

WSR 09-13-012
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
 [Filed June 4, 2009, 2:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-20-058.

Title of Rule and Other Identifying Information: WAC 415-108-432, PERS Plan 1 duty disability benefit and WAC 415-108-434, PERS Plan 1 nonduty disability benefit.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on July 23, 2009, at 2:00 p.m.

Date of Intended Adoption: July 24, 2009.

Submit Written Comments to: Sarah White, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on July 23, 2009.

Assistance for Persons with Disabilities: Contact Sarah White, rules coordinator, by July 16, 2009, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement statutes governing duty and nonduty disability benefits for members of the public employees' retirement system (PERS) Plan 1. The PERS Plan 1 duty disability benefit is available to members of PERS Plan 1 who are totally incapacitated due to an accident or occupational disease that occurred while they were in the line of duty. The PERS Plan 1 nonduty disability benefit is available to vested members of PERS Plan 1 who are totally incapacitated by a disability that did not occur while in the line of duty.

Reasons Supporting Proposal: Statutes governing these benefits have been in effect for some time and these rules will assist plan members, retirees, employers, and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: For WAC 415-108-432 is RCW 41.40.200, 41.40.210, 41.40.220; for WAC 415-108-434 is RCW 41.40.230, 41.40.235, 41.40.250.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Cathy Cale, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

June 4, 2009
 Sarah White
 Rules Coordinator

NEW SECTION

WAC 415-108-432 PERS Plan 1 duty disability benefits. This section covers benefits provided for in RCW 41.40.200 through 41.40.220 for PERS Plan 1 members who incur a disability in the line of duty. You may also be eligible for benefits from the Washington state department of labor and industries, the department of social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) Am I eligible for a PERS Plan 1 duty disability benefit? You are eligible for a PERS Plan 1 duty disability benefit if the department determines that all of the following are true:

- (a) You are a member of PERS Plan 1;
- (b) You have separated from PERS employment;
- (c) At the time you separate from PERS employment, you are totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;
- (d) You are under sixty years of age;
- (e) Your disability is the result of:
 - (i) An accident that occurred in the performance of duty;

or

- (ii) An occupational disease as defined in RCW 51.08.140 for which you qualify to receive workers' compensation benefits under Title 51 RCW. To "qualify" means that you have received a formal determination from the department of labor and industries that you are eligible to receive Title 51 RCW benefits on account of an occupational disease.

(f) Your disability is not the result of willful negligence on your part;

(g) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054; and

(h) You apply for benefits within the specific time limits set forth in subsection (5) of this section.

(2) What is the PERS Plan 1 duty disability benefit? If you qualify to receive a duty disability benefit, you will receive the following for as long as you remain eligible:

(a) A monthly benefit of three hundred fifty dollars or two-thirds of your monthly average final compensation, whichever is less, until you attain the age of sixty.

(i) The degree of your disability or impairment will not affect the amount of your benefit.

(ii) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.

Example: Tiegan is a member of PERS Plan 1. Due to a work-related accident, she separated from service and began receiving a Title 51 RCW benefit in the amount of \$1,500 from the department of labor and industries (L&I). She then qualified for a duty disability benefit of \$350 per month from DRS. Because her duty disability benefit is offset by her Title 51 RCW benefit, Tiegan will receive, per month, \$0 from DRS and \$1,500 from L&I.

Example: Jennifer is a member of PERS Plan 1. Due to a work-related accident, she separated from ser-

vice and began receiving a duty disability benefit of \$350 per month from DRS. Jennifer then began receiving a Title 51 RCW benefit from L&I in the amount of \$100 per month. Because her duty disability benefit will be offset by her Title 51 RCW benefit, Jennifer will receive, per month, \$250 from DRS and \$100 from L&I.

(b) One month of service credit for each month you receive a monthly benefit. You will accrue service credit even if your monthly benefit is totally offset by benefits you receive from other sources.

(3) **How do I apply?** To apply for a PERS Plan 1 duty disability the following documents must be submitted to the department:

(a) A properly completed three-part disability retirement application, consisting of:

(i) Part 1: Application for disability retirement. You must complete and sign the application.

(ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.

(iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by a person licensed according to Washington state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

(c) Any other material you want the department to consider.

(4) **Who is responsible for expenses related to my application?** You are responsible for all costs associated with your application for a benefit.

(5) **What is the time limit for filing a PERS Plan 1 duty disability application?** In general, you have two years to file an application for a duty disability benefit. You are considered an applicant for a duty disability benefit when the department receives Part 1 of your application. If your disability is the result of:

(a) An **accident**, you must apply within two years from the date you know or should know that you are totally incapacitated and cannot return to work.

Example: Linda is a member of PERS Plan 1 and was injured on the job. After her injury, Linda resumed employment. Three years after the injury, her condition unexpectedly worsened and she could no longer work. Although more than two years had passed since her duty-related injury, Linda had no way of knowing that the injury would eventually cause her to be totally incapacitated to perform the duties of her job. Linda may apply for a duty disability benefit because the two-year time limit began when Linda knew she could no longer perform the duties for which she has training or experience.

Example: Hunter is a member of PERS Plan 1. He is injured on the job and knows immediately that he cannot return to work. Hunter goes on sick leave for two months, followed by two years of unpaid leave of absence. At the end of the unpaid leave, he applies for duty disability retirement. He is not eligible because more than two years have passed from the time he knew that his injury was such that he could not return to work.

(b) An **occupational disease**, you must apply within two years from separation of service. The two-year time limit begins running on the last day you are reported as an employee by your employer. If you are on an authorized leave of absence (paid or unpaid) you have not separated from service.

Example: Celina is a member of PERS Plan 1. She falls ill and goes on unpaid leave of absence for twenty-six months. At the end of the twenty-six months, she is diagnosed with a disease caused by her occupation and terminates her employment. Celina may apply for a duty disability benefit because the two-year time limit starts on the last day her employer reports her as an employee to the department.

(6) **What information will the department use to determine whether I am entitled to a duty disability benefit