be assessed under this provision will not exceed five hundred twenty hours for each worker, per quarter for the first audited period. Estimated worker hours computed on all subsequent audits of the same employer that disclose a continued failure to make,

keep, or preserve the required payroll and employment records shall be subject to a maximum of seven hundred eighty hours for each worker, per quarter.

(ii) In the event an employer also has failed to make, keep, and preserve the records containing payroll information and wages paid to each worker, estimated average wages for each worker for whom a payroll and wage record was not maintained will be determined as follows: The employer's total gross income for the audit period (earned, received, or anticipated) shall be reduced by thirty-five percent to arrive at "total estimated wages." Total estimated wages will then be divided by the number of employees for whom a record of actual hours worked was not made, kept, or preserved to arrive at an "estimated average wage" per worker. Estimated hours for each worker will then be computed by dividing the estimated average wage by the state's minimum wage in effect at the time the wages were paid or would have been paid as described in (d)(i) of this subsection.

(e) Reporting requirements and premium payments.

(i) Every employer who is awarded a forest, range, or timber land services contract must report the contract to the department promptly when it is awarded, and prior to any work being commenced, except as provided in (e)(iii) of this subsection. Employers reporting under the provisions of (e)(iii) of this subsection shall submit the informational report with their quarterly report of premium. The report shall include the following information:

(I) The employers' unified business identification account number (UBI).

(II) Identification of the landowner, firm, or primary contractor who awarded the contract, including the name, address, and phone number of a contact person.

(III) The total contract award.

(IV) Description of the forest, range, or timber land services work to be performed under terms of the contract.

(V) Physical location/site where the work will be performed including legal description.

(VI) Number of acres covered by the contract.

(VII) Dates during which the work will be performed.

(VIII) Estimated payroll and hours to be worked by employees in performance of the contract.

(ii) Upon completion of every contract issued by a landowner or firm that exceeds a total of ten thousand dollars, the contractor primarily responsible for the overall project shall submit in addition to the required informational report described in (e)(i) of this subsection, report the payroll and hours worked under the contract, and payment for required industrial insurance premiums. In the event that the contracted work is not completed within a calendar quarter, interim quarterly reports and premium payments are required for each contract for all work done during the calendar quarter. The first such report and payment is due at the end of the first calendar quarter in which the contract work is begun. Additional interim reports and payments will be submitted each quarter thereafter until the contract is completed. This will be consistent with the quarterly reporting cycle used by other employers. Premiums for a calendar quarter, whether reported or not, shall become due and delinquent on the day immediately following the last day of the month following the calendar quarter.

(iii) A contractor may group contracts issued by a landowner, firm, or other contractor that total less than ten thousand dollars together and submit a combined quarterly report of hours, payroll, and the required premium payment in the same manner and periods as nonforestation, range, or timber land services employers.

(f) Out-of-state employers. Forest, range, or timber land services contractors domiciled outside of Washington state must report on a contract basis regardless of contract size for all forest, range, or timber land services work done in Washington state. Out-of-state employers will not be permitted to have an active Washington state industrial insurance account for reporting forest, range, or timber land services work in the absence of an active Washington forest, range, or timber land services contract.

(g) Work done by subcontract. Any firm primarily responsible for work to be performed under the terms of a forest, range, or timber land services contract, that subcontracts out any work under a forest, range, or timber land services contract must send written notification to the department prior to any work being done by the subcontractor. This notification must include the name, address, Social Security number, farm labor contractor number, (UBI) of each subcontractor, and the amount and description of contract work to be done by subcontract.

(h) Forest, range, or timber land services contract release - verification of hours, payroll, and premium. The department may verify reporting of contractors by way of an on-site visit to an employers' work site. This on-site visit may include close monitoring of employees and employee work hours. Upon receipt of a premium report for a finished contract, the department may conduct an audit of the firm's payroll, employment, and financial records to validate reporting. The entity that awarded the contract can verify the status of the contractors' account online at the department's web site (www.lni.wa.gov) or by calling the account manager. The landowner, firm, or contractor will not be released from premium liability until the final report for the contract from the primary contractor and any subcontractors has been received and verified by the department.

(i) Premium liability - work done by contract. Washington law (RCW 51.12.070) places the responsibility for industrial insurance premium payments primarily and directly upon the person, firm, or corporation who lets a contract for all covered employment involved in the fulfillment of the contract terms. Any such person, firm, or corporation letting a contract is authorized to collect from the contractor the full amount payable in premiums. The contractor is in turn authorized to collect premiums from any subcontractor they may employ his or her proportionate amount of the premium payment.

To eliminate premium liability for work done by contract permitted by Title 51 RCW, any person, firm, or corporation who lets a contract for forest, range, or timber land services work must submit a copy of the contract they have let to the department and verify that all premiums due under the contract have been paid.

Each contract submitted to the department must include within its body, or on a separate addendum, all of the following items:

(I) The name of the contractor who has been engaged to perform the work;

(II) The contractor's UBI number;

(III) The contractor's farm labor contractor number;

(IV) The total contract award;

(V) The date the work is to be commenced; a description of the work to be performed including any pertinent acreage information;

(VI) Location where the work is to be performed;

(VII) A contact name and phone number of the person, firm, or corporation who let the contract;

(VIII) The total estimated wages to be paid by the contractor and any subcontractors;

(IX) The amount to be subcontracted out if such subcontracting is permitted under the terms of the contract;

(X) The total estimated number of worker hours anticipated by the contractor and his/her subcontractors in the fulfillment of the contract terms;

(j) Reports to be mailed to the department. All contracts, reports, and information required by this section are to be sent to:

The Department of Labor and Industries
Reforestation Team 8
P.O. Box 44168
Tumwater, Washington 98504-4168

(k) Rule applicability. If any portion of this section is declared invalid, only that portion is repealed. The balance of the section shall remain in effect.

(5) Logging and/or tree thinning—Mechanized operations—Industry rule. The following subsection shall apply to all employers assigned to report worker hours in risk classification 5005, WAC 296-17A-5005.

(a) Every employer having operations subject to risk classification 5005 "logging and/or tree thinning - mechanized operations" shall have their operations surveyed by labor and industries insurance services staff prior to the assignment of risk classification 5005 to their account. Annual surveys may be required after the initial survey to retain the risk classification assignment.

(b) Every employer assigned to report exposure (work hours) in risk classification 5005 shall supply an addendum report with their quarterly premium report which lists the name of each employee reported under this classification during the quarter, the Social Security number of such worker, the piece or pieces of equipment the employee operated during the quarter, the number of hours worked by the employee during the quarter, and the wages earned by the employee during the quarter.

(6) Special drywall industry rule.

(a) What is the unit of exposure for drywall reporting? Your premiums for workers installing and finishing drywall (reportable in risk classifications 0540, 0541, 0550, and 0551) are based on the amount of material installed and finished, not the number of hours worked.

The amount of material installed equals the amount of material purchased or taken from inventory for a job. No deduction can be made for material scrapped (debris). A deduction is allowed for material returned to the supplier or inventory.

The amount of material finished for a job equals the amount of material installed. No deduction can be made for a portion of the job that is not finished (base layer of double-board application or unfinished rooms).

Example: Drywall installation firm purchases 96 4' x 8' sheets of material for a job which includes some double-wall installation. The firm hangs all or parts of 92 sheets, and returns 4 sheets to the supplier for credit. Drywall finishing firm tapes, primes and textures the same job. Both firms should report 2,944 square feet (4 x 8 x 92) for the job.

(b) I do some of the work myself. Can I deduct material I as an owner install or finish? Yes. Owners (sole proprietors, partners, and corporate officers) who have not elected coverage may deduct material they install or finish.

When you as an owner install (including scrap) or finish (including tape and prime or texture) only part of a job, you may deduct an amount of material proportional to the time you worked on the job, considering the total time you and your workers spent on the job.

To deduct material installed or finished by owners, you must report to the department by job, project, site or location the amount of material you are deducting for this reason. You must file this report at the same time you file your quarterly report:

$$\text{Total owners hours} \div (\text{owners hours} + \text{workers hours}) = \text{\% of owner discount.}$$

$$\text{\% of owner discount} \times (\text{total footage of job} (-) \text{=} \text{subcontracted footage, if any}) = \text{Total owner deduction of footage.}$$

(c) Can I deduct material installed or finished by subcontractors? You may deduct material installed or taped by subcontractors you are not required to report as your workers. You may not deduct for material only scrapped or primed and textured by subcontractors.

To deduct material installed or taped by subcontractors, you must report to the department by job, project, site or location the amount of material being deducted. You must file this report at the same time you file your quarterly report. You must have and maintain business records that support the number of square feet worked by the subcontractor.

(d) I understand there are discounted rates available for the drywall industry. How do I qualify for them? To qualify for discounted drywall installation and finishing rates, you must:

(i) Have an owner attend two workshops the department offers (one workshop covers claims and risk management, the other covers premium reporting and recordkeeping);

(ii) Provide the department with a voluntary release authorizing the department to contact material suppliers directly about the firm's purchases;

(iii) Have and keep all your industrial insurance accounts in good standing (including the accounts of other businesses in which you have an ownership interest), which includes fully and accurately reporting and paying premiums as they come due, including reporting material deducted as owner or subcontractor work;

(iv) Provide the department with a supplemental report (filed with the firm's quarterly report) showing by employee the employee's name, Social Security number, the wages paid them during the quarter, how they are paid (piece rate,

hourly, etc.), their rate of pay, and what work they performed (installation, scrapping, taping, priming/texturing); and

(v) Maintain accurate records about work you subcontracted to others and materials provided to subcontractors (as required by WAC 296-17-31013), and about payroll and employment (as required by WAC 296-17-35201).

The discounted rates will be in effect beginning with the first quarter your business meets all the requirements for the discounted rates.

Note: If you are being audited by the department while your application for the discounted classifications is pending, the department will not make a final decision regarding your rates until the audit is completed.

(e) Can I be disqualified from using the discounted rates? Yes. You can be disqualified from using the discounted rates for three years if you:

(i) Do not file all reports, including supplemental reports, when due;

(ii) Do not pay premiums on time;

(iii) Underreport the amount of premium due; or

(iv) Fail to maintain the requirements for qualifying for the discounted rates.

Disqualification takes effect when a criterion for disqualification exists.

Example: A field audit in 2002 reveals that the drywall installation firm underreported the amount of premium due in the second quarter of 2001. The firm will be disqualified from the discounted rates beginning with the second quarter of 2001, and the premiums it owed for that quarter and subsequent quarters for three years will be calculated using the nondiscounted rates.

If the drywall underwriter learns that your business has failed to meet the conditions as required in this rule, your business will need to comply to retain using the discounted classifications. If your business does not comply promptly, the drywall underwriter may refer your business for an audit.

If, as a result of an audit, the department determines your business has not complied with the conditions in this rule, your business will be disqualified from using the discounted classifications for three years (thirty-six months) from the period of last noncompliance.

(f) If I discover I have made an error in reporting or paying premium, what should I do? If you discover you have made a mistake in reporting or paying premium, you should contact the department and correct the mistake. Firms not being audited by the department who find errors in their reporting and paying premiums, and who voluntarily report their errors and pay any required premiums, penalties and interest promptly, will not be disqualified from using the discounted rates unless the department determines they acted in bad faith.

(7) Safe patient handling rule. The following subsection will apply to all hospital industry employers as applicable.

(a) Definitions. For the purpose of interpretation of this section, the following terms shall have the meanings given below:

(i) "Hospital" means an "acute care hospital" as defined in (a)(ii) of this subsection, a "mental health hospital" as defined in (a)(iii) of this subsection, or a "hospital, N.O.C.

(not otherwise classified)" as defined in (a)(iv) of this subsection.

(ii) "Acute care hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this rule does not include:

Hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include

Clinics, or physicians' offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include

Nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include

Birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include

Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(iii) "Mental health hospital" means any hospital operated and maintained by the state of Washington for the care of the mentally ill.

(iv) "Hospitals, N.O.C." means health care facilities that do not qualify as acute care or mental health hospitals and may be privately owned facilities established for purposes such as, but not limited to, treating psychiatric disorders and chemical dependencies or providing physical rehabilitation.

(v) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistance devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring and repositioning health care patients.

(vi) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(vii) "Department" means the department of labor and industries.

(b) Hospitals will report worker hours in the risk classification that describes the nature of their operations and either their level of implementation of, or need for, the safe patient handling program.

(c) A fully implemented safe patient handling program must include:

(i) Acquisition of at least the minimum number of lifts and/or appropriate equipment for use by lift teams as specified in chapters 70.41 and 72.23 RCW.

(ii) An established safe patient handling committee with at least one-half of its membership being front line, nonmanagerial direct care staff to design and recommend the process for implementing a safe patient handling program.

(iii) Implementation of a safe patient handling policy for all shifts and units.

(iv) Conducting patient handling hazard assessments to include such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas.

(v) Developing a process to identify appropriate use of safe patient handling policy based on a patient's condition and availability of lifting equipment or lift teams.

(vi) Conducting an annual performance evaluation of the program to determine its effectiveness with results reported to the safe patient handling committee.

(vii) Consideration, when appropriate, to incorporate patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date during new construction or remodeling.

(viii) Development of procedures that allow employees to choose not to perform or participate in patient handling activities that the employee believes will pose a risk to him/herself or to the patient.

(d) Department staff will conduct an on-site survey of each acute care and mental health hospital before assigning a risk classification. Subsequent surveys may be conducted to confirm whether the assigned risk classification is still appropriate.

(e) To remain in classification 6120-00 or 7200-00, a hospital must submit a copy of the annual performance evaluation of their safe patient handling program, as required by chapters 70.41 and 72.23 RCW, to the Employer Services Program, Department of Labor and Industries, P.O. Box 44140, Olympia, Washington, 98504.

(8) Rules concerning work by Washington employers outside the state of Washington (extraterritorial coverage).

(a) General definitions. For purposes of this section, the following terms mean:

(i) "Actual hours worked" means the total hours of each Washington worker's composite work period during which work was performed by the worker beginning with the time the worker's work day commenced, and ending with the quitting time each day excluding any nonpaid lunch period.

(ii) "Work day" means any consecutive twenty-four-hour period.

(iii) "Temporary and incidental" means work performed by Washington employers on jobs or at job sites in another state for thirty or fewer consecutive or nonconsecutive full or partial work days within a calendar year. Temporary and incidental work days are calculated on a per state basis. The thirty-day temporary and incidental period begins on January 1 of each year.

(iv) "Proof of out-of-state coverage" means a copy of a valid certificate of liability insurance for workers' compensation issued by:

(A) An insurer licensed to write workers compensation insurance coverage in that state; or

(B) A state workers' compensation fund in the state in which the employer will be working.

Note: Most certificates are written for a one-year period. The employer must provide the department with a current certificate of liability insurance for workers' compensation covering all periods the employer works in another state. If the policy is canceled, the employer must provide the department with a current in-force policy.

(v) "Worker" means every person in this state who is engaged in the employment of an employer under Title 51 RCW whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer whether by way of manual labor or otherwise.

(vi) "Employer" means any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, all while engaged in this state in any work covered by the provisions of Title 51 RCW, by way of trade or business, or who contracts with one or more workers, the essence of which is the personal labor of such worker or workers.

(b) Does a Washington employer have to pay premiums in both states while Washington workers are temporarily working in another state? A Washington employer must continue to pay Washington premiums for Washington workers performing temporary and incidental work in another state. If the Washington employer has Washington workers who work for more than thirty days in another state, it will not need to pay premiums in Washington for work in the other state during the calendar year, as long as it fulfills the following requirements:

(i) Provides the department with proof of out-of-state coverage for the Washington workers working out-of-state.

(ii) Keeps the policy continuously in force from the date the Washington employer's work exceeds the temporary and incidental period until the date the Washington employer no longer has Washington workers working in the other state. Failure to maintain a policy at the required level of workers' compensation coverage for the number of Washington workers working out-of-state may subject the Washington employer to payment of all premiums, penalties, and interest dues in the state of Washington.

(iii) For the first quarterly reporting period and all subsequent quarters during the same calendar year following the date the Washington employer's work exceeds the temporary and incidental period in the other state, the Washington employer must file a supplemental report of out-of-state work with their workers' compensation employer's quarterly report with the department. This supplemental report is available at: <http://www.LNI.wa.gov/ClaimsIns/Insurance/File/ExtraTeritorial/Default.asp>

(iv) Subitems (b)(i), (ii), and (iii) of this subsection must be met in each state in which the Washington employer has Washington workers working in excess of the temporary and incidental period.

Note: Workers' compensation coverage requirements vary widely among states. Washington employers should contact the regulatory agency in other states to determine the appropriate premium and coverage obligations in those states.

(c) What if a Washington employer knows the Washington workers work in another state will exceed the tem-

porary and incidental period? If the Washington employer knows their Washington workers will be working in another state in excess of the temporary and incidental period, it must immediately provide the department with proof of out-of-state coverage in order to avoid Washington premium liability for hours worked during the temporary and incidental period.

Reminder: The temporary and incidental period applies separately to each state in which the Washington employer worked.

(d) What if a Washington employer anticipates its out-of-state work will exceed the temporary and incidental period, but it does not occur? If a Washington employer did not pay workers compensation premium to Washington during the temporary and incidental period, and at the end of the calendar year Washington workers of the Washington employer had worked fewer than thirty consecutive or non-consecutive days in another state, by the filing of the fourth quarter report, the Washington employer must file amended reports for the calendar year. The employer may be required to pay Washington premiums, penalties, and interest. The fourth quarter report is due by January 31 of the following year.

(e) What records must the employer keep while employing Washington workers in another state? In addition to filing the supplemental report of out-of-state work, the Washington employer is required to keep the same records that are kept for Washington workers working in Washington. The records are listed in WAC 296-17-35201 and must be provided at the time of audit to any authorized representative of the department who has requested them.

(f) What reports does a Washington employer file to avoid paying Washington workers' compensation premiums when employing Washington workers in another state for work that exceeds temporary and incidental? A Washington employer must submit the workers' compensation employer's quarterly report and a supplemental report of out-of-state work to the department for each state in which it has Washington workers performing work. The supplemental report must include the following information:

(i) The Washington employer's unified business identification number (UBI).

(ii) The Washington employer's department account identification number.

(iii) The Social Security numbers for those Washington worker(s) performing work out-of-state.

(iv) The last name, first name, and middle initial of those Washington worker(s) performing work out-of-state.

(v) The gross payroll paid during the quarter for those Washington worker(s) performing work out-of-state.

(vi) The Washington workers' compensation risk classification(s) that would have applied for each Washington worker performing work out-of-state.

(vii) The total number of hours that each Washington worker performed work out-of-state during the quarter.

(viii) In addition to completing the supplemental report of out-of-state work, the Washington employer must keep a record of all contracts awarded and worked under each state.

Copies of pertinent records must be made available to auditors in the event of an audit.

(g) **Where do Washington workers file their workers' compensation claims if injured in the course of employment outside of Washington state?** Washington workers may file their claim in the state where they were injured or in Washington state.

Washington employers must inform their Washington workers of their right to file for workers' compensation benefits in Washington or the state of injury.

The cost of these claims, if accepted by the department and assigned to the Washington employer's account, will be used in the calculations that determine the employer's experience factor and the appropriate risk classification base rate.

(h) **If the Washington employer's work in another state exceeds the temporary and incidental period, may the Washington employer obtain a credit or refund for the temporary and incidental period that workers' compensation premiums were paid to Washington?** Yes, but only if the Washington employer:

- (i) Obtained workers' compensation insurance for all hours worked in the other state during the calendar year;
- (ii) Provides proof of out-of-state coverage;
- (iii) Filed the appropriate quarterly reports with the department when due; and
- (iv) Otherwise complied with all statutory and regulatory requirements of Washington state.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17-35202 Definitions.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3603 Classification 3603.

3603-10 Furniture stripping and refinishing; metal plating or polishing, rustproofing, N.O.C.

Applies to establishments engaged in stripping and refinishing wood or metal furniture, or metal plating (a coating of metal on an object), polishing, and rustproofing that is not covered by another classification (N.O.C.). Furniture refinishing contemplated by this classification includes, but is not limited to, preparing articles for finishing or refinishing by dipping in chemical solutions/acid baths to remove the old finish or dirt, sanding and wire brushing as needed, thoroughly removing all residues, applying new finish by brushing, rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification. *Metal plating* contemplated by this classification may be done by dipping in hot solution or spraying with a very high pressure, heated gun. *Electroless plating* is another type of dipping process which can be used to plate metals, plastics, and other materials by first preparing the surface with a chemical to ensure adhesion of the metal plating material. *Rustproofing*, as contemplated

by this classification, is usually applied by dipping or spraying. Plated items may be finished by lacquering and polishing. *Polishing* may also be conducted as a separate contract on metal and nonmetal items.

This classification excludes furniture finishing/refinishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; metal plating, polishing, rustproofing and finishing done in conjunction with manufacturing of metal or a metal product which is to be reported separately as applicable to the product; undercoating of automobiles or other vehicles which is to be reported separately in classification 3411; metal plating done by an *electrolytic method* and rustproofing by *anodizing method* which are to be reported separately in classification 3603-11.

3603-11 Electroplating and detinning, N.O.C.

Applies to establishments engaged in providing electroplating or detinning services that are not covered by another classification (N.O.C.). Work contemplated by this classification includes, but is not limited to, preparing items by dipping in chemical solution/acid baths to remove old finish or dirt, sanding and wire brushing as needed, removing all residues thoroughly, electroplating to create the new finish, air or oven drying, any appropriate finish work such as polishing and buffing, and electrolytic or chemical baths for detinning processes, when done by employees of an employer having operations subject to this classification. *Electroplating* (including galvanizing and tinning) to achieve a protective or decorative coating is done by immersing the metal object in a solution which contains the desired metallic particles (metals commonly used are gold, silver, nickel, zinc and chromium) and passing an electric charge through the solution which causes the metal particles to adhere to the object being plated. Typical items plated include, but are not limited to, jewelry, plumbing hardware and components, silverware, eyeglass frames, medical instruments, and various specialized industrial components of any size. Plated items may be polished and lacquered as part of the finishing process. This classification includes *anodizing* to rustproof aluminum and some aluminum alloys by immersion in an acid bath and applying an electric charge to the metal which causes the finish to form on it. *Detinning* is the process of recovering tin from tin plated scrap. The "chemical process" involves using caustics and an oxidizing agent which causes the tin to separate from the metal it was plated to. A variation of this method introduces electrolysis to achieve a purer reclamation. The "chlorine process" uses chlorine applied under pressure to dissolve the tin and separate it from the tin plated scrap.

This classification excludes any electroplating or rustproofing by electrolytic methods done in conjunction with the manufacturing of metal or a metal product which is to be reported separately as applicable to the product; metal plating, polishing or rustproofing not using electrolytic methods which is to be reported separately in classification 3603-10; galvanizing or tinning done by hot dip process which is to be reported separately in classification 3604; and any detinning not done by a specialty shop as described above.

3603-12 Painting in shop, N.O.C.

Applies to establishments engaged in providing painting services at their shop, that are not covered by another classi-

fication (N.O.C.). This includes painting wood, metal, plastic, glass or other items. Customers include manufacturers, cabinetmakers or millwork manufacturers who do not do their own finish painting/staining/varnishing, or individuals who need only one item painted. Work contemplated by this classification includes, but is not limited to, preparing items for finishing by cleaning, sanding and wire brushing as needed, applying new finish by brushing, rolling, spraying or dipping, air or oven drying, and any appropriate finish work such as waxing, polishing and buffing when done by employees of an employer having operations subject to this classification. This classification includes application of nonmetallic coatings by dipping (such as nonstick surfaces) and painting with an electrostatic paint gun.

This classification excludes *sign painting* when done by establishments who do not manufacture the sign, which is to be reported separately in classification 4109; any painting done in conjunction with the manufacture of a sign which is to be reported separately in classification 2903, 3402, 3503 or 3510 as applicable; painting done in conjunction with the repair of an exterior sign which is to be reported separately in classification 0403; furniture stripping and refinishing services which are to be reported in classification 3603-10; furniture finishing done in conjunction with manufacturing or repair which is to be reported separately in classification 2905; automobile painting which is to be reported separately in classification 3412; the permanent yard or shop of a painting contractor which is to be reported separately in classification 5206 provided the conditions set forth in WAC (~~296-17-675~~) 296-17A-5206 have been met; and the painting/staining/varnishing of any item done in conjunction with the manufacturing of that item which is to be reported separately as applicable to the product.

WSR 09-12-102
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 2, 2009, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-21-089.

Title of Rule and Other Identifying Information: Regulating property and liability self-insurance requirements as to local governments and nonprofit corporations.

Hearing Location(s): Washington Cities Insurance Authority, 320 Andover Park East, Tukwila, WA 98138, on July 8, 2009, at 12:00 p.m. and on July 9, 2009, 9:00 a.m.; and at the Grant County Public Works, 124 Enterprise Street S.E., Ephrata, WA 98823, on July 13, 2009, at 12:00 p.m. and on July 14, 2009, at 9 a.m.

Date of Intended Adoption: August 5, 2009.

Submit Written Comments to: Roselyn Marcus, Office of Financial Management, P.O. Box 43113, Olympia, WA 98504-3113, e-mail Roselyn.Marcus@ofm.wa.gov, fax (360) 664-2832, by July 7, 2009.

Assistance for Persons with Disabilities: Contact Lillian Austin by July 2, 2009, TTY (360) 902-0679 or (360) 902-0533.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, chapter 82-60 WAC provides standards for both property and liability local government self-insurance programs and health and welfare local government self-insurance programs. As the programs have matured and the insurance environment has changed over years, these two types of programs (property/liability and health/welfare) have become so different as to require separate standards for each type of self-insurance program. As a result, temporary guidelines were put into place with the intent to engage in rule making at a later time using the APA process described in chapter 34.05 RCW.

Local government self-insurance programs have operated under the above-mentioned temporary guidelines for a number of years, which has caused confusion among the programs in determining what standards they are required to meet. Also, because the rules had not been updated and were not specific enough to each type of program given the changes in the insurance, economic and legal environment over time, oral waivers from requirements in both rules and guidelines were provided to some programs, creating further confusion due to lack of written documentation.

The state risk manager is required to adopt rules which create standards for solvency, management, operations and certain contracts. The office of financial management (OFM), working with the property and liability advisory board, has created proposed revisions to chapter 82-60 WAC which (1) remove the health and welfare rules from chapter 82-60 WAC and address them in a separate rule-making process, (2) replace temporary guidelines with updated rules specific to joint property and liability self-insurance programs to be adopted using the APA process described in chapter 34.05 RCW as required by RCW 48.62.061, and (3) remove the provision for waivers from rules and guidelines and allow the state risk manager to consistently regulate all programs.

Reasons Supporting Proposal: The revisions to chapter 82-60 WAC will result in standards adopted in rule which can be easily identified and are specific to individual and joint property and liability programs. Individual and joint health and welfare programs will be able to clearly identify standards that apply to those programs in a newly created separate chapter. By creating rules, rather than guidelines, local governments wishing to form new programs will be able to easily locate the specific regulations which apply to their programs in the rules, as prescribed in RCW 48.62.061. Because these rules will clearly identify standards specific to each type of program, regulation will be consistent and waivers will be unnecessary.

Statutory Authority for Adoption: RCW 48.62.061.

Statute Being Implemented: Chapter 48.62 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: To obtain a copy of the rules showing how they are being amended from their current versions in chapter 82-60 WAC, contact either Shannon Stuber at shannon.stu-

ber@ofm.wa.gov, phone (360) 902-7311, or Roselyn Marcus at roselyn.marcus@ofm.wa.gov, phone (360) 902-0568.

Name of Proponent: Office of financial management, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shannon Stuber, General Administration Building, P.O. Box 41027, Olympia, (360) 902-7311.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules have no or minimal cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. OFM is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, OFM does not voluntarily make section 201 applicable to this rule adoption nor to date, has JARRC made section 201 applicable to this rule adoption.

May 28, 2009

Roselyn Marcus
Director of Legal Affairs
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-010 Preamble and authority. These rules governing local government and nonprofit self-insurance transactions are adopted by the state risk manager to implement chapter 48.62 RCW relating to the management and operations of both individual and joint local government (~~health and welfare benefit and~~) property and liability self-insurance programs and nonprofit property and liability self-insurance programs.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-020 Definitions. (1) "Actuary" means any person who is (~~qualified under WAC 284-05-060 to provide actuarial services~~) a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program.

(3) (~~"Beneficiary" means any individual entitled to payment of all or part of a covered claim under a local government health and welfare self insurance program.~~

(4)) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(~~(5)~~) (6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event (~~such as:~~

(a) ~~For health and welfare benefits, a covered service or services being delivered; or~~

(b) ~~For property and liability, the destruction or damage of property or related deaths or injuries.~~

Unless specifically referenced, the term "claim" is used for both health and welfare and property and liability programs.

(6)) that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

(7) "Claims auditor" means a person who has the following qualifications:

(a) A minimum of five years in claims management and investigative experience;

(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(c) Proof of professional liability insurance; and

(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

(8) "Competitive process" means a (~~documented formal process providing a fair and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the party's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.~~

(7) "Contribution" means the amount paid or payable by the employee into a health and welfare self insurance program.

(8)) formal sealed, electronic, or web-based bid procedure used for all nonclaims related purchases for goods and services over fifty thousand dollars. For purchases between five thousand dollars and fifty thousand dollars, competitive process means quotations obtained from at least three vendors by telephone or written quotations, or both, and supported by evidence of competition. Purchases up to five thousand dollars are exempt from competitive bids providing procurement is based on obtaining maximum quality at minimum cost.

(9) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(10) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's

methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

(11) "Foundation agreement" means the interlocal agreement binding local government members or the contract binding nonprofit members to a joint self-insurance program.

(12) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(13) "Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later as claims, (b) unknown loss events that are expected to become claims, and (c) ~~(expected)~~ future development on claims already reported.

~~((9))~~ (14) "Individual self-insurance program" means a formal program established and maintained by a local government entity to provide advance funding to self-insure ~~(health and welfare benefits or)~~ for property and liability risks on its own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

~~((10))~~ (15) "Interlocal agreement" means an agreement established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.

(16) "Joint self-insurance program" means any two or more local government entities, two or more nonprofit corporations or a combination of local government entities and nonprofit corporations which have entered into a cooperative risk sharing foundation agreement ~~(pursuant to the provisions of the Interlocal Cooperation Act (chapter 39.34 RCW) and/or)~~ subject to regulation under chapter 48.62 RCW.

~~((11))~~ "Liability for unpaid claims" means the amount needed to provide for the estimated ultimate cost of settling claims which have occurred on or before a particular date. The estimated liability includes the amount of money that will be needed for future payments on both claims which have been reported and IBNR claims.

(12) "Liability for unpaid claim adjustment expenses" means the amount needed to provide for the estimated ultimate costs required to investigate and settle claims for covered events that have occurred on or before a particular date, whether or not reported to the government entity or nonprofit corporation at that date.

~~((13))~~ (17) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negligence of the parties and contribution or recovery from other sources.

(18) "Member" means a local government entity or nonprofit corporation that:

(a) Is a signatory to a joint insurance program's foundation agreement;

(b) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

(c) Is a past or present participant in ~~((a joint self-insurance))~~ the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW.

~~((14))~~ (19) "Nonprofit corporation," as defined in RCW 24.03.005(3), means a corporation of which no part of the income ~~((of which))~~ is distributable to its members, directors or officers.

~~((15))~~ (20) "Primary assets" means cash and investments ~~(less any nonclaims liabilities).~~

(21) "Reassessment" means additional moneys paid by the members to a joint self-insurance program.

(22) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

(23) "Secondary assets" means insurance receivables, real estate or other assets ~~(less any nonclaims liabilities)~~ the value of which can be independently verified by the state risk manager.

(24) "Self-insurance program" means any individual or joint ~~(local government entity or nonprofit corporation)~~ self-insurance program required by chapter 48.62 RCW to comply with this chapter.

~~((16))~~ (25) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pools excess or self-insured insurance programs.

(26) "Stop-loss insurance" means ~~((insurance against the risk of economic loss assumed under a self-insurance program.~~

(17)) a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

(27) "Third-party administrator" means~~(:~~

(a) ~~An~~ a independent association, agency, entity or enterprise which, through a contractual agreement ~~((is responsible for the overall operational and financial management of the self-insurance program; or~~

(b) An independent association, agency, entity or enterprise which, through a contractual agreement, provides a professional service for the analysis, design, implementation, or termination of a self-insurance program; or

(c) An independent association, agency, entity or enterprise which, through a contractual agreement, administers the claim payment process on behalf of a self-insurance program. Such claim administration process includes, but is not limited to, receiving requests for claim payments, investigation, verification and adjustment of the claim. Claim payment disbursement is also considered an administrative process), provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

(28) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

(29) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

NEW SECTION

WAC 82-60-02001 Standards for operation and management—Rules for individual self-insurance programs. Each individual self-insurance program that self-insures is exempt from the rules applicable to joint self-insurance programs. Individual self-insurance programs shall meet the following standards:

(1) The individual self-insurance program must notify the state risk manager of its existence or termination.

(2) The program may contract for claims handling and investigation services, or the program may choose to provide these services internally. In either case, the person responsible for the program shall establish sufficient contract monitoring and internal control procedures to provide adequate oversight over the claims handling and investigation process.

(3) The program shall establish standards requiring each claim be reserved for settlement, legal and loss adjustment expense. Settlement (indemnity) reserves shall be established by a reserving process which may include estimates of jury verdict value.

(4) The program shall establish claims reserving processes that include a periodic review of case reserves.

(5) The individual self-insurance program may obtain the services of an independent claims auditor to evaluate the claims handling procedures of its contractor or internal staff.

(6) The program may use the services of an actuary to determine the funding levels necessary to fund reserves restricted for payment of claims and related claims expenses.

NEW SECTION

WAC 82-60-02003 Standards for operation and management—Rules for joint self-insurance programs. The following rules apply exclusively to joint self-insurance programs. Individual programs shall be exempt from these requirements.

NEW SECTION

WAC 82-60-02005 Standards for operation—Membership. Membership in a joint self-insurance program requires the execution of a foundation agreement. Only members may participate in risk-sharing. Only members may participate in the self-insured retention layer, and only members may participate in the joint purchase of insurance or reinsurance. Further, each member shall agree to the following:

(1) Each member shall pay assessments and reassessments when required by the governing body of the program.

(2) Each member shall obtain approval to join the program from the governing body of the respective member. The approval shall be by resolution or ordinance of the governing body as appropriate for the entity type.

(3) Each member shall become a signatory to the foundation agreement and subsequent amendments to the foundation agreement of the joint self-insurance program.

NEW SECTION

WAC 82-60-02007 Standards for operation—Providing services to nonmembers. (1) Nonmembers may purchase services through an interlocal agreement as authorized by chapter 39.34 RCW. Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer. This section is not intended to preclude nonmembers purchasing services from becoming members of the joint self-insurance program, provided the nonmember meets the requirements of WAC 82-60-020(18) and is eligible for membership as authorized by RCW 48.62.021(1).

(2) A program intending to provide services to nonmembers shall submit a written plan to the state risk manager for approval prior to providing services. The plan shall include, at a minimum, the services to be provided, the time frame for providing such services, the expected revenues and expenditures resulting from providing said services, and a written legal determination of all potential federal and state tax liabilities created by providing services to nonmembers. The arrangement to provide such services shall be approved in writing by the state risk manager within sixty days of the joint self-insurance program's final plan submission.

(3) Every joint self-insurance program providing services as of the effective date of these regulations must submit a written plan meeting the requirements stated herein.

NEW SECTION

WAC 82-60-02009 Standards for operation—Communication with members—Annual membership report. The joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, financial information which includes the comparative balance sheet and statement of revenues, expenses and net assets. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official web site of the program for a minimum of three years from the date of publication.

NEW SECTION

WAC 82-60-02011 Standards for operations—Meetings. All joint self-insurance programs are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW.

NEW SECTION

WAC 82-60-02013 Standards for operation—Notice of regular meetings of the governing body. Every joint self-insurance program shall provide every member with a notice of the time and place of each regular meeting of the governing body at least ten days prior to the meeting. The notice shall be delivered in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to members in the same form, manner and time as provided to members. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the electronic web site of the program accessible to the public. Notice of regular meetings shall comply with the meeting notification requirements of chapter 42.30 RCW or be published at least ten days in advance of regular meetings, whichever notification time is greater.

NEW SECTION

WAC 82-60-02015 Standards for operation—Special meetings—Notice to members. All joint self-insurance programs shall comply with the requirements of RCW 42.30.080 in providing notification of special meetings. In addition, programs shall provide notice by electronic mail to the state risk manager and every member of the joint self-insurance program twenty-four hours in advance of every special meeting.

NEW SECTION

WAC 82-60-02017 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance program will provide the state risk manager and every member with a preliminary agenda in advance of each meeting of the governing body. The agenda shall be delivered by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be provided to the state risk manager and every member of the program by electronic mail and shall be posted on the web site of the program accessible to the public.

NEW SECTION

WAC 82-60-02019 Standards for operation—Notification of changes to bylaws or foundation agreement. Every joint self-insurance program shall provide notification of the intent to change the bylaws or foundation agreement to each member of the joint self-insurance program and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed change will occur. Such notification shall include a copy of proposed changes.

NEW SECTION

WAC 82-60-02021 Standards for operation—Changes to foundation agreement. (1) Changes to any terms of the foundation agreement shall be approved by a majority of the members, or by a greater majority if provided

for in the bylaws or foundation agreement of the joint self-insurance program. Changes to the foundation agreement shall be approved during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote, either in the affirmative or negative, and recorded in the meeting minutes.

(2) Amendments to the foundation agreement shall be adopted by ordinance or resolution of the governing board or council of each member. The signed amendment and copy of the ordinance or resolution, as appropriate, shall be retained by the joint self-insurance program. The foundation agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.

(3) Changes to any terms of the foundation agreement shall require amendment using the approval and adoption process described above.

(4) The addition of new members to a joint self-insurance program and/or the subscription of the foundation agreement by said new members shall not be considered as amendments to the foundation agreement.

NEW SECTION

WAC 82-60-02023 Standards for operation—Elections of the governing body. The governing body of every joint self-insurance program shall be elected by a majority of the members. Elections may be conducted during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote and recorded in the meeting minutes.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-030 Standards for management and operation—Adoption of program. ~~(((1) All self-insurance programs shall provide that the governing body of the local government entity or nonprofit corporation establishing or maintaining a program adopt the self-insurance program by resolution or ordinance.))~~ The foundation agreement of a joint self-insurance program shall be adopted by resolution or ordinance by each participating member's governing body. The resolution or ordinance shall include, but not be limited to, ((funding and expenditure mechanisms.

(2) The interlocal agreement of a joint self-insurance program shall be adopted by resolution or ordinance by each participating member's governing body)) an acknowledgment that the entity shall be subject to assessments and reassessments as required by the joint self-insurance program.

Copies of each resolution or ordinance shall be retained by the joint self-insurance program and available for inspection by the state risk manager. The foundation agreement, along with a list of members participating in the program, shall be published on the public web site of each joint self-insurance program. The foundation agreement and subsequent amendments shall be filed in accordance with requirements of chapter 39.34 RCW.

NEW SECTION

WAC 82-60-03001 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides estimates of the unpaid claims measured at the expected and the seventy percent confidence level.

(2) The governing body of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the requirement to maintain sufficient primary assets shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The governing body of the joint self-insurance program shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the seventy percent confidence level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the reserve requirements to maintain sufficient primary and secondary assets shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission. Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include the service of a cease and desist order upon the program.

(4) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, member equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the governing body and requirements for corrective plans.

(5) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the

state risk manager may obtain an independent actuarial evaluation to determine the adequacy of reserves. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-033 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program assessments. (1) Joint self-insurance program assessment formulas shall include all costs including rating for insured and self-insured layers of coverage. Assessment formulas shall be consistent and nondiscriminatory among ((new and existing)) all members. ((Joint self-insurance programs shall not engage in practices that set standard assessment rates lower for new members than those established for existing members.))

(2) This provision shall not be construed to prohibit individual choice of coverage by members from several offered by the joint self-insurance program. The assessment formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The assessment formula shall be available for review by the state risk manager.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-034 Standards for operations—Disclosures. ~~((1) All health and welfare self-insurance programs shall furnish each employee or retiree covered by the program a written description of the benefits allowable under the program, together with:~~

- ~~(a) Applicable restrictions, limitations, and exclusions;~~
- ~~(b) The procedure for filing a claim for benefits;~~
- ~~(c) The procedure for requesting an adjudication of disputes or appeals arising from beneficiaries regarding the payment or denial of any claim for benefits; and~~
- ~~(d) A schedule of any direct monetary contributions toward the program financing required by the employee.~~

~~Such benefits or procedures shall not be amended without written notice to the covered employees and retirees at least thirty days in advance of the effective date of the change unless exigent circumstances can be demonstrated.~~

~~(2)) All joint self-insurance programs shall furnish to each member of the program written statements which describe:~~

~~((a) All) (1) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;~~

~~((b)) (2) The method by which ((members pay assessments)) members' (re)assessments are determined;~~

~~((c)) (3) The procedure for filing a claim against the joint self-insurance program; ((and~~

~~((d)) (4) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues((-~~

Such statements shall not be amended without written notice to the members at least thirty days in advance of the effective date of the change); and

(5) General characteristics of the insurance coverage portion of the program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-036 Standards for operations—Standards for solvency—Termination provisions. (1) Program terminations. All ~~((individual and joint health and welfare self-insurance programs and all))~~ joint ~~((property and liability))~~ self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) Member terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of membership of a member.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-037 Standards for management and operations—Financial plans. (1) All joint self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to RCW 48.62.111 governing the investments of the program; and

(c) The preparation and submission of accurate and timely annual financial ~~((statements))~~ reports of the program as prescribed by the state auditor's office.

(d) The submission of audited financial statements to the state risk manager within one year of the program's fiscal year end which meet the requirements of the state risk manager as described in 82.60.060(3).

(2) No financial plan of a joint self-insurance program shall permit ~~((interfund))~~ loans to any member from primary assets held ~~((against liabilities for unpaid claims and claim adjustment expenses except for those amounts which are clearly inactive or in excess of liabilities for unpaid claims and claim adjustment expenses.~~

(3) ~~No financial plan of a joint self insurance program shall permit loans from assets held against liabilities for unpaid claims and claim adjustment expenses to any member~~ for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-038 Standards for management—Standards for contracts—Third-party administrator contracts. ~~((H))~~ Before contracting for third-party administra-

tor professional services, all joint self-insurance programs shall establish and maintain written ~~((standards and))~~ procedures for contracting with third-party administrators. Entering a contract for services shall not relieve the ~~((entity))~~ governing body of the joint self-insurance program of its ultimate governing, managerial and financial responsibilities. The procedures shall, as a minimum:

~~((A))~~ (1) Provide a method of third-party administrator selection using a formal competitive solicitation process;

~~((B))~~ (2) Require a complete written description of the services to be provided, remuneration levels, ~~((and))~~ contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;

~~((C))~~ (3) Provide for the confidentiality ~~((and ownership))~~ of the program's information, data and other intellectual property developed or shared during the course of the contract;

~~((D))~~ (4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;

(5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program; ~~((and~~

~~((E))~~ (6) Require the compliance with all applicable local, state and federal laws~~((-~~

~~(2) None of the above shall otherwise relieve the entity from other contracting requirements imposed on those entities));~~

(7) Establish a monitoring and acceptance procedure to determine compliance with third-party administrator contract requirements; and

(8) Establish indemnification provisions and set forth insurance requirements between the parties.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-039 Standards for management and operations—Preparation for incorporation of nonprofit corporation members. Joint property and liability self-insurance programs whose members are local government entities that are preparing to include nonprofit corporations as members of the program shall, as a minimum, address the following in their plan of operation:

(1) Amount of capitalization each nonprofit corporation will pay to become a member of the joint self-insurance program and criteria used to determine the capitalization amount;

(2) Self-insured retention level for nonprofit corporation members;

(3) ~~((Flexibility in premium assessment rates with emphasis on rates for nonprofit corporations that recognize the potential and actual loss experience of the nonprofit corporation;))~~ Legal determination of federal and state tax liabilities resulting from the inclusion of nonprofit members;

(4) Procedures for reviewing the financial soundness of each nonprofit corporation being considered for membership in the self-insurance program; and

(5) Representation of nonprofit corporations on the governing board of directors but local government entities must retain control as required by RCW 48.62.121 (2)(a).

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-040 Standards for operation and management—Risk management. ~~((Individual and))~~ All joint ((property and liability)) self-insurance programs shall have a written risk management program which ((addresses risk finance, loss control, risk avoidance and risk transfer)) includes, but is not limited to, loss control, loss prevention, training and evaluation of risk based on loss experience.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-050 Standards for claims management—Claims administration. (1)~~((a))~~ All joint self-insurance programs shall ((have)) adopt a written claims administration program ((that contains)) which includes, as a minimum, ((claim)) the following procedures:

(a) Claims filing procedures((, internal financial control mechanisms, and claim and claim adjustment expense reports.

(b) All individual and joint health and welfare self-insurance programs and all joint property and liability self-insurance programs shall have a written claim appeal procedure that contains, as a minimum, a time limit for filing an appeal, a time limit for response, and a provision for a second level of review.

(2)(a) All self-insurance programs may contract for claims administration services with a qualified third-party administrator, provided all the requirements under subsection (1) of this section are included in the contract.

(b) Individual and joint property and liability self-insurance programs may perform claims administration services on their own behalf. Individual and joint health and welfare self-insurance programs may perform claims administration services on their own behalf, provided the state risk manager is supplied with documentation and a detailed written explanation in support of the self-insurance program's proposed claims administration activities. The documentation and proposal shall include, as a minimum, the following:

(i) The nature, type and anticipated volume of claims to be administered.

(ii) The number of employment positions established or to be established which are required to perform the self-insurance program's claim administration functions, including an organizational chart showing reporting responsibilities.

(iii) Qualifications of personnel having claim reserving and settlement authority.

(iv) A projection of expected claim administration expenses.

(3) All self-insurance programs shall have conducted by an independent qualified professional not currently performing claims administration services to the program, a review of

claim reserving, adjusting and payment procedures no less than every three years. Such review shall be in writing and retained for a period not less than three years.)) and forms.

(b) Standards requiring each claim be reserved for settlement, legal and loss adjustment expense. Indemnity (settlement) reserves shall be established by a reserving process which estimates the jury verdict value.

(c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.

(d) Standards requiring appropriate adjuster work loads.

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.

(f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099MISC regulations.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written member coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a ((dedicated claim account from which only)) financial system that identifies claim and claim adjustment expenses ((can be paid)).

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.

(6) All joint self-insurance programs shall maintain ((written)) claim ((and claim adjustment)) expense reports for all claims made against the joint self-insurance program and((, separate written reports for each individual)) its members.

(7) All joint self-insurance programs shall obtain an independent review of claim reserving, adjusting and payment procedures every three years at a minimum. Said audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, find-

ings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-060 ((Financial) Standards for management and operations—State risk manager reports. (1) Every ((individual and joint health and welfare self-insurance program and every)) joint property and liability self-insurance program authorized to transact business in the state of Washington shall ((record and annually report its revenue, claim and claim expense experience, and other data as required by the state risk manager. Multistate programs shall report both its Washington state revenues, claim and claim expense experience and other data required by)) submit the annual report to the state risk manager ((and its overall income, claim and claim expense experience)).

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form:

(a) Unaudited annual financial statements, including attestation, as provided to the state auditors office;

(b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the unaudited financial statements are based;

(c) Copies of all insurance coverage documents;

(d) List of contracted consultants;

(e) Details of changes in articles of incorporation, bylaws or foundation agreement;

(f) Details of services provided by contract to nonmembers;

(g) List of members added or terminated.

Such reports shall be submitted to the state risk manager no later than one hundred fifty days following the completion of the joint program's fiscal year.

~~((2) All joint self-insurance programs authorized to transact business in the state of Washington shall submit quarterly financial reports to the state risk manager. Such reports shall be submitted to the state risk manager no later than sixty days following the completion of each of the program's four quarters within its fiscal year.)) (3) Audited financial statements shall be provided to the state risk manager within one year of the program's fiscal year end and comply with requirements for submission of audited financial statements established by the state risk manager.~~

(4) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(5) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.

NEW SECTION

WAC 82-60-065 Standards for operations—Program changes—Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

(a) Any change in the terms of the foundation agreement;

(b) Elimination or reduction of stop loss insurance;

(c) Acceptance of any loans or lines of credit;

(d) Provision of services to nonmembers;

(e) Addition of members of other entity types than those included in original application approved by state risk manager.

(2) The following program changes require written notification to the state risk manager prior to implementing the following changes:

(a) Increases in retention level;

(b) Decrease or elimination of insurance limits;

(c) Initial contract with a third-party administrator, or change in third-party administrator;

(d) Any change to bylaws.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-080 Standards for management and operations—Conflict of interest. (1) Every joint self-insurance program shall require the claims auditor, the third-party administrator, the actuary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the joint self-insurance program.

(2) All joint self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

~~((+))~~ (a) No member of the board of directors; trustee; administrator, including a third-party administrator; or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

~~((+))~~ (i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

~~((b))~~ (ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, trustee, third-party administrator, or as an employee.

~~((e))~~ (iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

~~((2))~~ (b) No consultant (~~(, third-party administrator)~~) or legal counsel to the joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer (~~(, health care service contractor, or health care supply provider)~~. This provision shall not preclude licensed insurance brokers or agents from receiving compensation for insurance transactions performed within the scope of their licenses, provided such compensation is disclosed to the self-insurance program's governing body.

~~(3))~~ or consultant.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The terms of compensation shall be provided for by contract between the broker of record and the governing body, and the amount or percentage of the compensation must be disclosed in writing. Contracts between brokers of record and the governing body shall include a provision that contingent commissions or other form of compensation not specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions. The joint self-insurance program shall establish a contract provision which requires the broker provide to the program a written annual report on a form provided by the state risk manager which discloses the actual financial compensation received. The report shall include verification that no undisclosed commission was received as a result of any such insurance transaction made on behalf of the program.

(d) No third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-100 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager, with concurrence from the property and liability advisory board (~~(and the health and welfare advisory board)~~), shall fix (~~(assessments)~~) state risk manager fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.62 RCW. Such (~~(assessments)~~) fees shall be levied against each joint property and liability self-insurance program (~~(and each individual and joint health and welfare benefit self-insurance program)~~) regulated by chapter 48.62 RCW. (~~(Examination fees shall be based upon actual time and expenses incurred for the review and investigation of every joint property and liability self-insurance program and every individual and joint health and welfare benefit self-insurance program by the state risk manager or designee.~~

(2) The state risk manager, with concurrence from the two advisory boards, shall determine the assessment rate on a

~~fiscal year basis and the review and investigation fees on a fiscal year basis.~~

~~(3))~~ Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The (~~(review and investigation)~~) state risk manager fees shall be paid by (~~(the)~~) each joint self-insurance program to the state of Washington, office of financial management within (~~(thirty)~~) sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

~~((4))~~ (3) A joint self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative (~~(cost assessment and review and investigation fees)~~) fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the joint self-insurance program have been satisfied.

~~((5))~~ (4) The state risk manager shall assess each prospective joint self-insurance program (~~(, and each prospective individual health and welfare benefit self-insurance program)~~) an initial investigation fee at a rate determined annually by the state risk manager, with the concurrence of the advisory boards. (~~(Such fee shall be sufficient to cover the costs for the initial review and approval of that self-insurance program.)~~)

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-200 Standards for operations—Appeals of fees. (1) A joint self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a joint self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

AMENDATORY SECTION (Amending WSR 05-04-072, filed 2/1/05, effective 3/4/05)

WAC 82-60-210 Standards for operations—Appeals of cease and desist orders. Within ten days after a joint self-insurance program covering property or liability risks (~~(, or an individual or joint self-insurance program covering health and welfare benefits)~~) has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hearing from the state risk manager. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

NEW SECTION

WAC 82-60-215 Standards for contracts—Competitive solicitation standards for consultant contracts. Every joint self-insurance program shall use a formal competitive solicitation process in the selection of consultants. The process shall provide an equal and open opportunity to qualified parties and shall culminate in a selection based on preestablished criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by state risk manager and state auditor.

NEW SECTION

WAC 82-60-220 Standards for contracts—Standards for operation—Purchases of goods and services not related to claims. Joint self-insurance programs comprised of one common entity type must comply with bidding and purchasing requirements as prescribed by law or regulation for that entity type. Joint self-insurance programs comprised of multiple entity types shall use a competitive process for the purchase of goods and services not described in WAC 82-60-215. Vendor selection shall be based on fees or costs, ability, capacity, experience, reputation, and responsiveness to time limitations. These regulations do not apply to the purchase of goods and services described in WAC 82-60-050(5).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 82-60-031 Program financing.
- WAC 82-60-032 Nondiscrimination in contributions.
- WAC 82-60-035 Wellness programs.
- WAC 82-60-070 State risk manager may waive requirements.

**WSR 09-12-103
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed June 2, 2009, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-102.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Old Capitol Building, 2nd Floor Conference Room, 600 South Washington Street, Olympia, WA 98504, on July 8, 2009, at 8:30 a.m.

Date of Intended Adoption: July 9, 2009.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by July 7, 2009.

Assistance for Persons with Disabilities: Contact Penny Coker by July 2, 2009, TTY (360) 664-3631 or (360) 725-6142.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update and clarify reporting requirements and calculations of the operation allocation formula.

Statutory Authority for Adoption: RCW 28A.150.290.

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: See Purpose above.

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Martin Mueller, Office of Superintendent of Public Instruction, (360) 725-5175; and Enforcement: Allan J. Jones, Office of Superintendent of Public Instruction, (360) 725-6120.

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

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

June 2, 2009

Randy I. Dorn

State Superintendent

AMENDATORY SECTION (Amending WSR 07-03-072, filed 1/17/07, effective 2/17/07)

WAC 392-141-185 Operation allocation computation. The computation of the transportation operation allocation shall be as follows:

(1) All basic and transit tripper students defined in WAC 392-141-115 who are transported to school shall be measured by radius mile intervals between the bus route stop and the destination sites in accordance with WAC 392-141-170(3) and multiplied by two to yield the round trip totals in each distance interval;

(2) All midday students defined in WAC 392-141-115 and basic shuttle students transported shall be measured by radius mile intervals between the bus route stop and the destination school in accordance with WAC 392-141-170(3). Basic shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

No. of days per week	Percent factor
1	20%

No. of days per week	Percent factor
2	40%
3	60%
4	100%

(3) The total students in subsections (1) and (2) of this section in each distance interval, multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Midday transportation students whose schedule is one day per week shall have the weighted student units multiplied by twenty percent;

(4) The district's minimum load factor, if applicable, is calculated pursuant to WAC 392-141-170(5). This factor is multiplied by the total weighted student units generated by basic and tripper students. This total is the additional weighted units attributable to the district's small average bus load;

(5) The sum of the cumulative weighted student units calculated in subsections (3) and (4) of this section, if applicable, equals the total basic transportation weighted units;

(6) The basic allocation is the total basic transportation weighted units calculated in subsection (5) of this section multiplied by the standard student mile allocation rate;

(7) All special students defined in RCW 28A.155.020 transported on special transportation bus routes to school or agencies for related services shall be measured by radius mile intervals between their bus route stops and destinations sites in accordance with WAC 392-141-170(3) and multiplied by two to yield the round trip total in each distance interval;

(8) All special shuttle students transported between schools or agencies less frequently than five days a week shall be measured by radius mile intervals between the bus route stop and destination sites in accordance with WAC 392-141-170(3);

(9) The total students in subsections (7) and (8) of this section in each distance interval multiplied by the applicable distance weighting factor contained in WAC 392-141-170(3) shall equal the weighted student units in each distance interval. Special shuttle transportation whose schedule is less than five days a week shall have the weighted units multiplied by the appropriate percent shown in the table below:

No. of days per week	Percent factor
1	20%
2	40%
3	60%
4	100%

(10) The district's special transportation load factor, if applicable, is calculated pursuant to WAC 392-141-170. The factor is multiplied by the total weighted student units generated by special students (not special shuttle students);

(11) The weighted student units calculated in subsections (9) and (10) of this section, if applicable, equals the total special transportation weighted units;

(12) The special allocation is the total special transportation weighted units calculated in subsection (11) of this section, multiplied by the standard student mile allocation rate;

(13) The one radius mile allocation for basic trippers and midday kindergarten students shall be calculated by the number of kindergarten through fifth grade students enrolled during the five consecutive day count week and living one radius mile or less from their enrollment school less kindergarten through fifth grade special education students living and transported within one mile, multiplied by the allocation rate, and further multiplied by a factor established by the Biennial Appropriations Act;

(14) The district car allocation is computed for each vehicle and then totaled to equal the district car allocation. The computation is based on one hundred eighty days and fifty mile increments multiplied by the appropriate district car operation and depreciation rates published by the superintendent of public instruction. All vehicles traveling over two hundred fifty miles receive only the depreciation rate for miles in excess of two hundred fifty for the one hundred eighty day period;

(15) The district's annual allocation for transportation operation is the total of the calculations made in subsections (6), (12), (13) and (14) of this section;

(16) The allocation for kindergarten through fifth grade students living one radius mile or less from their school of enrollment may be used for transporting students, funding crossing guards or local and the state matching funds for capital projects. Projects managed by the federal government are ineligible;

(17) When a district submits a revised report pursuant to WAC 392-141-165, to the extent funds are available, the district's operation allocation shall be recalculated. Any increase in operations allocations shall be prorated for the remainder of the annual school term or until termination of activities before the end of the scheduled school term. The date that the district documents first meeting the ten percent increase in eligible students transported shall be used to prorate any increase in annual transportation operation allocations.

(18) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12) school transportation services are provided by the school district five days per week, to and from school, before and after the regular school day. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

WSR 09-12-115
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING
 [Filed June 3, 2009, 8:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-084 and 07-19-028.

Title of Rule and Other Identifying Information: Revising and renaming chapter 170-290 WAC as Working connec-

tions and seasonal child care subsidy programs; adopting new sections in chapter 170-290 WAC regarding the seasonal child care subsidy program; and repealing all sections of chapter 170-292 WAC, Seasonal child care, and some sections of chapter 170-290 WAC.

Hearing Location(s): Tacoma Public Library, main downtown branch, 1102 Tacoma Avenue South, Tacoma, WA 98402, in the library auditorium, on Tuesday, July 7, 2009, at 6:30 p.m. to 8:30 p.m.; and at the Yakima Child Care Resource and Referral (located at Catholic Family and Child Services), 5301 Tieton Drive, Suite C, Yakima, WA 98908, on Saturday, July 11, 2009, starting at 11 a.m.

Date of Intended Adoption: Not earlier than July 31, 2009.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, e-mail Rules@del.wa.gov, or fax (360) 413-3482, by 11:59 p.m. on July 18, 2009.

Assistance for Persons with Disabilities or in Need of Spoken or Sign Language Interpreter Services: Contact the DEL rules coordinator by July 1, 2009, at Rules@del.wa.gov, or by phone at (360) 725-4397.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Visit the department of early learning (DEL) web site at <http://www.del.wa.gov/laws/rules/WorkingConnections.aspx> for more information about the proposed rules. This web site also has a side-by-side chart of the proposed new seasonal child care (SCC) rules compared to the current SCC rules in chapter 170-292 WAC.

DEL is revising all of its child care subsidy regulations (rules) currently in chapters 170-290 and 170-292 WAC. These rules were transferred from the department of social and health services (DSHS) in 2006 when the legislature created the DEL as a separate state agency. See section 501 (uncodified), chapter 265, Laws of 2006. The legislature has also named DEL as the "lead agency" for federal monies (child care and development fund (CCDF)) that the state receives that helps pay for child care subsidies under the working connections child care (WCCC) and SCC programs.

Most of chapter 170-292 WAC has not been substantially updated since 1973. Chapter 170-290 WAC has not had a significant update since 2005 and does not reflect current requirements or the current child care subsidy rates. Both chapters 170-290 and 170-292 WAC contain obsolete references to DSHS laws, rules and program names that need to be updated.

The department plans to update the child care subsidy rules in phases. This proposal is the first phase. DEL intends to adopt the current proposed rules in mid-summer 2009, and to make them effective in September 2009 or later. A time frame for the second phase has not been determined yet. The proposed rules below are intended to:

- Clarify existing requirements to make the rules easier to understand;
- Where appropriate, align the rules with the collective bargaining agreement with the Services Employees International Union 925 covering in-home child care providers, with the exception of child care subsidy rates. **Note:** The 2009 legislature

did not approve funding for the negotiated subsidy rates that were to take effect July 1, 2009. Under the 2007-2009 collective bargaining agreement, the July 1, 2008, rates in this proposal would remain in effect until the effective date of a subsequent agreement, not to exceed July 1, 2010;

- Create a new Part I of chapter 170-290 WAC, with rules that would apply to both the WCCC and SCC subsidy programs, and create a Part II of the chapter with rules that apply only to the WCCC program;
- Move SCC rules to a new Part III of chapter 170-290 WAC. See proposed new WAC 170-290-3501 through 170-290-3865. When these proposed rules are adopted as final, DEL will repeal all sections of chapter 170-292 WAC;
- Clarify the DEL and DSHS roles in the WCCC program. Under chapter 265, Laws of 2006, DEL determines WCCC policy, including the adoption of rules governing the program. DSHS is responsible for determining consumer (parent, family and child) eligibility for WCCC, and processing payments to child care providers;
- Clarify the role of SCC contractors in new Part III of chapter 170-290 WAC. SCC contractors are local community agencies contracted by DEL to accept applications for SCC subsidies and to determine parent and family eligibility for SCC-subsidized child care based on the rules in Part III;
- Where appropriate, align WCCC and SCC requirements;
- Align the rules with applicable federal laws and rules (United States Code and Code of Federal Regulations) for the CCDF; and
- Remove outdated references to DSHS laws, rules, and program names, and replace them with appropriate DEL references.

DEL has withdrawn proposed rules for the SCC program filed in November 2008 (WSR 08-22-102). Comments received on that proposal helped DEL draft the SCC rules in the current proposal. DEL will respond to the public comments received on the November 2008 proposed SCC rules before adoption of this current proposal. The response will be in a concise explanatory statement document required under RCW 34.05.325.

Reasons Supporting Proposal: Revising and reorganizing the WCCC and SCC rules is expected to make requirements for both programs easier for parents and participating child care providers to understand and follow. Making the rules more consistent with federal requirements is expected to help the state retain important federal funding, allowing eligible parents to get child care subsidy support while the parents pursue work, training, or other approved activities. Making the rules consistent with the collective bargaining agreement as approved by the legislature will reduce confusion about child care subsidy program requirements impacted by the agreement. Updating these rules will help DEL better fulfill the legislature's intent in designating DEL as the lead agency to administer child care and early learning programs in the state of Washington.

Statutory Authority for Adoption: RCW 43.215.060.

Statute Being Implemented: Chapter 265, Laws of 2006, chapter 43.215 RCW, RCW 43.215.060.

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: RCW 43.215.060 authorizes DEL to adopt rules necessary to entitle Washington state to participate in federal funding programs, in this case the CCDF under federal rule 45 C.F.R. 98 and 99. DEL must remain in compliance with CCDF requirements - including child care policy making and fiscal responsibilities of the CCDF lead agency for Washington state.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Work[ing] Connections Child Care, Mark Rosen; Seasonal Child Care, Jenny Lemstrom, DEL, 649 Woodland Square Loop S.E., Lacey, WA 98503, (360) 725-2838 or (360) 725-4673; Implementation and Enforcement: Lynne Shanafelt, Assistant Director, DEL, 649 Woodland Square Loop S.E., Lacey, WA 98503, (360) 725-2829.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to create any new costs for small businesses (child care providers) who must comply, and if new costs are created they are expected to be minor. A small business economic impact statement is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The DEL is not listed among the agencies who must comply with the requirements of RCW 34.05.328.

June 2, 2009

Elizabeth M. Hyde
Director

Chapter 170-290 WAC

WORKING CONNECTIONS AND SEASONAL CHILD CARE SUBSIDY PROGRAMS

PART I. INTRODUCTION

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0001 (~~What is the purpose of the working connections child care program?~~) **Purpose and intent.** (1) This chapter establishes the requirements for eligible families to receive subsidized child care through the working connections child care (WCCC) and seasonal child care (SCC) programs under applicable state and federal law, to the extent of available funds.

(2) The purpose of (~~working connections child care~~) WCCC(†), as provided in part II of this chapter, is to:

~~((1) Help families with children pay child care costs for approvable activities to find jobs, keep their jobs, and get better jobs))~~ (a) Assist families with lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and

~~((2))~~ (b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(3) The purpose of SCC, as provided in part III of this chapter, is to:

(a) Assist families who are seasonally employed in agriculturally related work to access licensed child care; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

NEW SECTION

WAC 170-290-0002 Scope of agency responsibilities.

(1) The responsibilities of the department of early learning (DEL) include, but are not limited to:

(a) Determining child care subsidy policy for the WCCC and SCC programs, including determining thresholds for eligibility and copayment amounts and establishing rights and responsibilities. DEL is also designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds;

(b) Contracting with community organizations to meet with families to see if they are eligible for the SCC program. SCC contractors are located in several communities across the state, and must follow the rules that DEL has established for the SCC program; and

(c) Serving as the designated representative for the state to implement the collective bargaining agreement under RCW 41.56.028 for in-home/relative providers as defined in WAC 170-290-0003(7), and for all licensed family child care providers.

(2) The responsibilities of the department of social and health services (DSHS) include, but are not limited to, service delivery for the WCCC program, including determining who is eligible for WCCC benefits, authorizing payments, and managing payments made to WCCC providers.

(3) This allocation between DEL and DSHS is pursuant to section 501(2), chapter 265, Laws of 2006 (2SHB 2964), in which the legislature transferred all of the powers, duties, and functions relating to the WCCC program from DSHS to DEL, except for eligibility staffing and eligibility payment functions, which remain in DSHS.

NEW SECTION

WAC 170-290-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

(2) **"Consumer"** or **"eligible consumer"** means the person applying for or receiving:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

(3) **"Copayment"** means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.

(4) **"DEL"** means the department of early learning.

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

(6) "Days" means calendar days unless otherwise specified.

(7) "In-home/relative provider," referred to in the collective bargaining agreement as "license-exempt provider," means those providers who meet the requirements in WAC 170-290-0130 through 170-290-0167.

(8) "In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian.

(9) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists families who are seasonally employed in agriculturally related work to access licensed child care.

(10) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists families with lower incomes in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs.

PART II. WORKING CONNECTIONS CHILD CARE

Eligibility Requirements

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0005 ((Who is considered a consumer for the WCCC program?)) Consumers. ((For the purposes of this chapter, "you" and "your" refer to the consumer. If you apply for or receive WCCC, we consider you to be the consumer.))

(1) In WCCC, an eligible consumer ((is one of the following individuals who)) has parental control of one or more children, lives in the state of Washington, and is the child's:

- (a) Parent, either biological or adopted;
- (b) Stepparent;
- (c) Legal guardian verified by a legal or court document;
- (d) Adult sibling or step-sibling;
- (e) Nephew or niece;
- (f) Aunt;
- (g) Uncle;
- (h) Grandparent; or
- (i) Any of the relatives in (e), (f) ((through)), (g), or (h) of this subsection with the prefix great((, such as)) (for example, great-aunt).

(2) ((You are not an eligible consumer when you:

- (a) Are the only parent in the household; and
- (b) Will be away from the home for more than thirty days in a row.)) Consumers may be eligible for WCCC benefits if they:

(a) Meet eligibility requirements for WCCC described under part II of this chapter;

(b) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(c) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020; and

(d) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG) (under WAC 170-290-0065).

(3) A consumer is not eligible for WCCC benefits when he or she:

(a)(i) Will be away from the home for more than thirty days in a row; and

(ii) Is the only parent in the household; or

(b) Has a monthly copayment that is higher than the rate the state will pay for all eligible children in care.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0012 ((When do I need to verify)) Verifying consumers' information(?), (1) ((When you apply for benefits, we require you to provide information that helps us decide your eligibility. We call this "verification."

(2) After you apply, we ask you to give us new verification when:

(a) You report a change;

(b) We find out that your circumstances have changed;
or

(c) The information we have is questionable, confusing or outdated.

(3) Whenever we ask for verification, we give you a notice as described in WAC 388-458-0020.

(4) We)) A consumer must provide information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits;

(b) The consumer reapplies for benefits;

(c) A change of circumstances occurs, which is either reported by the consumer or determined by DSHS;

(d) DSHS finds out that the consumer's circumstances may have changed; or

(e) The information DSHS has is inconsistent, conflicting, or outdated.

(2) DSHS may accept any verification that ((you)) the consumer can easily ((get)) obtain when it reasonably supports ((you)) the consumer's statement or circumstances. The verification ((you give to us)) that the consumer gives to DSHS must:

(a) Clearly relate to ((what you are trying to verify)) the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

((5) We cannot make you give us a specific type or form of verification.

(6) If the only type of verification that you can get costs money, we pay for it.

(7)) (3) If DSHS requires verification from a consumer that costs money, then DSHS must pay for the consumer's reasonable costs.

(4) If the verification that ((you give to us)) a consumer provides DSHS with is ((questionable or confusing)) inconsistent, conflicting, or outdated, ((we)) DSHS may:

(a) Ask ((you to give us)) the consumer to provide DSHS with more verification or provide a collateral contact (a "col-

lateral contact" is a statement from someone outside of ~~((your))~~ the consumer's residence that knows ~~((your))~~ the consumer's situation); or

(b) Send an investigator from the division of fraud investigations (DFI) to make an unannounced visit to ~~((your))~~ the consumer's home to verify ~~((your))~~ the consumer's circumstances. See WAC ~~((388-290-0025))~~ 170-290-0025(10).

~~((8)) If you do not give us all of the verification that we have asked for, we determine if you are eligible based on the information that we already have. If we cannot determine that you are eligible based on this information, we deny or stop your benefits per WAC 388-290-0107 or 388-290-0115-))~~ (5) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0015 ~~((How does the WCCC program determine my family size for eligibility?))~~ **Eligibility—Family size.** ~~((We))~~ DSHS determines ~~((your))~~ a consumer's family size by reviewing those individuals who live together in the same household as follows:

(1) If ((you are)) a consumer is:	((We)) DSHS counts the following individuals as part of the family for WCCC eligibility:
(a) A single parent, including a minor parent living independently((:)) ₂	((You and your)) <u>The consumer and the consumer's</u> children.
(b) Unmarried parents who have at least one mutual child((:)) ₂	Both parents and all their children living in the household.
(c) Unmarried parents with no mutual children((:)) ₂	Unmarried parents and their respective children living in the household as separate WCCC families.
(d) Married parents((:)) ₂	Both parents and all their children living in the household.
(e) Undocumented parents((:)) ₂	Parents and children, documented and undocumented, as long as the child needing care is a U.S. citizen or legally residing in the United States. All other family rules in this section apply.

((A consumer as defined in WAC 388-290-0005-1)(e) through (i);)) <u>A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew, niece, aunt, uncle, grandparent; or great-nephew, great-niece, great-aunt, great-uncle, or great-grandparent.</u>	The children only((:)) (the children and their income are counted((:)))₂
(g) A minor parent with children and lives with a parent/guardian((:)) ₂	Only the minor parent and their children.
(h) A family member who is out of the household because of employer requirements, such as the military or training, and is expected to return to the household.	((You)) <u>The consumer</u> , the absent individual, and the children. Subsection (1)(b) and (d) of this section apply.
(i) A family member who is voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household.	((You)) <u>The consumer</u> , the absent individual and the children. Subsection (1)(b) and (d) of this section apply as well as WAC ((388-290-0020)) <u>170-290-0020</u> .
(j) An incarcerated family member.	The absent individual is removed from the household. We count all remaining household members. All other family rules in this section apply.
(2) If ((your)) the consumer's household includes:	((We)) DSHS counts the following individuals as part of the family for WCCC eligibility:
(a) Eighteen year old siblings of the children who require care and are enrolled in high school or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.

<p>(b) Siblings of the children requiring care who are up to twenty-one years of age and who are participating in an approved program through the school district's special education department under RCW 28A.155.020.</p>	<p>The individual participating in an approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.</p>
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AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0020 ~~((Are there)) Eligibility—Special circumstances ((that might affect my WCCC eligibility?)).~~ (1) ~~((You might))~~ A consumer may be eligible for WCCC if ~~((you are))~~ he or she is:

(a) An employee of the same child care center where ~~((you))~~ the employee's children receive care and ~~((you do))~~ the employee does not provide direct care to ~~((you))~~ his or her own children during the time WCCC is requested;

(b) A sanctioned WorkFirst participant or an applicant who was terminated by a sanction review panel and in an activity needed to remove a sanction penalty or to reopen ~~((you))~~ his or her case;

(c) A parent in a two-parent family and one parent is not able or available to provide care for ~~((you))~~ the children while the other is working, looking for work, or preparing for work;

(i) "Able" means physically and mentally capable of caring for a child in a responsible manner. If ~~((you))~~ a consumer claims one parent is unable to care for the children, ~~((you))~~ the consumer must provide written documentation from a licensed professional (see WAC 388-448-0020) that states the:

(A) Reason the parent is unable to care for the children;

(B) Expected duration and severity of the condition that keeps ~~((them))~~ the parent from caring for the children; and

(C) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing ~~((they are))~~ he or she is cooperating with treatment and ~~((are))~~ is still unable to care for the children.

(ii) "Available" means free to provide care when not participating in an approved work activity under WAC ~~((388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055))~~ 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed~~((:))~~; or

(d) A married consumer described under WAC ~~((388-290-0005))~~ 170-290-0005 (1)(d) through (i). Only ~~((you))~~ the consumer or ~~((you))~~ the consumer's spouse must be participating in activities under WAC ~~((388-290-0040, 388-290-0045, 388-290-0050, or 388-290-0055))~~ 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055.

(2) ~~((You))~~ A consumer might be eligible for WCCC if ~~((you))~~ his or her children are legally residing in the country, are living in Washington state, and are:

(a) Less than age thirteen; or

(b) Less than age nineteen, and:

(i) Have a verified special need, according to WAC ~~((388-290-0220))~~ 170-290-0220; or

(ii) Are under court supervision.

(3) Any of ~~((you))~~ a consumer's children who receive care at the same place where ~~((you))~~ the consumer works (other than (1)(a) of this ~~((subsection))~~ section) are not eligible for WCCC payments but ~~((can))~~ may be included in ~~((you))~~ the consumer's household if they meet the requirements of WAC ~~((388-290-0015))~~ 170-290-0015. This includes if ~~((you))~~ a consumer works:

(a) In a family home child care in any capacity and ~~((you))~~ his or her children are receiving care at the same home during ~~((you))~~ the consumer's hours of employment; or

(b) In ~~((you))~~ the consumer's home or another location and ~~((you))~~ his or her children receive care at the same location during ~~((you))~~ the consumer's hours of employment.

Rights and Responsibilities

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0025 ~~((What)) Consumer rights ((do I have when I apply for or receive WCCC benefits?)).~~ When ~~((you apply))~~ a consumer applies for or receives WCCC benefits ~~((you have))~~ he or she has the right to:

(1) Be ~~((treated politely and fairly without regard to race, color, creed, religion, sex, presence of any sensory, mental or physical disability, sexual orientation, political affiliation, national origin, religion, age, gender, disability, or birthplace))~~ free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Have WCCC eligibility determined within thirty days from ~~((you))~~ the consumer's application date per WAC ~~((388-290-0100))~~ 170-290-0100(2);

(3) Be informed, in writing, of ~~((you))~~ the consumer's legal rights and responsibilities related to WCCC benefits;

(4) ~~((Only have your information shared with other agencies when required by federal or state regulations;~~

~~((5-Get))~~ Receive a written notice at least ten days before ~~((we))~~ DSHS makes changes to lower or stop benefits except as stated in WAC ~~((388-290-0120))~~ 170-290-0120;

~~((6))~~ (5) Ask for ~~((a fair))~~ an administrative hearing if ~~((you do))~~ the consumer does not agree with ~~((us))~~ DSHS about a decision per WAC ~~((388-290-0260))~~ 170-290-0280;

~~((7))~~ (6) Ask a supervisor or administrator to review a decision or action affecting ~~((you))~~ the consumer's benefits without affecting the right to ~~((a fair))~~ an administrative hearing;

~~((8))~~ (7) Have an interpreter or translator service provided by DSHS within a reasonable amount of time and at no cost to ~~((you))~~ the consumer;

~~((9))~~ (8) Choose ~~((you))~~ a provider as long as the provider meets the requirements in WAC ~~((388-290-0125))~~ 170-290-0125; ~~((and~~

~~((10))~~ (9) Ask the fraud early detection (FRED) investigator from the division of fraud investigations (DFI) to come back at another time. ~~((You do))~~ A consumer does not have to

let an investigator into ~~((your))~~ his or her home. ~~((You may ask the investigator to come back at another time.))~~ This request will not affect ~~((your))~~ the consumer's eligibility for benefits. If ~~((you))~~ the consumer refuses to cooperate (provide the information requested) with the investigator, it could affect ~~((your))~~ his or her benefits:

(10) Access his or her child at all times while he or she is in child care;

(11) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination;

(12) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between their private rate and the state maximum rate, when their private rate for child care or the registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0030 ~~((What must I do when I apply for or receive WCCC benefits?))~~ **Consumers' responsibilities.** When ~~((you apply))~~ a consumer applies for or receives WCCC benefits ~~((you)),~~ he or she must:

(1) Give ~~((us))~~ DSHS correct and current information so ~~((we))~~ DSHS can determine ~~((your))~~ the consumer's eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC ~~((388-290-0125))~~ 170-290-0125;

(3) Pay, or make a plan to have someone pay, ~~((your))~~ the consumer's WCCC copayment directly to ~~((your))~~ the child care provider;

(4) Leave ~~((your))~~ the consumer's children with ~~((your))~~ his or her provider while ~~((you are))~~ the consumer is in WCCC approved activities. If ~~((you are))~~ the consumer is not in an approved activity and ~~((you))~~ wants to use the provider, ~~((you))~~ he or she must make a plan to pay the provider ~~((yourself))~~ if the provider wants payment~~((:));~~

(5) Pay for additional child care hours that exceed the DSHS authorization based on the same fees that are charged to other families;

(6) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(7) ((If you use an in-home/relative provider, make sure)) Ensure that care is ((being)) provided in the ((right)) correct home per WAC ((388-290-0130).

~~((6) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. You become ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remain ineligible until you meet quality assurance require-~~

~~ments or thirty days from the determination of noncooperation.~~

~~((7) Cooperate with))~~ 170-290-130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

(8) Cooperate (provide the information requested) with the quality assurance review process to remain eligible for WCCC. A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation by quality assurance and remains ineligible until he or she meets quality assurance requirements or thirty days from the determination of noncooperation. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter, or when thirty days have passed since the consumer became ineligible;

(9) Provide the information requested by DSHS's WCCC staff or the fraud early detection (FRED) investigator. If ((you)) the consumer refuses to ((cooperate-)) provide the information requested~~((-with the investigator))~~ within a reasonable time, it could affect ((your)) his or her benefits; and

(10) Sign the consumer's children in and out of child care as provided in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0031 ~~((What))~~ **Notification of changes ((do I need to report when I apply for or receive WCCC?)).** When a consumer applies for or receives WCCC benefits, he or she must:

(1) Notify DSHS's WCCC staff, within five days, of any change in providers;

(2) Notify ~~((your))~~ the consumer's provider within ten days when ~~((we))~~ DSHS changes ~~((your))~~ his or her child care authorization;

(3) ~~((Provide))~~ Give notice to DSHS's WCCC staff within ten days of any change in:

(a) The number of child care hours ~~((you))~~ the consumer needs (more or less hours);

(b) ~~((Your))~~ The consumer's household income, including any TANF grant or child support increases or decreases;

(c) ~~((Your))~~ The consumer's household size such as any family member moving in or out of ~~((your))~~ his or her home;

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of ~~((your))~~ the consumer's in-home/relative provider;

(f) ~~((Your))~~ The consumer's home address and telephone number; and

(g) ~~((Your))~~ The consumer's legal obligation to pay child support~~((:));~~

(4) Report to ~~((your child care authorizing worker))~~ DSHS's WCCC staff, within twenty-four hours, any pending charges or conviction information ~~((you))~~ the consumer

learns about ~~((you))~~ his or her in-home/relative provider~~(-); and~~

(5) Report to ~~((the child care authorizing worker))~~ DSHS's WCCC staff, within twenty-four hours, any pending charges or conviction information ~~((you))~~ the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0032 ~~((What are the consequences if I do not report changes within the specified time frames?))~~ Failure to report changes. If ~~((you))~~ a consumer fails to report any changes as required in WAC ~~((388-290-0031))~~ 170-290-0031 within the stated time frames, ~~((we))~~ DSHS may establish an overpayment to the consumer per WAC ~~((388-290-0271))~~ 170-290-0271, or ~~((you might))~~ the consumer may have to pay ~~((more than your normal share of child care))~~ additional costs, such as:

(1) ~~((Paying))~~ A higher copayment as provided in WAC 170-290-0085; or

(2) ~~((Paying for extra hours of care when your activity requires more than ten hours a day of care;~~

~~((3))~~ Receiving an overpayment ~~((for the number of days your child was absent including the absences the licensed/certified or DSHS seasonal contracted day care))~~ beyond what the provider is allowed to bill (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, ~~((DSHS))~~ DEL 22-877, March 2007). ~~((An overpayment for absent days can occur when care is used when you are not eligible for WCCC and can be up to five days a month;))~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0035 ~~((What responsibilities does the WCCC program staff have?))~~ DSHS's responsibilities to consumers. ~~((The WCCC program staff are))~~ DSHS's WCCC staff is responsible to:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Determine ~~((you))~~ a consumer's eligibility within thirty days from the date ~~((you))~~ the consumer applied (application date as described in WAC ~~((388-290-0100))~~ 170-290-0100(2)(-);

~~((2))~~ (3) Allow ~~((you))~~ a consumer to choose ~~((you))~~ his or her provider as long as ~~((they))~~ the provider meets the requirements in WAC ~~((388-290-0125))~~ 170-290-0125;

~~((3))~~ (4) Review ~~((you))~~ a consumer's chosen in-home/relative provider's background ~~((information-))~~ check results;

~~((4))~~ (5) Authorize payments only to child care providers who allow ~~((you))~~ a consumer to ~~((see you))~~ access his or her children whenever they are in care;

~~((5))~~ (6) Only authorize payment when no adult in ~~((your WCCC))~~ a consumer's family (under WAC 170-290-0015) is "able" or "available" (under WAC 170-290-0020) to

care for ~~((you))~~ the consumer's children ~~((under WAC 388-290-0020-));~~

~~((6))~~ (7) Inform ~~((you))~~ a consumer of:

(a) ~~((You))~~ His or her rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers ~~((we))~~ DSHS can pay;

(c) The community resources that can help ~~((you))~~ a consumer select child care when needed; and

(d) Any change in ~~((you))~~ a consumer's copayment during the authorization period except under WAC ~~((388-290-0120))~~ 170-290-0120(5).

~~((7))~~ (8) Respond to ~~((you))~~ a consumer within ten days if ~~((you))~~ the consumer reports a change of circumstance that affects ~~((you))~~ the consumer's:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

~~((8))~~ (9) Provide prompt child care payments to ~~((you))~~ a consumer's child care provider; and

(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer.

Approved Activities

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0040 ~~((If I receive a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits?))~~ Approved activities for TANF consumers. If ~~((you))~~ a consumer receives a temporary assistance for needy families (TANF) grant, ~~((you))~~ he or she may be eligible for WCCC benefits, for activities in ~~((you))~~ his or her individual responsibility plan (IRP), for up to a maximum of sixteen hours ~~((maximum))~~ per day for ~~((you))~~ his or her hours of participation in the following:

(1) An approved WorkFirst activity under WAC 388-310-0200;

(2) Employment or self-employment. ~~((We consider))~~ "Employment" or "work" ((to)) means:

(a) Engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States; or

(b) Working in a federal or state paid work study program. ~~((You))~~ The consumer may receive WCCC for paid work study and transportation hours (not for the time ~~((you are))~~ the consumer is in an unapproved activity).

(3) Transportation time between the location of child care and ~~((you))~~ the consumer's place of employment or approved activity;

(4) Up to ten hours per week of study time before or after regularly scheduled classes or up to three hours of study time per day when needed to cover time between approved classes; and

(5) Up to eight hours per day of sleep time when it is needed, such as if ~~((you))~~ the consumer works nights and sleeps days.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0045 ~~((If I don't get a temporary assistance for needy families (TANF) grant, what activities must I be involved in to be eligible for WCCC benefits?))~~

Approved activities for consumers not receiving TANF. ~~((+))~~ If ~~((you do))~~ a consumer does not receive TANF, ~~((you))~~ he or she may be eligible for WCCC benefits for:

(1) Up to a maximum of sixteen hours ~~((maximum))~~ per day, including travel, study, and sleep time, for the hours of ~~((you))~~ his or her participation in the following:

(a) Full- or part-time employment or self-employment under WAC ~~((388-290-0050))~~ 170-290-0050. ~~((We consider))~~ "Employment" or "work" ~~((to))~~ means:

(i) Legal, income generating activity taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States ~~((-))~~; or

(ii) Federal or state paid work study.

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed ~~((-))~~;

(c) High school (HS) or general equivalency diploma (GED) program until ~~((you reach you))~~ the consumer reaches his or her twenty-second birthday ~~((you can))~~ the consumer may be enrolled in a HS or GED program without a minimum number of employment hours ~~((-))~~;

(d) Approved WorkFirst activities according to WAC 388-310-0200 or 388-310-0700 if ~~((you are))~~ the consumer is a TANF applicant ~~((-))~~; or

(e) Food stamp employment and training program under chapter 388-444 WAC.

(2) If ~~((you are))~~ a consumer is participating in an activity listed in subsections (3) through (8) of this section, ~~((you))~~ he or she may be eligible for WCCC benefits as described in subsection (1) of this section if ~~((you are))~~ the consumer is actually working either:

(a) Twenty or more hours per week; or

(b) Sixteen or more hours per week in a paid federal or state work study program.

(3) Adult basic education (ABE).

(4) English as a second language (ESL).

(5) High school or GED completion if ~~((you are))~~ the consumer is twenty-two years of age or older.

(6) Vocational education (Voc Ed). The Voc Ed program must:

(a) ~~((Must))~~ Lead to a degree or certificate in a specific occupation ~~((-))~~;

(b) Cannot include prerequisite classes or programs ~~((-))~~; and

(c) Be offered by the following accredited entities only:

(i) Public and private technical college or school ~~((-))~~;

(ii) Community college ~~((-))~~; or

(iii) Tribal college.

(7) Job skills training: For no more than fourteen consecutive days. Job skills training is not tied to a specific occu-

pation but is training in specific skills directly related to employment, such as CPR/First Aid, keyboarding, computer programs, project management, and oral and written communication skills. Training offered or required by a current employer, at or off ~~((you))~~ the consumer's job site, may extend past the fourteen consecutive day limit.

(8) Post-employment services under WAC 388-310-1800.

(9) Child care for participation in Voc Ed is limited to thirty-six months regardless of the length of the educational program. The thirty-six months includes the months in which the following occurred at the same time:

(a) WCCC benefits were paid to support ~~((you))~~ the consumer's participation in a Voc Ed program ~~((-))~~; or

(b) ~~((You))~~ The consumer or someone in ~~((you))~~ his or her household received TANF benefits.

(10) WCCC may be approved for activities listed in WAC ~~((388-290-0040 (3) through (5)))~~ 170-290-0040 (2)(b) through (d), when needed.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0050 ~~((If I am self employed, can I get WCCC benefits?))~~ Additional requirements for self-employed WCCC consumers. ~~((You may be eligible for WCCC benefits for up to sixteen hours maximum per day when you are self-employed.~~

(1) ~~We consider "employment" or "work" to mean engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States;~~

(2) ~~You are eligible for the calculation discussed in subsection (4)(a) of this section one time only, for one self-employment venture. If you change self-employment, any months left up to the first six months are covered by child care according to subsection (4)(a)(i) of this section.~~

(3) ~~If you get TANF and are self-employed:~~

(a) ~~You must have an approved self-employment plan under WAC 388-310-1700;~~

(b) ~~The amount of WCCC you get for self-employment is equal to the number of hours in your approved plan; and~~

(c) ~~Income from self-employment while you are receiving TANF is determined by WAC 388-450-0085.~~

(4) ~~If you don't get TANF at the time of application for WCCC and it is a:~~

(a) ~~New self-employment business (established less than six months):~~

(i) ~~The hours of care you are eligible to receive for the first six months is based on your report of how many hours are needed, up to sixteen hours per day; and~~

(ii) ~~Your self-employment income is based on WAC 388-290-0060.~~

(b) ~~For a self-employment business (established for six months or more) the number of hours of care you are eligible to receive is based on whichever is more:~~

(i) ~~Your work hours reported in your business records; or~~

(ii) The average number of monthly hours equal to dividing your monthly self-employment income by the federal or state minimum wage (whichever minimum wage is lower).

(e) After the first six months, the number of hours of WCCC you can get each month is based on the lesser of subsections (4)(b)(i) or (ii) of this section.) **(1) Consumers receiving TANF.** If a consumer receives TANF and is also self-employed:

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC a consumer receives for self-employment is equal to the number of hours in his or her approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(2) Consumers not receiving TANF. If a consumer does not receive TANF at the time of application for WCCC and is establishing a new self-employment business (established less than six months):

(a) The hours of care the consumer is eligible to receive for the first six months is based on his or her report of how many hours are needed, up to sixteen hours per day; and

(b) The consumer's self-employment income is based on WAC 170-290-0060.

(c) A consumer is eligible for the calculation discussed in subsection (2)(a) of this section one time only. If the consumer changes self-employment during the initial six-month period, any months left are covered by child care according to subsection (2)(a) of this section.

(d) After the first six months of self-employment, the number of hours of WCCC a consumer can receive each month is based on the lesser of subsection (2)(e)(i) or (ii) of this section.

(e) For an established self-employment business (established for six months or more) the number of hours of child care the consumer is eligible to receive is based on whichever is greater:

(i) The consumer's work hours reported in his or her business records; or

(ii) The average number of monthly hours equal to dividing the consumer's monthly self-employment income by the federal or state minimum wage (whichever minimum wage is lower).

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0055 ~~((If I am not working or in an approved activity right now, can I get WCCC benefits?))~~ **Receipt of benefits when not engaged in approved activities.** When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.

(1) ~~((We can authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when you're waiting to enter an approved activity under WAC 388-290-0040 or 388-290-0045.~~

(2) ~~We can authorize WCCC payments for a child's attendance in child care for up to twenty-eight consecutive~~

~~days if you or the other parent in the household experience a gap in your approved activity.~~

~~(3) Your household may be eligible for payment described in subsection (2) of this section:~~

~~(a) Twice in a calendar year;~~

~~(b) For the same number of units open while you were in the approved activity, not to exceed two hundred thirty hours a month;~~

~~(c) If you report the loss of activity or employment timely following WAC 388-290-0031; and~~

~~(d) If you receive WCCC immediately before the loss of employment or approved activity; and:~~

~~(i) Your employment, or the approved activity, will resume within that period; or~~

~~(ii) You are looking for another job.)~~ **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) Twenty-eight-day gap period. DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in his or her employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:

(a) Twice in a calendar year; and

(b) For the same number of units open while the consumer is in the approved activity, not to exceed two hundred thirty hours a month.

(3) In order for a consumer to qualify for the twenty-eight-day gap period:

(a) The consumer must be currently receiving WCCC benefits;

(b) The consumer must report to DSHS within ten days the loss of his or her employment or approved activity; and

(c) The consumer must:

(i) Be looking for another job; or

(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.

Income and Copayment Calculations

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0060 ~~((What))~~ **Countable income** ~~((does the WCCC program count when determining eligibility and copayments?))~~ ((The WCCC program)) DSHS counts income as money ((you get)) a consumer earns or receives from:

(1) A TANF grant, except when ((exempt under WAC 388-290-0070-1(h))) the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) Child support payments;

(3) Supplemental Security Income (SSI);

(4) Other Social Security payments, such as SSA and SSDI;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation;

(8) Other types of income not listed in WAC ((388-290-0070)) 170-290-0070;

(9) VISTA volunteers, ((AmeriCorps)) AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;

(10) Gross wages from employment or self-employment. Gross wages includes any wages that are taxable. "Self-employment income" means ((your)) a consumer's gross income from self-employment minus allowable business expenses in WAC 388-450-0085;

(11) Lump sums as money ((you get)) a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(12) Income for the sale of property as follows:

(a) If ((you)) a consumer sold the property before application, ((we)) DSHS considers the proceeds an asset and ((do)) does not count as income;

(b) If ((you)) a consumer sold the property in the month ((you apply)) he or she applies or during ((your)) his or her eligibility period, ((we)) DSHS counts it as a lump sum payment as described in WAC ((388-290-0065(3)-)) 170-290-0065 (2)(a);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0065 ((How does the WCCC program define and use my)) Calculation of income(?). ((We)) DSHS uses ((your)) a consumer's countable income when determining ((your)) his or her income eligibility and copayment. ((You)) A consumer's countable income is the sum of all income listed in WAC ((388-290-0060)) 170-290-0060 minus any child support paid out (through a court order, division of child support administrative order, or tribal government order).

(1) To determine ((your)) a consumer's income ((we)), DSHS:

(a) Determines the number of months, weeks or pay periods it took ((your family)) the consumer's WCCC household to earn the income and divide the income by the same number of months, weeks or pay periods to ((get)) determine an average monthly amount; or

(b) Uses the best available estimate of ((your family's)) the consumer's WCCC household's current income when ((you)) he or she begins new employment, or if ((you don't)) the consumer does not have an income history to make an accurate estimate of ((your)) his or her future income, ((we)) DSHS may ask ((your)) the consumer's employer to verify ((your)) his or her income.

(2) If ((you)) a consumer receives a lump sum payment (such as money from the sale of property or back child support payment) in the month of application or during ((your)) his or her WCCC eligibility ((we)):

(a) DSHS divides the lump sum payment by twelve to come up with a monthly amount; ((and))

(b) DSHS adds the monthly amount to ((your)) the consumer's expected average monthly income for the month it was received and the remaining months of the current authorization period; and

(c) ((You)) The consumer must meet income guidelines for WCCC after the lump sum payment is applied to remain eligible for WCCC.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0070 ((What income types and deductions does the WCCC program disregard when figuring my income eligibility and for WCCC benefits?)) Excluded income and deductions. (1) The WCCC program does not count the following income types when ((figuring your)) determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(c) Adoption support assistance and foster care payments;

(d) Reimbursements, such as an income tax refund;

(e) Diversion cash assistance;

(f) Income in-kind that is untaxed, such as working for rent;

(g) Military housing and food allowance;

(h) The TANF grant for the first three consecutive calendar months after ((you)) the consumer starts a new job. The first calendar month is the month in which ((you)) he or she starts working;

(i) Payments to ((you)) the consumer from ((your)) his or her employer for benefits such as medical plans;

(j) Earned income of a WCCC family member defined under WAC ((388-290-0015)) 170-290-0015(2);

(k) Income of consumers described in WAC ((388-290-0005)) 170-290-005 (1)(c) through (i);

(l) Earned income from a minor child who ((we)) DSHS counts as part of ((your)) the consumer's WCCC household; and

(m) Benefits received by children of Vietnam War veterans who are diagnosed with all forms or manifestations of spina bifida (except spina bifida occulta).

(2) WCCC deducts the amount ((you)) a consumer pays for child support under court order, division of child support administrative order, or tribal government order, from ((your)) the consumer's other countable income when figuring ((your)) his or her eligibility and ((eopay)) copayment for the WCCC program.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0075 ((What steps does the WCCC program take to determine my family's WCCC)) Determining income eligibility and copayment amounts(?). (1) ((The WCCC program)) DSHS takes the following steps

to determine ~~((your WCCC income))~~ a consumer's eligibility and copayment:

(a) Determine ~~((your))~~ the consumer's family size (under WAC ~~((388-290-0015))~~ 170-290-0015); and

(b) Determine ~~((your))~~ the consumer's countable income (under WAC ~~((388-290-0065))~~ 170-290-0065).

(2) If ~~((your))~~ the consumer's family's countable monthly income falls within the range below, then ~~((your))~~ his or her copayment is:

((YOUR)) IF A CONSUMER'S INCOME IS:	((YOUR)) THEN THE CONSUMER'S COPAYMENT ((IS)) IS:
At or below 82% of the ((FPL)) FPG	\$15
Above 82% of the ((FPL)) FPG up to 137.5% of the ((FPL)) FPG	\$50
Above 137.5% of the ((FPL)) FPG through 200% of the ((FPL)) FPG	The dollar amount equal to subtracting 137.5% of ((FPL)) FPG from countable income, multiplying by 44%, then adding \$50
((Income)) Above 200% of the ((FPL)) FPG, ((you are)) a consumer is not eligible for WCCC benefits.	

(3) ~~((We do))~~ DSHS does not prorate the copayment when ~~((you))~~ a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0082 ((When I am approved, how long is my)) Eligibility period(?). ((We can)) DSHS may approve ((you)) a consumer for a period up to six months. ((Your)) A consumer's eligibility ((can)) may end ((prior to your)) before his or her end date as stated in WAC ((388-290-0110)) 170-290-0110.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0085 ((When might my WCCC copayment)) Change(?) in copayment. (1) Once ((we)) DSHS determines that ((you are)) a consumer is eligible for WCCC benefits, ((your)) his or her copayment ((could)) may change when:~~

- ~~(a) ((Your)) The consumer's monthly income decreases;~~
- ~~(b) ((Your)) The consumer's family size increases;~~
- ~~(c) ((We)) DSHS makes an error in ((your)) the consumer's copayment computation;~~
- ~~(d) ((You)) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;~~

~~(e) ((You are)) The consumer is no longer eligible for the minimum copayment under WAC ((388-290-0090)) 170-290-0090;~~

~~(f) ((We)) DEL makes a mass change in benefits due to a change in law or program funding; or~~

~~(g) ((You are)) The consumer is approved for a new eligibility period.~~

~~(2) If ((your)) a consumer's copayment changes during ((your)) his or her eligibility period, the change is effective on the first day of the month following ((our)) DSHS becoming aware of the change.~~

~~(3) ((We do)) DSHS does not increase ((your)) a consumer's copayment during ((your)) his or her current eligibility period when ((your)) his or her countable income remains at or below two hundred percent of the ((FPL)) FPG, and:~~

- ~~(a) ((Your)) The consumer's monthly countable income increases; or~~
- ~~(b) ((Your)) The consumer's family size decreases.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0090 ((When do I pay the)) Minimum copayment(?). ((You pay the minimum copayment:~~

- ~~(1) If your countable monthly income is at or below eighty-two percent of the FPL;~~
- ~~(2) If you are a minor parent, and are:

 - ~~(a) Receiving TANF; or~~
 - ~~(b) Part of your parent's or relative's TANF assistance unit.~~~~

~~(3) For the first full month following the month you get a job or apply for WCCC and we pay benefits;~~

~~(4) If there is a break of at least thirty days in your WCCC benefits due to your activity ending; or~~

~~(5) If you received child care benefits within the last thirty days immediately prior to the eligibility period and you do not meet the qualifications in subsections (1) through (4) of this section, your copayment will be computed according to WAC 388-290-0075.) (1) The minimum copayment is paid when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.~~

~~(2) First application. The consumer pays the minimum copayment when he or she first applies for WCCC, and benefits are paid. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC child care services, and the first full calendar month thereafter.~~

~~(3) Reapplication. The consumer pays the minimum copayment when the consumer reapplies for WCCC after a break of at least thirty days in his or her approved activity. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC child care services, and the first full calendar month thereafter.~~

~~(4) The consumer pays the minimum copayment when he or she is a minor parent, and:~~

- ~~(a) Receives TANF; or~~
- ~~(b) Is part of the parent's or relative's TANF assistance unit.~~

Start Dates and Eligibility Period

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0095 ((If I receive temporary assistance for needy families (TANF) and I am determined eligible for WCCC, when do my benefits begin?)) When~~

WCCC benefits start for TANF consumers. When ~~((you))~~ a consumer receives TANF~~(-)~~ and ~~((are))~~ is eligible for WCCC, ~~((your))~~ his or her benefits begin when ~~((your))~~:

(1) ~~The consumer's~~ eligible provider (under WAC ~~((388-290-0125))~~ 170-290-0125) is caring for ~~((your))~~ his or her children; and

~~((you are))~~ (2) The consumer is participating in an approved activity under WAC ~~((388-290-0040 or 388-290-0055))~~ 170-290-0040 or 170-290-0055.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0100 ~~((If I do not receive temporary assistance for needy families (TANF) and I am determined eligible for WCCC, when do my benefits begin?))~~ **When WCCC benefits start for consumers not receiving TANF.** (1) If ~~((you do))~~ a consumer does not receive TANF and ~~((are))~~ is eligible for WCCC ~~((your))~~, his or her benefits begin as described in WAC ~~((388-290-0055))~~ 170-290-0055 (1) or the date ~~((you apply))~~ the consumer applies for WCCC and the following requirements are met:

(a) ~~((You have))~~ The consumer has turned in all ~~((your))~~ information within thirty days of ~~((your))~~ his or her application date;

(b) ~~((You))~~ The consumer meets all eligibility requirements; and

(c) ~~((You))~~ The consumer's eligible provider (under WAC ~~((388-290-0125))~~ 170-290-0125) is caring for ~~((your))~~ his or her children.

(2) ~~((You))~~ The consumer's application date is whichever is earlier:

(a) The date ~~((your))~~ the consumer's application is entered into ~~((our))~~ DSHS's automated system; or

(b) The date ~~((your))~~ the consumer's application is date stamped as received.

(3) If ~~((you))~~ a consumer fails to turn in all ~~((your))~~ information within thirty days from ~~((your))~~ his or her application date ~~((you))~~, the consumer must restart ~~((your))~~ the application process. ~~((You))~~ The consumer's begin date for benefits is described in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0107 ~~((When do I receive a denial letter?))~~ **Denial of benefits—Date of redetermining eligibility.** ~~((We))~~ DSHS sends ~~((you))~~ a consumer a denial letter when ~~((you have))~~ the consumer has applied for child care and ~~((you))~~ the consumer:

(1) Withdraws ~~((your))~~ his or her request;

(2) ~~((Are))~~ Is not eligible due to ~~((your))~~ the consumer's:

(a) Family composition;

(b) Income; or

(c) Activity.

(3) Did not provide information ~~((necessary))~~ required to determine ~~((your))~~ the consumer's eligibility according to WAC ~~((388-290-0012))~~ 170-290-0012;

(4) If a consumer turns in information or otherwise meets eligibility requirements after DSHS sends the consumer a

denial letter. DSHS determines the consumer's benefit begin date by:

(a) WAC 170-290-0095 if the consumer is a TANF consumer; or

(b) WAC 170-290-0100 if the consumer is not receiving TANF.

NEW SECTION

WAC 170-290-0109 **New eligibility period.** (1) If a consumer wants to receive child care benefits for another eligibility period, he or she must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests application information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's application information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) If DSHS determines that a consumer is eligible for WCCC benefits based on his or her application information, DSHS notifies the consumer of the new eligibility period and copayment.

(4) When a TANF consumer submits an application after the last day of his or her current eligibility period, the consumer's benefits begin when:

(a) The consumer is participating in an approved TANF/WorkFirst activity; and

(b) The consumer's child is being cared for by his or her eligible WCCC provider.

(5) When a consumer who is not receiving TANF submits an application after the last day of his or her current eligibility period, his or her benefits begin:

(a) On the date that the consumer's application is date-stamped as received in DSHS's community service office (CSO) or entered into the CSO automated system, whichever date is earlier;

(b) When the consumer is participating in an approved activity; and

(c) The consumer's child is being cared for by his or her eligible WCCC provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0110 ~~((What circumstances might affect my eligibility for WCCC benefits and when might I be eligible again?))~~ **Termination of and redetermining eligibility for benefits.** (1) ~~((We))~~ DSHS stops ~~((your))~~ a consumer's eligibility for WCCC benefits when ~~((you do not))~~:

(a) The consumer's monthly copayment is higher than the state maximum monthly rate for all of the consumer's children in care under WAC 170-290-0005; or

(b) The consumer does not:

(i) Pay copayment fees assessed by ~~((us))~~ DSHS and ~~((you do))~~ the consumer does not make mutually acceptable arrangements with ~~((your))~~ his or her child care provider to pay the copayment;

~~((b))~~ (ii) Complete the requested ~~((reapplication))~~ application before the deadline noted in WAC ~~((388-290-0105))~~ 170-290-0109 (2)(a);

~~((e))~~ (iii) Meet other WCCC eligibility requirements related to family size, income and approved activities; or

~~((d))~~ (iv) Cooperate with the quality assurance review process or with the DSHS division of fraud investigations.

(2) ~~((You might))~~ A consumer may be eligible for WCCC again when ~~((you))~~ the consumer meets all WCCC eligibility requirements, and:

(a) The consumer paid back copayment fees ~~((are paid))~~;

(b) ~~((You make))~~ The consumer made mutually acceptable payment arrangements with ~~((your))~~ his or her child care provider; or

(c) ~~((You cooperate))~~ The consumer cooperated with the quality assurance review process or with the DSHS division of fraud investigations.

Notice

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0115 ((When does the WCCC program provide me with advance and adequate))~~ Notice of payment changes ~~((?))~~, ~~((1))~~ The WCCC program DSHS provides ~~((you))~~ WCCC consumers with ~~((advance and adequate))~~ at least ten days written notice for changes ~~((in))~~ to payments ~~((when the change results in a))~~ related to suspension, reduction, or termination of benefits, or forces a change in child care arrangements, except as noted in WAC ~~((388-290-0120))~~ 170-290-0120.

~~((2))~~ "Advance and adequate notice," means a written notice of a WCCC reduction, suspension, or termination that is mailed at least ten days before the date of the intended action which includes the Washington Administrative Code (WAC) supporting the action, and your right to request a fair hearing.)

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0120~~ When ~~((doesn't advance and adequate))~~ notice of payment changes ~~((apply to me?))~~ is not required, ~~((We do))~~ DSHS does not give ~~((you advance and adequate))~~ a consumer notice in the following circumstances:

(1) ~~((You))~~ The consumer tells ~~((us you))~~ DSHS that he or she no longer wants WCCC;

(2) ~~((Your))~~ The consumer's whereabouts are unknown to ~~((us))~~ DSHS;

(3) ~~((You are))~~ The consumer is receiving duplicate child care benefits;

(4) ~~((Your))~~ The consumer's current eligibility period is scheduled to end;

(5) ~~((Your))~~ The consumer's new eligibility period results in a change in child care benefits;

(6) The location where child care occurs does not meet requirements under WAC ~~((388-290-0130(2)))~~ 170-290-0130; or

(7) ~~((We))~~ DSHS determines ~~((your))~~ that a consumer's in-home/relative provider:

(a) Is not of suitable character and competence;

(b) May cause a risk of harm to ~~((your))~~ the consumer's children based on the provider's physical or mental health; or

(c) Has been convicted of, or has charges pending for crimes ~~((posted))~~ on the ~~((DSHS secretary's list of permanently disqualifying convictions for ESA. You can find the complete list at http://www1.dshs.wa.gov/esa/decel/))~~ DEL director's list in WAC 170-06-0120.

Eligible Child Care Providers

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0125 ((What child care providers can I choose under the WCCC program?))~~ Eligible child care providers. (1) To receive payment under the WCCC program, ~~((your))~~ a consumer's licensed or certified child care provider must be:

~~((1))~~ (a) Currently licensed as required by chapter ~~((74.15))~~ 43.215 RCW and chapters ~~((388-155, 388-295, or 388-151))~~ 170-295, 170-296, or 170-151 WAC;

~~((2))~~ (b) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. ~~((We))~~ DSHS pays the lesser of the following to qualified child care facilities in bordering states:

~~((a))~~ (i) The provider's ~~((usual daily))~~ private pay rate for that child; or

~~((b))~~ (ii) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.

~~((3))~~ (c) Exempt from licensing but certified by ~~((us))~~ DEL, such as:

~~((a))~~ (i) Tribal child care facilities that meet the requirements of tribal law;

~~((b))~~ (ii) Child care facilities on a military installation; and

~~((e))~~ (iii) Child care facilities operated on public school property by a school district.

~~((4))~~ (d) Seasonal day camps that have a contract with ~~((us))~~ DEL to provide subsidized child care and are:

~~((a))~~ (i) Of a duration of three months or less;

~~((b))~~ (ii) Engaged primarily in recreational or educational activities; and

~~((e))~~ (iii) Accredited by the American Camping Association (ACA).

~~((5))~~ An in-home/relative meeting (2) Providers other than those specified in this section shall meet the requirements in WAC ~~((388-290-0130))~~ 170-290-0130.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0130 ((What in-home/relative providers can I choose under the WCCC program?))~~ In-home/relative providers—Eligibility. (1) To be eligible as an in-home/relative provider ~~((the person must:~~

~~(a) Be an adult who is a U.S. citizen or legally residing in the United States;~~

~~(b) Meet the requirements in WAC 388-290-0135; and~~

~~(c) Be one of the following adults providing care in the home of either the child or the adult:~~

~~(i) A sibling living outside the child's home;~~

~~(ii) An extended tribal family member according to chapter 74.15 RCW; or~~

~~(iii) A grandparent, aunt, uncle, or great-grandparent, great-aunt or great-uncle.~~

~~(2) An adult not listed in (1)(c)(i), (ii), or (iii) of this section must:~~

~~(a) Meet the requirements in subsection (1)(a) and (b) of this section; and~~

~~(b) Provide care in the child's home.~~

~~(3) If you use an in-home/relative provider you can:~~

~~(a) Have no more than two in-home/relative providers authorized for payment during your eligibility period at the same time (not including back-up providers);~~

~~(b) Have one back-up provider (licensed or an in-home/relative provider.) to care for children under WCCC, the applicant must be:~~

~~(a) Eighteen years of age or older;~~

~~(b) A citizen or legal resident of the U.S.; and~~

~~(c) Meet all of the requirements listed in WAC 170-290-0135.~~

~~(2) Additionally, eligible in-home/relative providers must:~~

~~(a) Meet all applicable background check requirements in part II of this chapter;~~

~~(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside; and~~

~~(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the parent for his or her DSHS approved activities or work hours.~~

~~(3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:~~

~~(a) Adult siblings that live outside the child's home;~~

~~(b) Extended tribal family members;~~

~~(c) Grandparent or great-grandparent; or~~

~~(d) Aunt or uncle, or great-aunt or great-uncle.~~

~~(4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.~~

~~(5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:~~

~~(a) The child's biological, adoptive, or step-parent;~~

~~(b) The child's legal guardian or the guardian's spouse or live-in partner; or~~

~~(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.~~

~~(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period, plus one back-up provider, either licensed~~

~~or in-home/relative also authorized to care for the consumer's children.~~

~~(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. Additionally, WCCC consumers are required by federal law to ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, except in cases based on religious preference or medical conditions.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0135 ((When I choose an in-home/relative provider, what information must I give the department?)) In-home/relative providers—Information provided to DSHS. ((When you choose in-home/relative child care, you must complete certain forms and give us the following:

~~(1) The in-home/relative child care provider's legal name, address and telephone number;~~

~~(2) A copy of the provider's valid Social Security card;~~

~~(3) A copy of the provider's photo identification;~~

~~(4) A completed background check authorization; and~~

~~(5) A form supplied by us, completed and signed by you and the provider in which both of you attest to the following:~~

~~(a) The provider is:~~

~~(i) Of suitable character and competence;~~

~~(ii) Of sufficient physical and mental health to meet the needs of the children in care. If we request it, you must provide written evidence that the in-home child care provider of your choice is of sufficient physical and mental health to be a safe child care provider;~~

~~(iii) Able to work with the children without using corporal punishment or psychological abuse;~~

~~(iv) Able to accept and follow instructions;~~

~~(v) Able to maintain personal cleanliness;~~

~~(vi) Prompt and regular in-job attendance;~~

~~(vii) Informed about basic health practices, prevention and control of infectious disease, immunizations; and~~

~~(viii) Able to provide constant care, supervision and activities based on the child's developmental needs.~~

~~(b) The children are current on the immunization schedule as described in the National Immunization Guidelines, developed by the American Academy of Pediatrics and the Advisory Committee on Immunization Practices;~~

~~(c) The home where care is provided is safe for the care of the children.)) (1) When a consumer chooses in-home/relative child care, the consumer and the provider must give DSHS the following information:~~

~~(a) The in-home/relative provider's legal name, address, and telephone number;~~

~~(b) A copy of the provider's valid Social Security card;~~

~~(c) A copy of the provider's photo identification;~~

~~(d) A completed, signed and dated background check form; and~~

~~(e) A completed WCCC application form, signed and dated by the consumer and the provider, in which they both attest that the provider is:~~

- (i) Of suitable character and competence;
 - (ii) Of sufficient physical and mental health to be a safe child care provider and meet the needs of the children in care;
 - (iii) Able to work with the children without using corporal punishment or psychological abuse;
 - (iv) Able to accept and follow instructions;
 - (v) Able to maintain personal cleanliness;
 - (vi) Prompt and regular in job attendance; and
 - (vii) Informed about basic health practices, prevention and control of infectious disease, and immunizations.
- (2) If DSHS requests it, the consumer and/or the provider must provide written medical or legal evidence that the in-home/relative provider is of sufficient physical and mental health to provide safe, reliable and developmentally appropriate child care services.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0138 ((~~What responsibilities does my eligible in-home/relative provider have?~~) **In-home/relative providers—Responsibilities.** ((Your in-home/relative provider must:

- (1) Report within ten days changes in their legal name, address or telephone number;
- (2) Report within twenty-four hours pending charges or convictions they have;
- (3) Report within twenty-four hours pending charges or convictions for anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home;
- (4) Bill WCCC only for care he/she provided;
- (5) Not bill WCCC for more than six children at one time for the same hours of care; and
- (6) Keep correct attendance records. Records must:
 - (a) Show both days and times the care was provided;
 - (b) Be kept for five years; and
 - (c) Be given to us, within fourteen consecutive calendar days, if we ask for them.)) A consumer's in-home/relative provider must:
 - (1) Provide care, supervision, and daily activities based on the child's developmental needs. As used in this section, "care" means that the provider must be within sight or hearing of the children in his or her care, both inside and outside;
 - (2) Report to DSHS within ten days any changes to their legal name, address or telephone number;
 - (3) Report to DSHS within twenty-four hours any pending charges or convictions they have;
 - (4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider when care occurs in the provider's home;
 - (5) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for his or her DSHS approved activities;
 - (6) Bill for no more than six children at one time during the same hours of care;
 - (7) Keep daily attendance records that:
 - (a) Show days and times the care was provided;

(b) Show the consumer's full signature, or the full signature of the consumer's designee as provided in subsection (8) of this section, signing the child in and out of the provider's care;

- (c) Be kept for five years; and
- (d) Be given to DSHS or DEL, within fourteen consecutive calendar days, if DSHS or DEL asks for them.
- (8) If the consumer wishes to designate an alternate person to drop off and/or pick up the consumer's child:
 - (a) The consumer's designee must be over the age of eighteen; and
 - (b) There must be a signed and dated agreement between the provider and the consumer allowing the consumer's designee to leave with the consumer's child.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0140 ((~~When is my in-home/relative provider not eligible for WCCC payment?~~) **In-home/relative providers—Ineligibility.** ((We do not pay for the cost of in-home/relative care if:

- (1) Your provider does not meet the requirements in WAC 388-290-0130, 388-290-0135, and 388-290-0138;
- (2) Your in-home/relative provider has been convicted of, or has charges pending for crimes posted on the DSHS secretary's crime and action list for background checks for ESA. You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/policy.shtml>;
- (3) We do not have background check results according to WAC 388-290-0143;
- (4) The provider is:
 - (a) The child's biological, adoptive or step-parent;
 - (b) The child's nonneedy or needy relative or relative's spouse or live-in partner;
 - (c) The child's legal guardian or the guardian's spouse or live-in partner; or
 - (d) Another adult acting in loco parentis or that adult's spouse or live-in partner.
- (5) We do not have the results of all applicable criminal background checks under WAC 388-290-0143(1) and 388-290-0150. An in-home/relative provider is not an eligible provider (per WAC 388-290-0095 and 388-290-0100) prior to receiving these background results. Providers other than in-home/relative providers you can use are described in WAC 388-290-0125; or
- (6) We determine your provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the household may be at risk of harm by this provider, as indicated by information other than conviction information. We will use criteria, such as the following, when reviewing information about incidents/issues/reports/findings:
 - (a) Recency;
 - (b) Seriousness;
 - (c) Type;
 - (d) Frequency; and
 - (e) Relationship to the direct care of a child including health, mental health, learning, and safety.)) DSHS does not

pay for the cost of child care provided by an in-home/relative provider if:

(1) The provider does not meet the requirements listed in WAC 170-290-0130, 170-290-0135, and 170-290-0138;

(2) The provider has been convicted of, or has charges pending for crimes on the DEL director's list in WAC 170-06-0120;

(3) DSHS has not received all background check results under WAC 170-290-0143(1) and 170-290-0150; or

(4) DSHS determines a consumer's provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the household may be at risk of harm by this provider, as indicated by information other than conviction information. DSHS will use criteria, such as the following, when reviewing information about incidents, issues, reports, and findings:

(a) Recency;

(b) Seriousness;

(c) Type;

(d) Frequency; and

(e) Relationship of the information obtained to the direct care of a child, including but not limited to, impacts to the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0143 ~~((Who must have a))~~ Background checks ~~((for the WCCC program and how often is the check done?))~~—Required persons. (1) Background checks for eligible licensed and certified providers are covered under chapter 170-06 WAC.

(2) A background check must be completed for:

(a) All in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a provider when the provider cares ~~((occurs outside of the child's))~~ for the child in the provider's own home.

~~((2))~~ (3) A background check must be completed for individuals listed in subsection ~~((1))~~ (2)(a) and (b) of this section at least every two years.

~~((3))~~ (4) Additional background checks must be completed for individuals listed in subsection ~~((1))~~ (2)(a) and (b) of this section when:

(a) Any individual sixteen years of age or older is newly residing with a provider when the provider cares ~~((occurs outside of the child's))~~ for the child in the provider's own home;

(b) ~~((We have))~~ DSHS has a valid reason to ~~((do a))~~ check more frequently;

(c) An in-home/relative provider applies to provide care for a family, such as when:

(i) A break in service occurs to the current consumer;

(ii) There is a break in consumer eligibility; or

(iii) A provider is currently providing care and there are no prior background results for this provider.

~~((4 We do))~~ (5) DSHS does not need to request a new background check for an individual in subsection ~~((1))~~ (2)(a) or (b) if:

(a) ~~((We have))~~ DSHS has results that were received no more than ninety days prior to the current requested start date of care; and

(b) The results indicate ~~((that))~~ there is no record.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0145 ~~((Why is a))~~ Background checks ~~((required and will I be notified of the results?))~~—Reasons and notification. (1) ~~((We))~~ DSHS requires ~~((the))~~ background checks to:

(a) Help safeguard the health, safety, and well-being of children;

(b) Reduce the possible risk of harm from persons who have been convicted or have charges pending of certain crimes having access to WCCC children; and

(c) Help ~~((you))~~ consumers make informed decisions about individuals who have access to ~~((your))~~ their children.

(2) ~~((We notify you,))~~ DSHS notifies the WCCC consumer~~((:~~

~~((:~~ (a) Whether we can approve the provider for the WCCC program; and

~~((:))~~ (b) Of the following results from the background check~~((:))~~, after receiving the results of the background checks, if the consumer's chosen provider is an eligible provider under the WCCC rules.

(3) DSHS also notifies the consumer of the following results from the completed background checks:

(a) No background information is found given current sources of information;

~~((ii))~~ (b) Background information is found, but the information will not disqualify the individual being checked; or

~~((iii))~~ (c) Background information is found that disqualifies the individual being checked.

(4) It is the WCCC consumer's responsibility to monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0150 ~~((What information does the background check contain and where does it come from?))~~ Background checks—Included information and sources. (1) ~~((The background information includes, at a minimum, criminal convictions and pending charges.~~

~~((2))~~ DSHS obtains background information, at a minimum, from the Washington state patrol under chapter 10.97 RCW and RCW 43.43.830 through 43.43.837 via the background check central unit (BCCU).

(2) The background information includes, at a minimum, criminal convictions and pending charges. Additional sources may include:

(a) Child/adult protective service case information;
~~((and))~~

(b) Civil judgments, determinations, or disciplinary board final decisions of abuse or neglect~~((:~~

(3) We obtain background information, at a minimum, from the Washington state patrol under chapter 10.97 RCW via the background check central unit (BCCU).

(4) Additional sources of the background information may be obtained from:

- (a) Child/adult protective service case files;
- (b) Other states and federally recognized Indian tribes;
- (c) The department of corrections and the courts;
- (d) Law enforcement records of convictions and pending charges in other states or locations if:
 - (i) The individual being checked has lived in another state; and
 - (ii) Reports from credible community sources indicate a need to investigate another state's records.
- (e) The individual being checked self-discloses information;
- (c) Other states and federally recognized Indian tribes;
- (d) The department of corrections and the courts;
- (e) The individual being checked, if he or she self-discloses information; and
- (f) Law enforcement records of convictions and pending charges in other states or locations if reports from credible community sources indicate a need to investigate another state's records.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0155 (~~What happens after the WCCC program receives the background information?~~) **Background checks—Subsequent steps.** After ((we)) DSHS receives the background information ((we)), DSHS:

(1) Compares the background information with convictions ((posted on the DSHS secretary's crime and action list for background checks for economic services administration (ESA). You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/policy.shtml>)) of, or charges pending for crimes on the DEL director's list in WAC 170-06-0120;

(2) Reviews the background information using the following rules:

(a) ((We)) DSHS gives the same weight to a pending charge for a crime as a conviction;

(b) If the conviction has been renamed, ((we)) DSHS gives the same weight as the previous named conviction. For example, larceny is now called theft;

(c) ((We)) DSHS gives convictions whose titles are preceded with the word "attempted" the same weight as those titles without the word "attempted"; and

(d) ((We do)) DSHS does not consider the crime a conviction for the purposes of WCCC when:

- (i) It has been pardoned; or
- (ii) A court of law acts to expunge, dismiss, or vacate the conviction record.

(3) ((Notify you whether or not we are able to approve the provider for WCCC.

(4) Allow you, the consumer, to decide character and suitability of the provider when an individual is not automatically disqualified due to the background information from the record of arrests and prosecutions (RAP) sheet.

(5) Deny or stop payment when the background information disqualifies the individual being checked.

(6) Assist you in finding other child care arrangements.)) Notifies the consumer whether or not the provider has been disqualified for WCCC:

(4) Allows the consumer to decide character and suitability of the provider when an individual is not automatically disqualified due to the background information from the record of arrests and prosecutions (RAP) sheet or other information available to DSHS;

(5) Denies or stops payment when the background information disqualifies the individual being checked; and

(6) Assists the consumer in finding other child care arrangements.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0160 (~~What convictions would cause the WCCC program to permanently disqualify my in-home/relative provider?~~) **Background checks—Disqualified in-home/relative providers.** (1) If ((you)) a consumer's provider or an individual listed in WAC ((388-290-0143)) 170-290-0143(1) has a background containing a permanently disqualifying conviction ((posted on the DSHS secretary's list of disqualifying convictions for ESA, we permanently disqualify the person as an in-home/relative child care provider for WCCC. You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/>)) for crimes on the DEL director's list in WAC 170-06-0120(1), DSHS permanently disqualifies the person as an in-home/relative provider for WCCC.

(2) If the conditions in WAC ((388-290-0167)) 170-290-0167 (1)(a) and (b) are met, the disqualifying background of an individual sixteen years of age or over living with the provider may not permanently disqualify the provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0165 (~~Is there other background information or convictions that will disqualify my in-home/relative provider?~~) **Background checks—Other disqualifying information for in-home/relative providers.**

(1) ((We)) DSHS can disqualify ((you)) a consumer's in-home/relative provider if the individual being checked has a background containing information other than conviction information that ((we)) DSHS determines:

(a) Makes the individual not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care; or

(b) Puts the household at risk for harm.

(2) If an individual being checked has a background containing a five-year disqualifying conviction ((posted)) for crimes on the ((DSHS secretary's list of disqualifying convictions for ESA)) DEL director's list in WAC 170-06-0120(2), ((you)) the consumer's provider is disqualified as an in-home/relative ((child care)) provider for WCCC for five years after the conviction date. ((You can find the complete list at <http://www1.dshs.wa.gov/esa/decel/>))

(3) If an individual being checked has:

(a) A conviction listed in subsection (2) of this section, and it has been more than five years; or

(b) Any conviction other than those ~~((posted)) crimes on the ((DSHS secretary's list of disqualifying convictions for ESA we will)) DEL director's list in WAC 170-06-0120. DSHS allows ((you)) the consumer to determine the provider's character, suitability, and competence by reviewing important information such as the:~~

- (i) Amount of time that has passed since the conviction;
- (ii) Seriousness of the crime that led to the conviction;
- (iii) Individual's age at the time of conviction;
- (iv) Individual's behavior since the conviction;
- (v) Number and types of convictions in the individual's background; and
- (vi) Individual's verification, if any, of successful completion of all court-ordered programs and restitution.

(4) If conditions in WAC ~~((388-290-0167)) 170-290-0167~~ (1)(a) and (b) are met, the disqualifying background of an individual sixteen years of age or over living with the provider may not disqualify the provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0167 ((What happens if my in-home/relative provider, who provides care in their home, is disqualified based solely on the disqualifying background of an individual living with that provider?)) Background checks—Disqualified person living with provider. ((1) If we disqualify your provider based solely on the disqualifying background of an individual living with that provider, we require that:~~

~~(a) Child care occurs in the child's home away from the disqualified individual, if you wish to continue using that provider; and~~

~~(b) The parent and provider sign an agreement with us indicating that:~~

- ~~(i) Care occurs in the child's home; and~~
- ~~(ii) There is no contact between the child and disqualified individual during child care hours.~~

~~(2) The parent may choose a licensed provider or submit an application for a different in-home/relative provider.~~

~~(3) If we become aware that the parent and provider are not meeting the conditions in subsection (1)(a) and (b) of this section:~~

~~(a) We terminate care without advance and adequate notice;~~

~~(b) You need to find a different provider; and~~

~~(c) You may be subject to an overpayment under WAC 388-290-0270.) (1) If a consumer's in-home/relative provider is disqualified based only on the disqualifying background of a person living with the provider, then:~~

~~(a) Child care is allowed only in the child's home away from the disqualified individual, regardless of whether or not the provider meets the other qualifications listed in WAC 170-290-0130; and~~

~~(b) The consumer and provider sign an agreement with DSHS stating that:~~

~~(i) Care will occur only in the child's home; and~~

~~(ii) There is no contact between the child and disqualified person during child care hours.~~

~~(2) The consumer may also choose to select a licensed child care center or family child care home provider, or submit an application for a different in-home/relative provider.~~

~~(3) If DSHS becomes aware that the consumer and provider are not meeting the conditions in subsection (1)(a) and (b) of this section:~~

- ~~(a) DSHS may terminate payments without notice; and~~
- ~~(b) The consumer may be subject to an overpayment under WAC 170-290-0271.~~

Subsidy Rates and Fees

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0180 ((When are the WCCC program subsidy rates in this chapter effective?)) WCCC subsidy rates—Effective date. ((DSHS)) State child care subsidy rates (daily, half-day and hourly) in part II of this chapter are effective on ((or after November)) July 1, ((2005)) 2009, and are subject to legislative change.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0185 ((How does the WCCC program set rates when my child is five years old?)) WCCC subsidy rates—Five-year-old children. The rate paid for a five-year-old child is:~~

~~(1) The preschool rate for a child who has not entered kindergarten; or~~

~~(2) The school-age rate for a child who has entered kindergarten.~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

~~WAC 170-290-0190 ((What does the WCCC program pay for and when can the program pay more?)) WCCC authorized and additional payments—Determining units of care. (1) ((We)) DSHS may pay for the following child care hours:~~

~~(a) ((Basic child care hours, either full day,)) Half-day ((or hourly. We)) care, which is less than one hundred ten hours per calendar month; and~~

~~(b) Full-day care, which is one hundred ten or more hours per calendar month.~~

~~(2) DSHS authorizes:~~

~~((+)) (a) Full-day child care to licensed or certified facilities and ((DSHS)) DEL contracted seasonal day camps when ((you)) a consumer's children need care for five or more hours per day;~~

~~((+)) (b) Half-day child care to licensed or certified facilities and ((DSHS)) DEL contracted seasonal day camps when ((you)) a consumer's children need care for less than five hours per day; ((and~~

~~((+)) (c) Hourly child care for in-home/relative child care((-));~~

~~((b))~~ (d) A registration fee (under WAC ~~((388-290-0245))~~ 170-290-0245);

~~((e))~~ (e) A field trip fee (under WAC ~~((388-290-0245))~~ 170-290-0247); ~~(and~~

~~(d))~~ (f) Special needs care when the child has a documented need for a higher level of care (under WAC ~~((388-290-0220, 388-290-0225, 388-290-0230, and 388-290-0235))~~ 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(g) A nonstandard hours bonus under WAC 170-290-0249.

~~((2-We))~~ (3) DSHS may authorize up to the provider's ~~((usual daily))~~ private pay rate if:

(a) The parent is a ~~((mandatory))~~ WorkFirst participant; and

(b) Appropriate child care, at the ~~((DSHS))~~ state rate, is not available within a reasonable distance from the home or work (activity) site.

"Appropriate" means licensed or certified child care ~~((approvable))~~ under WAC ~~((388-290-0125))~~ 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

~~((3-We))~~ (4) DSHS authorizes an additional amount of care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's policy is to charge all families for these extra hours.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0200 ~~((What))~~ Daily ~~((rates does DSHS pay for))~~ child care ~~((in a))~~ rates—Licensed or certified child care centers ~~((or DSHS))~~ and DEL contracted seasonal day camps ~~((?))~~. (1) ~~((We))~~ DSHS pays the lesser of the following to a licensed or certified child care center or ~~((DSHS))~~ DEL contracted seasonal day camp:

(a) The provider's ~~((usual daily))~~ private pay rate for that child; or

(b) The ~~((DSHS))~~ maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$((25.89)) <u>28.53</u>	\$((21.77)) <u>23.99</u>	\$((20.57)) <u>22.67</u>	\$((19.36)) <u>21.34</u>
	Half-Day	\$((12.95)) <u>14.28</u>	\$((10.89)) <u>12.00</u>	\$((10.29)) <u>11.34</u>	\$((9.68)) <u>10.67</u>
Spokane County	Full-Day	\$((26.48)) <u>29.18</u>	\$((22.27)) <u>24.54</u>	\$((21.04)) <u>23.19</u>	\$((19.80)) <u>21.83</u>
	Half-Day	\$((13.25)) <u>14.61</u>	\$((11.14)) <u>12.28</u>	\$((10.53)) <u>11.61</u>	\$((9.90)) <u>10.91</u>
Region 2	Full-Day	\$((26.14)) <u>28.81</u>	\$((21.83)) <u>24.05</u>	\$((20.23)) <u>22.30</u>	\$((17.91)) <u>19.73</u>
	Half-Day	\$((13.07)) <u>14.41</u>	\$((10.92)) <u>12.03</u>	\$((10.12)) <u>11.15</u>	\$((8.96)) <u>9.88</u>

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 3	Full-Day	\$((34.60)) <u>38.13</u>	\$((28.84)) <u>31.79</u>	\$((24.92)) <u>27.46</u>	\$((24.20)) <u>26.67</u>
	Half-Day	\$((17.30)) <u>19.07</u>	\$((14.42)) <u>15.89</u>	\$((12.46)) <u>13.73</u>	\$((12.10)) <u>13.34</u>
Region 4	Full-Day	\$((40.27)) <u>44.38</u>	\$((33.63)) <u>37.06</u>	\$((28.21)) <u>31.09</u>	\$((25.40)) <u>28.00</u>
	Half-Day	\$((20.14)) <u>22.63</u>	\$((16.82)) <u>18.54</u>	\$((14.11)) <u>15.55</u>	\$((12.70)) <u>14.00</u>
Region 5	Full-Day	\$((29.52)) <u>32.54</u>	\$((25.40)) <u>28.00</u>	\$((22.36)) <u>24.65</u>	\$((19.85)) <u>21.88</u>
	Half-Day	\$((14.76)) <u>16.26</u>	\$((12.70)) <u>14.00</u>	\$((11.18)) <u>12.32</u>	\$((9.93)) <u>10.95</u>
Region 6	Full-Day	\$((29.03)) <u>31.99</u>	\$((24.92)) <u>27.46</u>	\$((21.77)) <u>23.99</u>	\$((21.29)) <u>23.46</u>
	Half-Day	\$((14.52)) <u>16.01</u>	\$((12.46)) <u>13.73</u>	\$((10.89)) <u>12.00</u>	\$((10.65)) <u>11.74</u>

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC ~~((388-295-0010))~~ 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC ~~((388-290-0220))~~ 170-290-0220.

~~((4) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region 1 rates apply to Spokane County.)~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0205 ~~((What daily rates does DSHS pay for child care in a licensed or certified family home child care?))~~ Daily child care rates—Licensed or certified family home child care providers. (1) ~~((We))~~ DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's ~~((usual daily))~~ private pay rate for that child; or

(b) The ~~((DSHS))~~ maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers ((12) 18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$(21.29) <u>24.29</u>	<u>\$24.29</u>	\$(19.16) <u>21.12</u>	\$(19.16) <u>21.12</u>	\$(17.04) <u>18.78</u>
	Half-Day	\$(10.65) <u>12.14</u>	<u>\$12.14</u>	\$(9.58) <u>10.56</u>	\$(9.58) <u>10.56</u>	\$(8.52) <u>9.39</u>
Spokane County	Full-Day	\$(21.78) <u>24.84</u>	<u>\$24.84</u>	\$(19.60) <u>21.60</u>	\$(19.60) <u>21.60</u>	\$(17.43) <u>19.21</u>
	Half-Day	\$(10.89) <u>12.42</u>	<u>\$12.42</u>	\$(9.80) <u>10.80</u>	\$(9.80) <u>10.80</u>	\$(8.71) <u>9.60</u>
Region 2	Full-Day	\$(21.29) <u>25.65</u>	<u>\$25.65</u>	\$(20.23) <u>22.30</u>	\$(18.10) <u>19.95</u>	\$(18.10) <u>19.95</u>
	Half-Day	\$(10.65) <u>12.82</u>	<u>\$12.82</u>	\$(10.12) <u>11.15</u>	\$(9.05) <u>9.97</u>	\$(9.05) <u>9.97</u>
Region 3	Full-Day	\$(30.88) <u>34.03</u>	<u>\$34.03</u>	\$(26.62) <u>29.33</u>	\$(23.42) <u>25.81</u>	\$(21.29) <u>23.46</u>
	Half-Day	\$(15.44) <u>17.02</u>	<u>\$17.02</u>	\$(13.31) <u>14.67</u>	\$(11.71) <u>12.91</u>	\$(10.65) <u>11.74</u>
Region 4	Full-Day	\$(31.94) <u>40.04</u>	<u>\$40.04</u>	\$(31.59) <u>34.81</u>	\$(26.62) <u>29.33</u>	\$(25.55) <u>28.16</u>
	Half-Day	\$(15.97) <u>20.03</u>	<u>\$20.03</u>	\$(15.80) <u>17.42</u>	\$(13.31) <u>14.67</u>	\$(12.78) <u>14.08</u>
Region 5	Full-Day	\$(23.42) <u>26.99</u>	<u>\$26.99</u>	\$(21.29) <u>23.46</u>	\$(20.23) <u>22.30</u>	\$(18.10) <u>19.95</u>
	Half-Day	\$(11.71) <u>13.50</u>	<u>\$13.50</u>	\$(10.65) <u>11.74</u>	\$(10.12) <u>11.15</u>	\$(9.05) <u>9.97</u>
Region 6	Full-Day	\$(23.42) <u>26.99</u>	<u>\$26.99</u>	\$(21.29) <u>23.46</u>	\$(21.29) <u>23.46</u>	\$(20.23) <u>22.30</u>
	Half-Day	\$(11.71) <u>13.50</u>	<u>\$13.50</u>	\$(10.65) <u>11.74</u>	\$(10.65) <u>11.74</u>	\$(10.12) <u>11.15</u>

(2) The family home child care WAC (~~(388-296-0020 and 388-296-1350)~~) 170-296-0020 and 170-296-1350 allows providers to care for children from birth up to and including the day before their twelfth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licensor to provide care for a child outside the age listed on their license. If the provider has a waiver to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) of this section, and the five to eleven year age range column is used for comparison.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC (~~(388-290-0220)~~) 170-290-0220.

(4) ~~(We)~~ DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five to eleven year age range column for comparisons.

(5) ~~(We)~~ DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) ~~(The child's nonneedy or needy relative or that relative's spouse or live-in partner;~~
- (c) The child's legal guardian or the guardian's spouse or live-in partner; or
- ~~(d))~~ (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

~~(6) Rates for Spokane County are subject to special funding allocated by the Legislature in the state operating budget. If the special funds are not allocated Region 1 rates apply to Spokane County.)~~

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0220 ((How does DSHS determine that my child qualifies for a) Special needs ((daily) rates((?))—Qualification. To qualify for the ~~((DSHS child care programs))~~ special needs ~~((subsidy))~~ daily rate your child must either:

(1) Be thirteen up to nineteen years old and be under court supervision; or

(2) Be ~~((under))~~ less than nineteen years old~~((;))~~; and~~((;))~~

(a) Have a verified physical, mental, emotional, or behavioral condition that requires a higher level of care while in the care of the licensed or certified facility, a ~~((DSHS))~~ DEL contracted seasonal day camp or in-home/relative provider; and

(b) Have their condition and need for higher level of care verified by an individual who is not employed by the child care facility and is either a:

- (i) Health, mental health, education or social service professional with at least a master's degree; or
- (ii) Registered nurse.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0225 ((What is the additional subsidy daily rate for children with) Special needs ((in a licensed or certified)) rates—Child care centers ((or DSHS contracted)) and seasonal day camps((?)).

(1) In addition to the rate listed in WAC (~~(388-290-0200)~~) 170-290-0200, ~~((we))~~ DSHS authorizes special needs daily rates to licensed or certified child care centers or ~~((DSHS))~~ DEL contracted seasonal day camps according to whichever of the following is greater:

(a) The provider's reasonable documented additional cost associated with the care of the child; or

(b) The daily rate listed in the table below after ~~((you have))~~ a consumer has verified that ~~((you))~~ his or her child has a special need and requires a higher level of care according to WAC (~~(388-290-0220)~~) 170-290-0220:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

(3) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must be:

- (a) At least eighteen years of age; and
- (b) Meet the requirements for being an assistant under chapter ((388-295)) 170-295 WAC.

(4) If the provider has a waiver to care for a child who:

- (a) Is thirteen years or older; and
- (b) Has special needs according to WAC ((388-290-0220)) 170-290-0220, ((we)) DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five to twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0230 ((What is the additional subsidy daily rate for children with)) Special needs ((in a licensed or certified)) rates—Family home child care(?) providers. (1) In addition to the rate listed in WAC ((388-290-0205)) 170-290-0205, ((we)) DSHS authorizes special needs daily rates to licensed or certified family home child care providers according to whichever of the following is greater:

(a) The provider's reasonable documented additional cost associated with the care of the child; or

(b) The daily rate listed in the table below after ((you have)) a consumer has verified that ((your)) his or her child has a special need and requires a higher level of care according to WAC ((388-290-0220)) 170-290-0220:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60

(2) A family home child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

(3) If the provider has a waiver to care for a child who:

- (a) Is twelve years or older; and
- (b) Has special needs according to WAC ((388-290-0220)) 170-290-0220, ((we)) DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five to eleven year age range for comparison.

(4) If a provider is requesting one-on-one supervision/direct care for the child with special needs((-), the person providing the one-on-one care must be:

- (a) At least eighteen years old; and
- (b) Meet the requirements for being an assistant under chapter ((388-155)) 170-296 WAC.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0235 ((What is the DSHS in-home/relative child care daily rate for children with)) Special needs(?) rates—In-home/relative providers. (1) ((We)) DSHS authorizes a base rate of two dollars and ((six)) twenty cents an hour for in-home/relative child care when a child has verified special needs and requires a higher level of care according to WAC ((388-290-0220)) 170-290-0220.

(2) In addition to the base rate, ((we)) the state authorizes whichever of the following is greater:

(a) Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; or

(b) The provider's reasonable documented additional cost associated with the care for that child while the child is in the child care setting.

(3) The in-home/relative provider must verify the child's additional care needs when they request a rate above that listed in subsection ((+)) (2)(a) of this section. The verification must include details about all of the child's additional needs while in child care in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

(4) If other children in the home are also authorized for in-home/relative care with the same provider, ((we)) DSHS authorizes the lesser of the following:

(a) Two dollars and ((six cents an hour for the child needing the most care; and

(b) One dollar and three cents an hour for any additional children)) twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seven-

teen cents per hour for the care of each additional child in the family; or

(b) An amount less than the state's rate.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0240 ~~((What is the DSHS child care subsidy rate for in-home/relative child care and how is it paid?))~~ **Child care subsidy rates—In-home/relative providers.** (1) When ~~((you))~~ a consumer employs an in-home/relative provider, the maximum ~~((we))~~ DSHS pays for child care is the lesser of the following:

(a) Two dollars and ~~((six))~~ twenty cents per hour for the child who needs the greatest number of hours of care and ~~((one))~~ two dollars and ~~((three))~~ seventeen cents per hour for the care of each additional child in the family; or

(b) ~~((The provider's usual hourly rate for that care.))~~ An amount less than the state's rate.

(2) ~~((We))~~ DSHS may pay above the maximum hourly rate for children who have special needs under WAC ~~((388-290-0235))~~ 170-290-0235.

(3) ~~((We))~~ DSHS makes the WCCC payment directly to ~~((your))~~ a consumer's eligible provider.

(4) When appropriate, ~~((we))~~ DSHS pays ~~((your-))~~ the employer's ~~((?))~~ share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA) when applicable.

(5) If an in-home/relative ~~((child care))~~ provider receives less than the wage base limit per family in a calendar year, ~~((we))~~ DSHS refunds all withheld taxes to the provider.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0245 ~~((When can the WCCC program authorize payment of fees for))~~ **Registration~~((?))~~ fees.** (1) ~~((We))~~ DSHS may pay licensed or certified child care providers and ~~((DSHS))~~ DEL contracted seasonal day camps a registration fee ~~((once per calendar year of fifty dollars per child or the provider's usual fee, whichever is less only if the fees are:~~

~~((a) Required of all parents whose children are in care with that provider; and~~

~~((b) Needed to maintain the child care arrangement.~~

~~((2) The registration fee may be authorized more than once per calendar year when:~~

~~((a) There is a break in your child care services for more than sixty days and the provider's policy is to charge an additional registration fee when there is a break in care; or~~

~~((b) The children change child care providers and the new provider meets subsection (1)(a) and (b) of this section.))~~

(a) A child is first enrolled by the consumer for child care with a provider;

(b) A consumer enrolls their child with a new child care provider during their eligibility period;

(c) A child has more than a sixty-day break in child care services with the same provider, and it is the provider's policy to charge all parents this fee when there is a break in service.

(2) A registration fee will be paid only once per calendar year for children who are cared for by the same provider, even if the provider receives subsidy payments under different subsidy programs during this time period for the enrolled children, unless there is a break of sixty days or more as provided in subsection (1)(c) of this section.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0247 ~~((When can the WCCC program authorize payment for))~~ **Field trip fees~~((?))~~.** (1) ~~((We))~~ DSHS pays licensed or certified child care providers and ~~((DSHS))~~ DEL contracted seasonal day camps a monthly field trip fee up to twenty dollars per child or the provider's actual cost for the field trip, whichever is less, only if the fees ~~((meet the conditions in subsection (1)(a) and (b) of WAC 388-290-0245))~~ are required of all parents whose children are in the provider's care. The field trip fee is to cover the provider's actual expenses for:

(a) Admission;

(b) Transportation (not to include the provider's gas and insurance); and

(c) The cost of hiring a nonemployee to provide an in-house field trip activity.

(2) The field trip fee can only be reimbursed for children three years of age and older. In-home/relative and licensed family home child care providers are exempt from this subsection.

NEW SECTION

WAC 170-290-0249 Nonstandard hours bonus. (1) A consumer's provider may receive a nonstandard hours bonus (NSHB) payment of fifty dollars per child per month for care provided in January 2008 or later if:

(a) The provider is licensed or certified;

(b) The provider provides at least forty hours of nonstandard hours care during one month; and

(c) The total cost of the NSHB to the state does not exceed the amount appropriated for this purpose by the legislature for the current state fiscal year.

(2) Nonstandard hours are defined as:

(a) Weekdays before 6 a.m. or after 6 p.m.;

(b) Saturdays and Sundays; and

(c) Legal holidays, as defined in RCW 1.16.050.

Payment Discrepancies

NEW SECTION

WAC 170-290-0266 Payment discrepancies—Generally. (1) Payment discrepancies include both underpayments and overpayments.

(2) For providers or consumers not covered under WAC 170-290-0267 through 170-290-0275, payment discrepancies are subject to chapter 388-410 WAC (benefit errors).

(3) For providers covered under the collective bargaining agreement, all other payment discrepancy issues are covered under WAC 170-290-0275.

NEW SECTION

WAC 170-290-0267 Payment discrepancies—Provider underpayments. (1) Underpayments to a provider occur if DSHS pays less than the amount the provider is eligible to receive.

(2) Underpayment requests will only be considered by DSHS if the provider submitted his or her original invoice for payment to DSHS no later than twelve months after the date of service.

NEW SECTION

WAC 170-290-0268 Payment discrepancies—Provider overpayments. (1) An overpayment occurs when a provider receives a payment that is more than the provider is eligible to receive. DSHS establishes overpayments for providers when that provider:

- (a) Bills and receives payment for services not provided;
- (b) Does not have attendance records that comply with WAC 170-290-0138 and chapters 170-151, 170-295, or 170-296 WAC, or for in-home/relative providers as provided in this chapter. Only attendance records meeting WAC requirements will be accepted for attendance verification;
- (c) Bills and receives payment for more than they are eligible to bill; or
- (d) With respect to licensed or certified providers only, is caring for a WCCC child outside their licensed allowable age range without a waiver.

(2) DEL's or DSHS's WCCC program staff may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.

(3) Providers are required to repay any payments that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.

(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.

(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care is billed incorrectly.

NEW SECTION

WAC 170-290-0269 Payment discrepancies—Consumer underpayments. If a copayment amount determined by DSHS for a consumer results in an underpayment, the consumer may request reimbursement within three years of the date of child care service, if he or she:

- (1) Meets all WCCC eligibility requirements during the time he or she is claiming an underpayment; and
- (2) Verifies all copayments made by the consumer to the provider during the time the consumer is claiming an underpayment.

AMENDATORY SECTION (Amending WSR 08-08-047, filed 3/27/08, effective 3/27/08)

WAC 170-290-0271 ~~((When might I get an)) Payment discrepancies—Consumer overpayments((?)).~~ ~~((You get WCCC overpayments whether you are a current or past WCCC consumer, when we make payment for WCCC benefits and))~~ (1) DSHS establishes overpayments for past or current consumers when:

~~((1) You are))~~ (a) The consumer is no longer eligible ~~((or you are))~~ for benefits:

(b) The consumer is eligible for a smaller amount of care than authorized, such as using care for an unapproved activity or for children not in ((your)) his or her WCCC household;

~~((2) You))~~ (c) The consumer fails to report information to ((us)) DSHS that results in an error in ((our determination of:

~~(a) Your))~~ determining eligibility((;
~~(b) The))~~ amount of care authorized((;)) or
~~((e) The amount of your))~~ copayment((;));

~~((3) Your))~~ (d) The consumer's provider is not an eligible provider per WAC ((388-290-0140)) 170-290-0125; or

~~((4) Your))~~ (e) The consumer's child is not eligible per WAC ((388-290-0015 or 388-290-0020)) 170-290-0015 or 170-290-0020.

(2) DEL's or DSHS's staff may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) When establishing an overpayment, DSHS reduces the overpayment by the amount of the underpayment when applicable.

(6) Absent days can be added to an overpayment when care is used or billed when the consumer was not eligible as provided in WAC 170-290-0032 or care is billed incorrectly.

NEW SECTION

WAC 170-290-0275 Payment discrepancies—Providers covered under collective bargaining. (1) This section applies to any provider covered under the collective bargaining agreement.

(2) For in-home/relative and licensed family home child care providers, disputes regarding underpayments shall be grievable.

(3) Beginning July 1, 2007, there are different time frames for how far back a payment discrepancy may be corrected. The time frames, as provided in this subsection are based on:

- (a) When services were provided;
- (b) When the request for the underpayment was made; and
- (c) The type of provider: Family home or in-home/relative provider.

(4) Family home and in-home/relative providers must submit a claim for payment no later than twelve months after the date of service. "Submitting a claim for payment" means

turning the original invoice in to DSHS for services no later than twelve months after the date of service. If the claim for payment is made within the twelve-month period, the time limits for correcting payment errors are:

(a) Two years back if the error is on rates paid by age and/or region, unless discovered by a federal audit. This means the provider has up to two years after the date of service to ask for a corrected payment; or

(b) Three years back if the error was for any other reason, including those discovered by a federal audit. This means the provider has up to three years after the date of service to ask for a corrected payment.

Administrative Hearings - WCCC

NEW SECTION

WAC 170-290-0280 Right to request an administrative hearing. (1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits except for mass changes resulting from a change in policy or law.

(2) Licensed or certified child care providers or in-home/relative providers may request hearings under this chapter and chapter 388-02 WAC only for WCCC overpayments.

(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider:

(a) Contacts the office which sent them the notice; or

(b) Writes to the office of administrative hearings, P.O. Box 42488, Olympia, WA 98504-2488; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters orders in overpayment cases under WAC 388-02-0217.

(5) To request a hearing under the seasonal child care program, see WAC 170-290-3910 and 170-290-3920.

NEW SECTION

WAC 170-290-0285 Receipt of WCCC benefits pending the outcome of an administrative hearing. (1) A consumer may receive WCCC benefits pending the outcome of a hearing if he or she requests the hearing:

(a) On or before the effective date of an action; or

(b) No more than ten days after DSHS sends the consumer a notice of adverse action.

"Adverse action" means an action to reduce or terminate a consumer's WCCC benefits.

(2) If a consumer loses a hearing, any WCCC benefit that a consumer uses between the date of the adverse action and the date of the hearing decision is an overpayment to the consumer.

(3) A consumer may not receive WCCC benefits pending the outcome of a hearing if he or she requests payment to a provider who is not eligible under WAC 170-290-0125.

(4) A consumer may receive WCCC benefits for another eligible provider, pending the outcome of the hearing.

PART III. SEASONAL CHILD CARE

Introduction

NEW SECTION

WAC 170-290-3501 Program funding—Waiting lists. The seasonal child care (SCC) program is subject to available funds and creates waiting lists when budget limits occur.

NEW SECTION

WAC 170-290-3510 SCC definitions. The following definitions apply only to part III of this chapter relating to seasonal child care (SCC):

(1) "Application interview date" means the first date a consumer, as defined in WAC 170-290-0003, meets with the SCC contractor to see if the consumer is eligible for subsidy benefits.

(2) "Child care plan" means a state form filled out by the SCC contractor that tells the consumer and provider:

(a) When benefits start and end;

(b) The amount of the copayment; and

(c) The approved hours of care.

(3) "SCC contractor" means the agency that DEL has contracted with to meet with families to see if they are eligible for the seasonal child care program. SCC contractors are located in several communities across the state. SCC contractors are responsible to follow the SCC rules that DEL has established.

(4) "Seasonally available labor" or "seasonally available agricultural related work" means labor that is available only in a specific season during part of the calendar year. The labor is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

(5) "Waiting list" means a list of families who are currently working and waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families.

Eligibility Requirements

NEW SECTION

WAC 170-290-3520 Eligible consumers. (1) In SCC, an eligible consumer is not currently receiving temporary aid for needy families (TANF), lives in the state of Washington, has parental control of one or more children, and is the child's:

(a) Parent, either biological or adopted;

(b) Stepparent;

(c) Legal guardian as verified by a legal or court document;

(d) Adult sibling or step-sibling;

(e) Aunt;

(f) Uncle;

(g) Niece or nephew;

- (h) Grandparent; or
- (i) Any of the above relatives with the prefix "great," such as great-aunt.
- (2) Consumers may be eligible for SCC benefits if they:
 - (a) Meet eligibility requirements in this chapter;
 - (b) Participate in an approved activity under WAC 170-290-3555; and
 - (c) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG) described in WAC 170-290-3640.
- (3) If a consumer's copayment, under WAC 170-290-0075, is higher than the maximum monthly state rate for all of the consumer's children in care, then the consumer is not eligible for SCC benefits.
- (4) Consumers are not eligible for SCC benefits if they:
 - (a) Were employed with one employer more than eleven months in the previous twelve months;
 - (b) Are receiving TANF benefits;
 - (c) Have a monthly copayment that is higher than the rate the state will pay for all eligible children in care; or
 - (d)(i) Will be away from the home for more than thirty days in a row; and
 - (ii) Are the only parent in the household.

NEW SECTION

WAC 170-290-3530 Verifying consumers' information. (1) A consumer must provide information to the SCC contractor to determine eligibility when:

- (a) The consumer initially applies for benefits;
- (b) The consumer reapplies for benefits; or
- (c) A change of circumstances occurs.
- (2) The SCC contractor may accept any verification that the consumer can easily obtain when it reasonably supports the consumer's statement of his or her circumstances. The verification that the consumer gives to the SCC contractor must:
 - (a) Clearly relate to information the SCC contractor is requesting;
 - (b) Be from a reliable source; and
 - (c) Be accurate, complete, current and consistent.
- (3) The SCC contractor will accept a variety of forms of verification to show the consumer is eligible. For example, any of the following documents are accepted to show the child is in the home: School records, immunization records or birth certificates, or other type of documents.
- (4) If the verification that a consumer gives to the SCC contractor is inconsistent, conflicting, outdated or confusing, the SCC contractor may:
 - (a) Ask a consumer to provide the SCC contractor with more information or documentation or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or
 - (b) Send an investigator from the division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances.
- (5) If a consumer does not provide the SCC contractor with all of the verification that the SCC contractor has requested, the SCC contractor will determine if the consumer

is eligible based on the information already available to the SCC contractor.

NEW SECTION

WAC 170-290-3540 Eligibility—Family size. DEL determines a consumer's family size by reviewing the individuals who live together in the same household as follows:

(1) If a consumer is:	Then DEL counts the following individuals as part of the family for SCC program eligibility:
(a) A single parent, including a minor parent, living independently or residing in her/his parent's home with her/his children.	The consumer and the consumer's children.
(b) Unmarried parents living together who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents living together with no mutual children.	Each parent and their own children, as separate families.
(d) Married parents living together.	Both parents and all their children living in the household.
(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew or niece; aunt; uncle; grandparent; or great-aunt, great-uncle, or great-grandparent.	Only the children and their income.
(f) A family member who is voluntarily out of the household for reasons other than employment, such as visiting a family member.	The consumer, the absent parent and the children.
(g) A family member who is out of the household because of employer requirements, such as working in a different community, and is expected to return to the household.	The consumer, the absent individual, and the children. Subsection (1)(b) and (d) of this section apply.
(h) An incarcerated family member.	The absent person is removed from the household. DEL counts all remaining household members. All other family rules in this section apply.

(2) If the consumer's household includes:	Then in addition, DEL counts the sibling as part of the family for SCC program eligibility as follows:
(a) Eighteen year old siblings of the children who require care and are enrolled in secondary education or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.
(b) Siblings of the children requiring care who are up to twenty-one years old who are participating in a program through the school district's special education department under RCW 28A.155.020.	The person participating in the approved program through RCW 28A.155.020 up to twenty-one years of age (unless they are a parent themselves). All other family rules in this section apply.

NEW SECTION

WAC 170-290-3550 Eligibility—Special circumstances. (1) A consumer may be eligible for the SCC program when he or she:

- (a) Has children living with the consumer in Washington state:
 - (i) That are younger than age thirteen; or
 - (ii) That are thirteen to nineteen years old and under court supervision; or
 - (iii) Less than nineteen years old and have a verified special need according to WAC 170-290-0220;
- (b) Is a parent in a two-parent family in which both parents work in seasonally available agricultural related work. If both parents are not employed in seasonally agricultural related work, the consumer may be eligible for SCC only when the other parent is "unable" to provide care for the children because of physical or mental restrictions. If a consumer claims one parent is unable to care for the children, the consumer must provide written documentation from a licensed medical or mental health professional that states the:
 - (i) Reason the parent is unable to care for the children; and
 - (ii) Expected duration and severity of the condition that keeps the parent from caring for the children.
- (2) The family's earned income must show fifty percent or more of his or her earned income for the previous twelve months comes from seasonally available agricultural related work.

NEW SECTION

WAC 170-290-3555 Eligibility—Approved activities. (1) A consumer may be eligible for SCC benefits for up to sixteen hours per day for the time he or she is involved in seasonally available agricultural related work in:

- (a) Washington state; or

- (b) A bordering state within forty miles of Washington state.
- (2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section;
- (3) Travel time between the child care location and the employment location only;
- (4) Job search, of no more than five days, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; and
- (5) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

Rights and Responsibilities

NEW SECTION

WAC 170-290-3560 Consumers' rights. When a consumer applies for or receives SCC benefits, he or she has the right to:

- (1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;
- (2) Have the consumer's application accepted and acted upon within thirty days;
- (3) Be informed, in writing, of the consumer's legal rights and responsibilities related to SCC benefits;
- (4) Have the consumer's information shared with other agencies only when required by federal or state regulations;
- (5) Be allowed to choose a provider as long as the provider meets requirements in WAC 170-290-3750;
- (6) Receive a written notice at least ten days before changes are made to lower or stop benefits except as stated in WAC 170-290-3570;
- (7) Ask for an administrative hearing if the consumer does not agree with a decision per WAC 170-290-3860;
- (8) Ask to speak to the SCC contractor's supervisor or administrator to review a decision or action affecting the consumer's benefits without affecting the consumer's right to an administrative hearing;
- (9) Have interpreter or translator services provided by the SCC contractor within a reasonable amount of time and at no cost to the consumer;
- (10) Refuse to speak to a fraud early detection (FRED) investigator from the department of social and health services division of fraud investigations when they ask to come into your home. This request will not affect eligibility for SCC program subsidies. If the consumer refuses to cooperate with the investigator at a later date, it could affect his or her benefits;
- (11) Access his or her child at all times while the child is in child care;
- (12) Terminate child care without cause and without notice to the provider. Notice must be given to the SCC contractor within five days of termination; and
- (13) Not be charged by the consumer's licensed or certified provider, or be made to pay, for:

- (a) The difference between their private rate and the state maximum child care subsidy rate, when their private rate for child care or the registration fee is higher;
- (b) Any day when the consumer's child is absent;
- (c) Vacation days when the provider chooses to close;
- (d) A higher amount than the state allows for field trips;
- (e) A preschool tuition fee in addition to regular child care services; or
- (f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

NEW SECTION**WAC 170-290-3565 Consumers' responsibilities.**

When a consumer applies for or receives SCC benefits, he or she must:

- (1) Give the SCC contractor correct and current information so that the SCC contractor can determine the consumer's eligibility and authorize child care payments correctly;
- (2) Choose a provider who meets requirements of WAC 170-292-3750;
- (3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must pay the provider if the provider wants payment;
- (4) Pay for additional child care that exceeds the authorization based on the same fees that are charged to other families;
- (5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider. The child care plan tells the consumer and the provider that subsidy benefits are approved, when the subsidy benefits begin and when benefits stop, and how many hours a day benefits are approved;
- (6) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;
- (7) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and
- (8) Provide the information requested by the SCC contractor or the department of social and health services fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within ten days, it could affect his or her benefits. If the SCC contractor determines that a consumer is not cooperating with the requested information, the consumer will not be eligible for SCC benefits. The consumer may become eligible again when he or she meets SCC requirements in part III of this chapter, or when thirty days have passed since the consumer became ineligible.

NEW SECTION

WAC 170-290-3570 Notification of changes. When a consumer applies for or receives SCC benefits, he or she must:

- (1) Notify the SCC contractor, within five days, of any change in providers;

- (2) Notify his or her provider within ten days when the SCC contractor changes his or her child care authorization;
- (3) Give notice to the SCC contractor within ten days of any change in the consumer's:
 - (a) Number of child care hours needed (more or less hours);
 - (b) Child becoming eligible for migrant Head Start or another child care program;
 - (c) Household income, including any new receipt of a TANF grant or child support increases or decreases;
 - (d) Household size such as any family member moving in or out of his or her home;
 - (e) Employment hours such as starting, stopping or changing employers;
 - (f) Home address and telephone number; or
 - (g) Child support payments made by the consumer.

NEW SECTION

WAC 170-290-3580 Failure to report changes. (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, DEL may establish an overpayment to the consumer per WAC 170-290-3850 or the consumer may have to pay additional costs, such as a higher copayment.

- (2) The consumer may receive an overpayment beyond what the provider is allowed to bill to include billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, DEL 22-877, March 2007).

NEW SECTION

WAC 170-290-3590 SCC contractor's responsibilities to consumers. SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their staff must:

- (1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;
- (2) Authorize SCC program subsidies for a consumer's children based on eligibility criteria established by DEL, as defined in this chapter;
- (3) Ask if a consumer has received, or is currently receiving, child care services from another subsidy program; and if he or she has received a copy of his or her termination letter from that program;
- (4) Ask if a consumer has applied, and been denied, for working connections child care (WCCC); and if he or she has, verify his or her denial from that program;
- (5) Complete intake documents in a consumer's presence, based on information he or she provides;
- (6) Accept a variety of forms of verification and may not specify the type of documentation required;
- (7) Authorize payments only to a child care provider of a consumer's choice who meets the requirements in WAC 170-290-3750 and who allows the consumer to access his or her children whenever they are in care;
- (8) Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or avail-

able to care for the consumer's children as defined in WAC 170-290-3550;

(9) Give a consumer a SCC program approved child care plan in order to enroll his or her children in licensed or certified child care;

(10) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing under the SCC program;

(11) Provide prompt child care authorizations to a consumer's child care provider;

(12) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

(13) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

Income and Copayment Calculations

NEW SECTION

WAC 170-290-3610 Countable income. DEL counts income as money a consumer earns or receives from:

(1) Wages and commissions earned from employment;

(2) Unemployment compensation;

(3) A TANF or other welfare grant;

(4) Child support payments received;

(5) Supplemental Security Income (SSI);

(6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

(7) Refugee assistance payments;

(8) Payments from the Veterans Administration;

(9) Pensions or retirement income;

(10) Payments from labor and industries (L&I), or disability payments;

(11) Inheritance;

(12) Reportable gambling winnings; and

(13) Other types of income not listed in WAC 170-290-3630.

NEW SECTION

WAC 170-290-3620 Calculation of income. For the SCC program, DEL uses a consumer's countable income when determining his or her income eligibility and copayment. DEL determines a consumer's average monthly income by totaling all income earned in the past twelve

months, as listed in WAC 170-290-3610, and dividing by twelve. The last month of income that is counted is the month before the consumer applies for SCC.

NEW SECTION

WAC 170-290-3630 Excluded income and deductions. (1) The SCC program does not count the following income types when determining a consumer's income eligibility and copayment:

(a) Savings accounts;

(b) Money received from sale of real property, such as a house, or personal property, such as a car;

(c) Tax refunds;

(d) Earned income credits;

(e) One-time insurance settlement payments;

(f) Capital gains;

(g) Basic Food program;

(h) Income earned by children as described in WAC 170-290-3540;

(i) Benefits received by children of Vietnam War veterans who are diagnosed with all forms or manifestations of spina bifida (except spina bifida occulta); and

(j) Government economic stimulus payments.

(2) SCC deducts the amount a consumer pays for child support from his or her countable income when figuring his or her eligibility and copayment for the SCC.

NEW SECTION

WAC 170-290-3640 Determining income eligibility and copayment. (1) For the SCC program, DEL determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620;

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and

(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.

(2) If a consumer's family's income is above the FPG as defined in WAC 170-290-0075, his or her family is not eligible for the SCC program.

(3) SCC does not prorate the copayment when a consumer uses care for part of a month.

(4) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(5) SCC shall assign a copayment amount based on the family's countable income. The copayment amount will be on the consumer's child care plan. The consumer pays the copayment directly to the provider.

NEW SECTION

WAC 170-290-3650 Change in copayment. A consumer's SCC program copayment could change when:

(1) DEL makes a mass change in subsidy benefits due to a change in law or program funding;

- (2) The consumer's family size increases;
- (3) The SCC contractor makes an error in the consumer's copayment computation;
- (4) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication;
- (5) The consumer is approved for a new eligibility period; or
- (6) If a consumer's copayment changes during his or her eligibility period, the change is effective:
 - (a) On the first day of the month following the change, when:
 - (i) The report is made to the SCC contractor or the information is learned by the contractor within ten or more days after the change as provided in WAC 170-290-3570;
 - (ii) The consumer receives ten days written notice; and
 - (iii) The copayment is increasing; or
 - (b) On the first day of the month that the change occurred when:
 - (i) The report is made to the SCC contractor or the information is learned by the contractor within ten days or less after the change as provided in WAC 170-290-3570; and
 - (ii) The copayment is decreasing.

NEW SECTION

WAC 170-290-3660 Eligibility period. The SCC contractor may approve a consumer for a period up to six months. The first month of eligibility is the same month that child care begins. A consumer's eligibility may end before his or her end date as stated in WAC 170-290-3855.

Start Dates and Eligibility Period

NEW SECTION

WAC 170-290-3665 When SCC benefits start. The consumer's child care plan will tell the consumer when the benefits start and end.

- (1) The SCC contractor authorizes child care subsidies when:
 - (a) The consumer turns in all of his or her eligibility paperwork to the SCC contractor;
 - (b) The SCC contractor determines that the consumer is eligible for the program; and
 - (c) The consumer starts his or her children in care with an approved child care provider.
- (2) After the SCC contractor decides that a consumer is eligible, the date the subsidy begins depends upon when the consumer applied and when the consumer turned in all of the paperwork needed as follows:

If at the time of application the consumer:	And the consumer turns all paperwork in:	Then the child care benefits begin:
(a) Has not begun work yet,	Within 14 days of the job starting,	The first day of the job.
(b) Has not begun work yet,	15-29 days after the job starts,	The day after the paperwork is turned in.

If at the time of application the consumer:	And the consumer turns all paperwork in:	Then the child care benefits begin:
(c) Has not begun work yet,	30 days after the job starts,	The application is denied and the consumer must reapply.
(d) Is working,	Within 14 days of the application interview date,	The day the consumer either calls or comes into the SCC contractor's office to apply for SCC benefits.
(e) Is working,	15-29 days after the application interview date,	The day after the paperwork is turned in.
(f) Is working,	30 days after the application interview date,	The application is denied and the consumer must reapply.

NEW SECTION

WAC 170-290-3670 Preauthorization for the SCC program. (1) A consumer may be preauthorized for the SCC program, before his or her job starts, if:

- (a) The consumer meets all eligibility criteria for the SCC program;
 - (b) The consumer has employment verification that shows a future start date; and
 - (c) The program does not have a waiting list.
- (2) Child care benefits begin according to the table in 170-290-3665.

NEW SECTION

WAC 170-290-3690 Denial of benefits—Date of re-determining eligibility. (1) The SCC contractor sends a consumer a denial letter when the consumer has applied for child care and the consumer:

- (a) Is not eligible due to the consumer's:
 - (i) Family composition;
 - (ii) Income; or
 - (iii) Activity; or
 - (b) Did not provide information required to determine the consumer's eligibility according to WAC 170-290-3530.
- (2) If a consumer turns in information or otherwise meets eligibility requirements after the denial letter is sent, the consumer's benefits begin according to WAC 170-290-3665.

Notice

NEW SECTION

WAC 170-290-3720 Notice of payment changes. The SCC contractor provides SCC consumers with at least ten

days written notice of changes to payments related to the suspension, reduction, or termination of benefits, in child care arrangements, except as noted in WAC 170-290-3730.

NEW SECTION

WAC 170-290-3730 Notice of payment changes is not required. The SCC contractor does not give a consumer notice if the consumer:

- (1) Tells the SCC contractor that he or she no longer wants SCC;
- (2) Has moved and his or her whereabouts are unknown to the SCC contractor;
- (3) Is receiving duplicate child care benefits;
- (4) Has a current eligibility period that is scheduled to end;
- (5) Has a new eligibility period that results in a change in child care benefits; or
- (6) Is receiving child care at a location that does not meet requirements under WAC 170-290-3750.

Eligible Providers and Rates

NEW SECTION

WAC 170-290-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

- (1) Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC;
- (2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. SCC pays the lesser of the following to qualified child care facilities in bordering states:
 - (a) The provider's private pay rate for that child; or
 - (b) The state maximum child care subsidy rate for the DSHS region where the child resides;
- (3) Exempt from licensing but certified by DEL, such as:
 - (a) Tribal child care facilities that meet the requirements of tribal law;
 - (b) Child care facilities on a military installation; and
 - (c) Child care facilities operated on public school property by a school district;
- (4) Seasonal day camps that have a contract with DEL to provide subsidized child care and are:
 - (a) Of a duration of three months or less;
 - (b) Engaged primarily in recreational or educational activities; and
 - (c) Accredited by the American Camping Association (ACA).

NEW SECTION

WAC 170-290-3760 SCC subsidy rates—Effective date. DEL child care subsidy rates in this part are effective as of the date stated in WAC 170-290-0180.

NEW SECTION

WAC 170-290-3770 Authorized SCC payments. The SCC program may authorize payments to licensed/certified child care providers for:

- (1) Basic child care either full day or half day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205, including on Saturdays and Sundays:
 - (a) A full day of child care when care is needed for five to ten hours per day;
 - (b) A half day of child care when care is needed for less than five hours per day;
- (2) A registration fee, according to WAC 170-290-0245;
- (3) Subsidy rates for five-year old children according to WAC 170-290-0185;
- (4) The field trip fees in WAC 170-290-0247;
- (5) The nonstandard hours bonus in WAC 170-290-0249; and
- (6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

NEW SECTION

WAC 170-290-3790 When additional SCC subsidy payments are authorized. DEL may authorize additional SCC program subsidy payments for more than the basic child care subsidy daily rate when:

- (1) Needed to accommodate a family's work schedule;
- (2) Employer verification of work schedule is presented; and
- (3) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day) and the provider's policy is to charge all families for these extra hours.

Review Process

NEW SECTION

WAC 170-290-3820 Review of eligibility and copayment information. A consumer's eligibility and copayment information for the SCC program are looked at:

- (1) When the consumer applies for the SCC program; and
- (2) At least every six months.

NEW SECTION

WAC 170-290-3830 Redetermination of SCC benefits. (1) At least every six months, the SCC contractor reviews a consumer's information to determine if he or she may keep receiving subsidies. A consumer may receive subsidy benefits for less than six months when:

- (a) The consumer's employer says that the consumer might be working less than six months; or
 - (b) The consumer's child or children may not be eligible for the next six months because of their age.
- (2) The SCC contractor will:
- (a) Review the consumer's updated information; and
 - (b) Redetermine the consumer's eligibility.

NEW SECTION

WAC 170-290-3840 New eligibility period. (1) If a consumer wants to receive child care benefits for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period on the child care plan. To determine if a consumer is eligible, the consumer calls or comes into the SCC contractor's office by or before the end date of the consumer's current SCC eligibility period to request an application interview date.

(2) A consumer may be eligible for SCC benefits for a new eligibility period with no break in child care if:

(a) The consumer calls or comes into the SCC contractor's office by or before the end date of the consumer's current SCC eligibility period to request an application interview date;

(b) The consumer's provider is eligible for payment under WAC 170-290-3750; and

(c) The consumer meets all SCC eligibility requirements.

(3) If the SCC contractor determines that a consumer is eligible for SCC benefits based on his or her application information, the SCC contractor notifies the consumer of the new eligibility period and copayment.

(4) If a consumer fails to call or come into a SCC contractor's office by or before the end date of the consumer's current SCC eligibility period to request an application interview date, he or she must reapply according to WAC 170-290-3665.

Payment DiscrepanciesNEW SECTION

WAC 170-290-3850 Payment discrepancies generally. DEL child care subsidy payment discrepancies are described in WAC 170-290-0266 through 170-290-0275, with the exception of underpayments requested by licensed child care centers, which will only be considered for twelve months after the date of services.

NEW SECTION

WAC 170-290-3855 Termination of and redetermining eligibility for benefits. (1) A consumer's continued eligibility for SCC program subsidies stops when:

(a) The consumer's monthly copayment is higher than the state maximum monthly rate for all of the consumer's children in care; or

(b) The consumer:

(i) Is not participating in an approved activity as defined in WAC 170-290-3555;

(ii) Does not meet other SCC eligibility requirements related to family size, income and approved activities;

(iii) Does not pay the copayment fees to the consumer's child care provider or does not make mutually acceptable arrangements with the consumer's child care provider for their payment; or

(iv) Refuses to cooperate with investigations conducted by quality assurance staff or the division of fraud investigations.

(2) A consumer might be eligible for SCC program subsidies again when:

(a) The consumer meets all SCC program eligibility requirements;

(b) The consumer paid back copayment fees or made mutually acceptable payment arrangements with his or her child care provider; or

(c) The consumer cooperated with the quality assurance review process or with the DSHS division of fraud investigations.

Administrative Hearings—SCCNEW SECTION

WAC 170-290-3860 Right to request an administrative hearing. (1) SCC consumers have a right to request a hearing under chapters 170-03 WAC and 34.05 RCW on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.

(2) Licensed or certified child care providers may request hearings under this chapter, chapters 170-03 WAC and 34.05 RCW, only for SCC overpayments.

(3) To request an administrative hearing, consumers must write to the office of administrative hearings at the address in WAC 170-03-0070 within ninety days of the date any decision of an action is received.

NEW SECTION

WAC 170-290-3865 Receipt of SCC benefits pending the outcome of an administrative hearing. (1) A consumer may receive SCC benefits while waiting for the outcome of a hearing, if he or she is currently authorized for the SCC program and:

(a) The consumer requests a hearing:

(i) On or before the effective date of an action; or

(ii) No more than ten days after the consumer receives a notice of adverse action ("adverse action" for the purposes of this section means an action to reduce or terminate the consumer's SCC subsidies); or

(b) The consumer requests payments for child care payable to an eligible provider according to WAC 170-290-3750.

(2) If a consumer loses a hearing, any SCC program benefit that a consumer uses between the date of the adverse action and the date of the hearing decision (final order) is an overpayment to the consumer.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-290-0010 What makes me eligible for WCCC benefits?

WAC 170-290-0105 How do I reapply for WCCC when my eligibility period is ending?

WAC 170-290-0108	What happens if I meet eligibility requirements after I receive a denial letter?	WAC 170-292-0040	How is my family's average monthly income calculated for the SCC program?
WAC 170-290-0260	Who has a right to ask for a hearing and how do they ask for one?	WAC 170-292-0045	What is not counted, or is deducted, when figuring income eligibility for the SCC program?
WAC 170-290-0265	When can I get WCCC benefits pending the outcome of a hearing?	WAC 170-292-0050	How is my family's income eligibility and copayment amount determined for the SCC program?
WAC 170-290-0270	What is a WCCC overpayment and what can be included?	WAC 170-292-0055	When might my SCC program copayment change?
WAC 170-290-0273	When would my licensed or certified provider or DSHS contracted seasonal day camp get an overpayment?	WAC 170-292-0060	What rights do I have when I apply for or receive SCC program subsidies?
WAC 170-290-0274	When would my in-home/relative provider get an overpayment?	WAC 170-292-0065	What responsibilities do I have when I apply for or receive SCC program subsidies?

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-292-0001	Introduction.	WAC 170-292-0070	Who are the SCC program staff and what responsibilities do they have?
WAC 170-292-0003	What is the purpose of the seasonal child care program?	WAC 170-292-0075	Do I have the right to ask for a hearing regarding SCC program subsidy payments, and how do I request one?
WAC 170-292-0005	Am I eligible for the SCC program?	WAC 170-292-0080	Can I use SCC programs subsidies while waiting for the outcome of a hearing, and when might it need to be repaid?
WAC 170-292-0010	How is my family size defined for SCC program eligibility purposes?	WAC 170-292-0085	What child care providers can I choose under the SCC program?
WAC 170-292-0015	Are there special circumstances when I might be eligible for the SCC program?	WAC 170-292-0090	When are the DSHS child care subsidy rates, used by the SCC program in this chapter, effective?
WAC 170-292-0020	What activities must I be involved in to be eligible for the SCC program?	WAC 170-292-0095	What DSHS child care subsidy rate does the SCC program use when my child is five years old?
WAC 170-292-0025	What additional criteria does my family need to meet to be eligible for SCC program subsidies?	WAC 170-292-0100	What services can be authorized for the SCC program, and at what rates?
WAC 170-292-0030	When might my ongoing eligibility for SCC subsidies stop, and when might I be eligible again?	WAC 170-292-0102	When can my child care provider charge me more than the amount authorized by the SCC program?
WAC 170-292-0035	What income is counted when determining eligibility and copayment for the SCC program?	WAC 170-292-0105	When can additional SCC program subsidy payments be authorized?

- WAC 170-292-0110 What additional SCC program subsidy payments can be authorized?
- WAC 170-292-0115 If I am determined eligible for the SCC program, when does my child care subsidy begin?
- WAC 170-292-0120 Can I be authorized for the SCC program before I start a job?
- WAC 170-292-0125 I am preauthorized for the SCC program, when do my SCC program child care subsidies begin?
- WAC 170-292-0130 If I am reauthorized for the SCC program, when do my SCC program subsidies begin?
- WAC 170-292-0135 When are my eligibility and copayment information for the SCC program looked at?
- WAC 170-292-0140 How are my SCC program subsidies reauthorized and when may they continue?
- WAC 170-292-0145 When might I receive advance and adequate notice of change in my SCC program subsidies?
- WAC 170-292-0150 When won't I receive advance and adequate notice of changes in my SCC program subsidies?
- WAC 170-292-0155 What is an overpayment and when might I receive one?
- WAC 170-292-0160 When might a child care provider receive an overpayment?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on July 7, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 8, 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 DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on July 7, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by June 23, 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: Child support is currently a deduction from a household's countable gross income for Basic Food assistance. The department is proposing to exercise an option from the 2002 Farm Bill to treat child support payments made to someone outside of the home as an income exclusion prior to administering the gross income test.

Reasons Supporting Proposal: Currently, some households are denied for Basic Food assistance for excess gross income, even when up to 50% of their income is paid out in child support. These families are now unable to qualify for food assistance due to income that they have no access to because it is paid out in child support. This change will enhance the division of child support's mission to collect child support and will enhance the community services division's mission to assist low-income families to access the Basic Food program.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: 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 Basic Food 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

WSR 09-12-117
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 3, 2009, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-14-119.

Title of Rule and Other Identifying Information: The department is amending WAC 388-450-0015 What types of income does the department not use to figure out my benefits?

health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

June 1, 2009

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-09-103, filed 4/20/09, effective 4/21/09)

WAC 388-450-0015 What types of income does the department not use to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal earned income tax credit (EITC) payments;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(e) Energy assistance payments;

(f) Educational assistance we do not count under WAC 388-450-0035;

(g) Native American benefits and payments we do not count under WAC 388-450-0040;

(h) Income from employment and training programs we do not count under WAC 388-450-0045;

(i) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

(j) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(k) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(l) Payments we are directly told to exclude as income under state or federal law.

(m) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household; (~~and~~)

(n) **For Basic Food Only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

(o) For medical assistance: Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

WSR 09-12-128

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed June 3, 2009, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-08-101.

Title of Rule and Other Identifying Information: Amending WAC 181-78A-510, 181-78A-520, 181-78A-525, and 181-78A-535, rules governing the awarding of professional certification [to] the educators. The rule change adds school administrators to the professional certification preparation programs that education service districts may develop for approval. Additional sections amended to align with this change to WAC 181-78A-500 and 181-78A-507.

Hearing Location(s): St. Martin's Pavilion, Norman Worthington Conference Center, 5300 Pacific Avenue S.E., Lacey, WA 98503, on July 22, 2009, at 8:30 a.m.

Date of Intended Adoption: July 22, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 20, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by July 20, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Aligns administrator professional certification with teacher certification by authorizing education service districts to develop preparation programs.

Reasons Supporting Proposal: Consistent with state policy for approving preparation programs.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236,

Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

June 3, 2009
David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

WAC 181-78A-510 Responsibilities of the professional certificate administrator. Each ~~((college or university))~~ approved program shall identify a professional certificate administrator who shall have the primary responsibility for the overall administration of the program.

AMENDATORY SECTION (Amending WSR 07-04-004, filed 1/24/07, effective 2/24/07)

WAC 181-78A-520 Approval standard—Professional education advisory board. The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(1).

(1) College or university.

(a) The professional education advisory board established for the preservice program in accordance with WAC 181-78A-209 shall also serve as the professional advisory board for the professional certificate program.

(b) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

(c) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

(d) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

(2) Educational service district.

(a) The educational service district electing to seek approval to offer a teacher professional certificate program has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program for teachers.

~~((+))~~ (i) Membership. The professional education advisory board shall consist of the following:

~~((+))~~ (A) Educational service district teacher assistance program coordinator;

~~((+))~~ (B) One college or university representative, from the educational service district region, appointed by the Washington association of colleges for teacher education;

~~((+))~~ (C) One superintendent appointed by the Washington association of school administrators from the educational service district region;

~~((+))~~ (D) One district human resource representative;

~~((+))~~ (E) One teacher with national board certification, from the educational service district region, appointed by the Washington Education Association;

~~((+))~~ (F) One teacher with professional certification, from the educational service district region, appointed by the Washington Education Association;

~~((+))~~ (G) One educational service district representative with responsibility for inservice/professional development; and

~~((+))~~ (H) One principal, from the educational service district region, appointed by the Washington Association of School Principals.

~~((+))~~ (ii) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

~~((+))~~ (iii) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

~~((+))~~ (iv) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

~~((+))~~ (v) Annual report. The professional education advisory board shall submit an executive summary to the professional educator standards board no later than July 31 of each year that includes the following:

~~((+))~~ (A) Evidence to demonstrate links between ongoing educational service district professional development opportunities/learning improvement initiatives and the professional certificate program;

~~((+))~~ (B) A summary of the status of all candidates in the program; and

~~((+))~~ (C) A description of formal and informal partnerships with school districts or consortia of school districts.

(b) The educational service district electing to seek approval to offer an administrator professional certificate program has established and maintained a professional education advisory board to participate in decisions related to the development, implementation, and revision of the professional certificate program.

(i) Membership. The professional education advisory board shall consist of the following:

(A) One college or university representative, from the educational service district region, appointed by the Washington council of educational administration programs;

(B) One superintendent appointed by the Washington association of school administrators from the educational service district region;

(C) One district human resource representative;

(D) One teacher with national board certification, from the educational service district region, appointed by the Washington education association;

(E) One educational service district representative with responsibility for inservice/professional development; and

(F) Two principals, from the educational service district region, appointed by the Washington association of school principals.

(ii) The professional education advisory board has participated in the development of the professional certificate program and has recommended approval of the proposed program prior to its submission to the professional educator standards board for approval.

(iii) The professional education advisory board has reviewed the annual summary on the status of all candidates in the program required by WAC 181-78A-525(7).

(iv) The professional education advisory board has made recommendation(s), as appropriate, for program changes to the professional certificate administrator who shall implement or respond to the recommendation(s) in a timely manner.

(v) Annual report. The professional education advisory board shall submit an executive summary to the professional educator standards board no later than July 31 of each year that includes the following:

(A) Evidence to demonstrate links between ongoing educational service district professional development opportunities/learning improvement initiatives and the professional certificate program;

(B) A summary of the status of all candidates in the program; and

(C) A description of formal and informal partnerships with school districts or consortia of school districts.

AMENDATORY SECTION (Amending WSR 07-15-053, filed 7/13/07, effective 8/13/07)

WAC 181-78A-525 Approval standard—Accountability. The following evidence shall be evaluated to determine whether each professional certificate program is in compliance with the program approval standards of WAC 181-78A-515(2). Each college, university or educational service district shall:

(1) Submit for initial approval to the professional educator standards board a performance-based professional certificate program (~~for teachers~~) which shall include the five program components specified in WAC 181-78A-535(4).

(2) Provide documentation that the respective professional education advisory board has participated in the development of and has approved the proposal.

(3) Identify the professional certificate administrator who shall be responsible for the administration of the professional certificate program.

(4) Delegate to the professional certificate administrator responsibility for reviewing or overseeing the following: Application for the professional certificate program; advising candidates once accepted; developing and implementing the individualized professional growth plan, the instruction and assistance components, and the assessment seminar; maintaining current records on the status of all candidates accepted into the professional certificate program; and serving as the liaison with the superintendent of public instruction certification office to facilitate the issuance of the professional certificates when candidates have met the required standards.

(5) Establish the admission criteria that candidates for the professional certificate shall meet to be accepted into the professional certificate program.

(6) Describe the procedures that the approved program will use to determine that a candidate has successfully demonstrated the standards and criteria for the professional certificate set forth in WAC 181-78A-540.

(7) Prepare an annual summary of the status of all candidates in the program and submit the summary to the respective professional education advisory board.

(8) Submit any additional information required to the respective professional education advisory board that it requests.

(9) Submit an annual report to the professional educator standards board as part of a less intensive evaluation cycle which will include the following:

(a) A summary of (~~course work~~) program requirements (~~for the preassessment and culminating seminars~~), linkages of the program to individual (~~teacher~~) professional growth plans, linkages to school district and school improvement plans, and, to the extent possible, linkages to school district professional development programs where such programs are in place in school districts.

(b) A summary of program design, assessment procedures and program revisions in the previous year.

(c) The number of candidates completing the program during the period between September 1 and August 31.

(d) The number of candidates enrolled in the program.

(e) Other information related to the professional certificate program requested by the professional educator standards board.

(10) Facilitate an on-site review of the program when requested by the professional educator standards board to ensure that the program meets the state's program approval standards and to provide assessment data relative to the performance standards.

Provided, That (~~the~~) subsequent to the initial program review specified in WAC 181-78A-105 on-site reviews shall be scheduled concurrently with regularly scheduled reviews of residency educator preparations offered by the university or on a five-year cycle (unless) for programs offered through an educational service district; provided that the professional educator standards board may approve(s) a variation in the schedule as it deems appropriate.

~~(Provided further, That colleges and universities seeking National Council for the Accreditation of Teacher Education (NCATE) accreditation may request from the professional educator standards board approval for concurrent site visits which shall utilize the same documentation whenever possible.)~~

AMENDATORY SECTION (Amending WSR 07-19-056, filed 9/14/07, effective 10/15/07)

WAC 181-78A-535 Approval standard—Program design. The following requirements shall govern the design of the professional certificate program:

(1) **Teacher.**

(a) To be eligible to apply for admission to a professional certificate program, a candidate shall hold a contract as a teacher in a public or a professional educator standards board-approved private school or state agency providing educational services for students and shall have completed provi-

sional status with a school district under RCW 28A.405.220 or the equivalent with a professional educator standards board-approved private school or state agency providing educational services for students or the candidate provides to the program a letter from the candidate's employing district, professional educator standards board-approved private school, or state agency providing educational services for students, documenting the employer's support for the candidate's full admission to the professional certificate program: Provided, That a candidate for the professional teacher's certificate may enroll in and complete the preassessment seminar described in subsection (4)(a) of this section prior to admission to a professional certificate program.

(b) The professional certificate program must be available to all qualified candidates.

(c) Using the descriptions of practice related to the criteria for the professional certificate, as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval, the professional certificate program shall be developed by a college(ies) or university and its professional education advisory board or an educational service district with its professional education advisory board. Additional agencies may participate in the development of the program if the ~~((college, university and))~~ approved provider and its professional education advisory board so choose.

(d) Each program shall consist of:

(i) A preassessment seminar which considers input from the candidate's "professional growth team" (WAC 181-78A-505), the candidate's past experience, the context in which he/she teaches, information from past annual evaluations if the individual chooses, the candidate's personal and professional goals, his/her self-evaluation, and evidences of the candidate's impact on student learning.

The seminar will culminate in preparation and approval of the candidate's individual professional growth plan designed to provide the candidate with the knowledge and skills needed to demonstrate successfully the standards and criteria required by WAC 181-78A-540.

A representative of the college/university and the candidate shall develop the professional growth plan to be reviewed and agreed upon after input from and consultation and "collaboration" (WAC 181-78A-010(9)) with his/her "professional growth team" (WAC 181-78A-010(10)).

The individual professional growth plan shall be based on:

(A) An analysis of the instructional context and teaching assignment(s) to determine strategies which the teacher should use to achieve a positive impact on student learning.

(B) An assessment of the candidate's ability to demonstrate successfully the professional certificate standards and criteria.

(C) Specifications of assistance and instructional components needed and any required course work.

(ii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required

statewide as essential to "effective teaching" as defined in WAC 181-78A-540(1).

(iii) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to "professional development" as defined in WAC 181-78A-540(2).

(iv) Course work, past and current experience, inservice, continuing education and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill and performance on all criteria required statewide as essential to professional contributions as defined in WAC 181-78A-540(3).

(v) A culminating seminar in which the candidate presents his/her final documentation and evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; identification of future goals and professional/career interests; and specification of areas for continuing education and development. The candidate must provide multiple forms of evidence which shall include, but are not limited to, the descriptions of practice related to the criteria for the professional certificate as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without prior professional educator standards board approval.

(vi) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for appropriate assistance and instruction.

(vii) No limits shall be placed on the number of times a candidate with a valid residency certificate may participate in the culminating seminar.

(2) Principal/program administrator.

(a) To be eligible to apply for enrollment in a professional certificate program, a candidate shall hold a contract as a principal, assistant principal, or program administrator in a public school or professional educator standards board-approved private school.

(b) The professional certificate program must be available to all qualified candidates.

(c) Using the six knowledge and skills standards, and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board or educational service district with its professional education advisory board. Additional agencies may participate in the development of the program if the ~~((college or university))~~ approved provider and its professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan shall be based on an assessment of the candidate's ability to demonstrate six standards at the professional certificate benchmark level (WAC

181-78A-270 (2)(b)), performance evaluation data, and an analysis of the administrative context and assignment.

(ii) Formalized learning opportunities, past and current experience, professional development opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards as defined in WAC 181-78A-270 (2)(b).

(iii) A final presentation to a panel that includes experienced administrators, during which the candidate provides evidence of professional certificate level knowledge, skill and performance; positive impact on student learning; and a professional growth plan that includes the identification of future goals and professional/career interests as well as a five-year plan for professional development designed to meet the requirements for certificate renewal.

(e) Candidates who do not successfully complete a final presentation shall receive an individualized analysis of strengths and weaknesses and a plan for assistance, and shall be allowed additional opportunities to present evidence pertaining to benchmarks not previously met.

(3) Educational staff associate (ESA) - school counselor, school psychologist, school social worker.

(a) To be eligible for enrollment in a professional certificate program, a candidate shall be employed in his/her ESA role in a public school, a professional educator standards board-approved private school, or state agency providing educational services for students.

(b) The professional certificate must be available to all qualified candidates.

(c) Using the knowledge and skills standards in WAC 181-78A-270 (5), (7), and (9), and the standards-based benchmarks as approved by the professional educator standards board and published by the office of the superintendent of public instruction, which may not be changed without professional educator standards board approval, the professional certificate program shall be developed by a college or university and its professional education advisory board. Additional agencies may participate in the development of the program if the college or university and professional education advisory board so choose.

(d) Each program shall consist of:

(i) An entry seminar during which the professional growth plan shall be developed. The plan will be agreed upon after input from and consultation with the ESA candidate's professional growth team (WAC 181-78A-010 (10)(c)) or the professional education advisory board (PEAB). The individual's professional growth plan shall be based on an assessment of the candidate's ability to demonstrate the standards at the professional certificate benchmark level in the specific ESA role pursuant to WAC 181-78A-270 (5), (7), or (9).

(ii) Formalized learning opportunities, and other activities directed at developing and verifying that the candidate has achieved acceptable knowledge, skill, and performance at the professional certificate benchmark level, or above, on all standards in the specific ESA role as defined in WAC 181-78A-270 (5), (7), or (9).

(iii) A culminating seminar in which the candidate presents his/her final documentation and evidence of profes-

sional certificate level knowledge, skill, and performance; positive impact on student learning; and specification of areas for continuing education and development.

(e) The candidate will present his/her portfolio to the professional education advisory board (PEAB) or the professional growth team (PGT) who will make a recommendation to the university program administrator/designee regarding the extent to which the candidate meets the professional certificate standards.

(f) Candidates who demonstrate they meet all standards and certification requirements pursuant to WAC 181-79A-150 will be recommended by the university program administrator/designee for the professional certificate.

(g) Candidates who do not successfully complete a culminating seminar shall receive an individualized analysis of strengths and weaknesses and a plan for assistance.

(h) No limit shall be placed on the number of times a candidate with a valid residency certificate may enroll in the culminating seminar.

WSR 09-12-131

PROPOSED RULES

**DEPARTMENT OF COMMUNITY,
TRADE AND ECONOMIC DEVELOPMENT**

[Filed June 3, 2009, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-033 [09-06-065].

Title of Rule and Other Identifying Information: Update to chapter 130-20 WAC Motion Picture Competitiveness Act, to align with statutory changes from the 2009 legislative session.

Hearing Location(s): Yesler Community Center, Multi-Purpose Room, 835 Yesler Way, Seattle, WA 98105, (206) 386-1245, on July 10, 2009, at 3:00 p.m. to 4:00 p.m.

Date of Intended Adoption: August 5, 2009.

Submit Written Comments to: Mary Trimarco, Business Development Manager, Department of Community, Trade and Economic Development, 2001 Sixth Avenue, Suite 2600, Seattle, WA 98121-2895, e-mail maryt@cted.wa.gov, fax (206) 256-6158 by July 3, 2009.

Assistance for Persons with Disabilities: Contact Yesler Community Center by July 9, 2009, TTY (206) 386-1245.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the 2009 legislative session, the legislature passed SHB 2042 and ESHB 2242 which made changes to the motion picture competitiveness program and the department of community, trade and economic development (CTED). Some of the statutory changes require an update to chapter 130-20 WAC. Additionally, the program has been under way for two years. The department is proposing rule updates based on two years of program experience.

Reasons Supporting Proposal: Conform WAC to law (reference SHB 2402, chapter 100, Laws of 2009, and to ESHB 2242, chapter 565, Laws of 2009) and enhance program efficiency by providing additional clarity to the rules.

Statutory Authority for Adoption: Chapter 43.365 RCW.

Statute Being Implemented: Chapter 43.365 RCW.

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

Name of Proponent: Washington department of community, trade and economic development, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mary Trimarco, Business Development Manager, CTED, International Trade and Economic Development, 2001 Sixth Avenue, Suite 2600, Seattle, WA 98121-2895, (206) 256-6156.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small businesses are directly affected by the rule (or statute).

A cost-benefit analysis is not required under RCW 34.05.328. CTED is not included in the list of departments required to conduct a cost-benefit analysis.

June 1, 2009

Marie Sullivan

Director of

Government Relations

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-010 Definitions. The following definitions apply to this chapter, unless the context clearly requires otherwise:

(1) "Applicant" means a television, film or commercial production company intending to produce a qualified production in Washington state.

(2) "Motion picture competitiveness program" means an approved program that is a 501 (c)(6) nonprofit organization with the ~~((sole))~~ primary purpose of revitalizing the state's standing in the film production marketplace through recommending and awarding financial assistance to qualified productions.

(3) "Costs" mean actual expenses of preproduction, production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental/lease costs of machinery, equipment and facilities, and the purchase of food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of ~~((community, trade, and economic development))~~ commerce.

~~((5))~~ "State film office" means a program within the department with the responsibility of promoting Washington state as a premier location for film and video production and assisting production needs within the state.

~~((6))~~ (5) "Motion picture" means a recorded audio-visual production intended for distribution to theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilot or television commercials. Motion picture does not mean production of ~~((a television commercial that spends less than one hundred fifty thousand dollars in the state of Washington or))~~ one or more segments of a newscast or sporting event.

~~((7))~~ (6) "Funding assistance" means financial assistance from a motion picture competitiveness program.

~~((8))~~ (7) "Person" means the same as defined in RCW 82.04.030.

~~((9))~~ (8) "Qualified production" is a production that has been certified by the motion picture competitiveness program as fully meeting the requirements for funding assistance.

~~((10))~~ (9) "Qualified expenditures" include production costs for wages and benefits provided to residents of Washington state for services performed in Washington state, goods and services purchased, leased or employed from a legal resident of this state, or a vendor or supplier who is located and doing business in this state for one year. Qualified expenditures do not include wages, salaries or other compensation for services of nonresident production personnel.

~~((11))~~ (10) "Motion picture competitiveness board" means a board appointed by the governor that administers the motion picture competitiveness program. The board evaluates and awards funding assistance to motion picture projects pursuant to the guidelines of this chapter.

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-020 Eligibility criteria and guidelines.

(1) To qualify for funding assistance, the applicant must:

(a) Certify that it is not engaged, to any extent, in the production of erotic material, as defined in RCW 9.68.050.

(b) The end credits of a film production must acknowledge that the production was filmed in Washington state. The type and style of acknowledgment shall be negotiated between the motion picture competitiveness board and the production company.

(c) Agree to pay all obligations the film production company incurs in Washington state.

(d) Complete a survey as required in WAC 130-20-060 and file it with the ~~((state film office))~~ department following the completion of the part of the project covered by the contract with the competitiveness board and before distribution of the funding assistance.

(e) Make every effort to maximize the hiring of local cast, crew and support services.

(f) Make industry standard payments for health insurance and a retirement plan for those positions typically covered by a collective bargaining agreement; and

(g) Enter into a contract with the motion picture competitiveness program accepting the terms above.

(2) The following activities are considered, but not limited to, qualified expenditures, provided the expenditure occurs in Washington state:

(a) Production costs include costs for preproduction, production and postproduction.

(b) Salaries of Washington state residents who are cast and crew, including wages and payments for health insurance and retirement plans, or fees of Washington state residents to include talent, management and labor.

(c) Cost of set construction and operations, wardrobe, make-up, accessories, location fees and related services.

(d) Costs associated with photography, sound synchronization, lighting and related services and materials.

(e) Renting or leasing vehicles, equipment or facilities.

(f) In-state food, lodging, and per diems.

(g) Agency fees for insurance coverage and bonding if purchased from Washington state-based insurance agent.

(h) Postproduction expenditures directly attributable to the production of a motion picture or commercial for services including, but not limited to: Editing and related services, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects, animation services, and music.

(i) Legal and accounting fees and expenses related to the production's activities in Washington state, provided such services are performed by Washington state licensed attorneys or accountants.

(j) "Preproduction" means costs for standard activities directly related to the production, which are incurred prior to the first day of principal photography for a motion picture.

(k) Other direct or indirect costs of producing a film in accordance with the generally accepted entertainment industry practices if expenditures occurred in the state of Washington.

(l) Other costs the competitiveness program believes add economic benefit to the state of Washington.

(3) The board is encouraged to consider the following when considering certifying a production for funding assistance:

(a) The additional income and tax revenue to be retained in the state for general purposes.

(b) Creation and retention of family wage jobs that provide health insurance and payments into a retirement plan.

(c) The impact of projects to maximize in-state labor and use of in-state film production and film postproduction companies.

(d) The impact on the local economy and the state economy as a whole.

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-030 Funding assistance limits. (1) Maximum funding assistance from a motion picture competitiveness program is subject to the ~~((following))~~ limitations~~((:~~

~~((a) No more than twenty percent of a total actual expenditure in the state of at least five hundred thousand dollars for a single feature film produced in Washington state.~~

~~((b) No more than twenty percent of a total actual expenditure in the state of at least three hundred thousand dollars per television episode produced in Washington state (e.g., television series, pilot, movie of the week).~~

~~((c) No more than twenty percent of a total actual expenditure in the state of at least one hundred fifty thousand dollars for an infomercial or television commercial produced in Washington state)) as specified in RCW 43.365.020.~~

(2) Funding assistance is subject to the amount available in the account managed by the motion picture competitiveness program.

AMENDATORY SECTION (Amending WSR 09-03-033, filed 1/12/09, effective 2/12/09)

WAC 130-20-060 Survey requirement. In order to recognize the accountability and effectiveness of tax policy, the legislature requires that each production receiving funding assistance from the motion picture competitiveness program shall report information to the ~~((state film office))~~ department through a survey.

(1) The motion picture competitiveness program shall ensure that no funds are disbursed until an applicant submits answers to a survey developed by the ~~((state film office))~~ department.

(2) The ~~((state film office))~~ department will make available on its web site a survey template.

(3) The motion picture competitiveness program may extend the due date for timely filing of the survey if failure to file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(4) Surveys shall include the following information:

(a) The amount of funding assistance requested.

(b) The total amount of preproduction, production and postproduction spending made in the state.

(c) The number of total employment positions.

(d) The number of full-time and part-time/temporary employment positions as a percent of total employment.

(i) Full-time employment is forty hours or more per week, or positions held for the full shooting schedule;

(ii) Part-time/temporary employment is for positions held for less than the full shooting schedule.

(e) The number of jobs at the wage bands of less than thirty thousand dollars, thirty thousand to sixty thousand dollars, and sixty thousand dollars and greater per production.

(f) The number of jobs that have employer-provided health insurance and payments into a retirement plan by each wage band.

(g) Additional information as requested by the department ~~((or state film office))~~.

~~((5) The state film office will continue to track total production spending of projects, monitor the state's competitiveness in the national marketplace, and continue to build partnerships that streamline the delivery of production services statewide.~~

~~((6))~~ (5) The department shall submit a summary of descriptive statistics based on information from the survey ~~((each year))~~ by September 1 of even-numbered years.

~~((7))~~ (6) The department shall provide the complete surveys to the joint legislative audit and review committee each year by September 1.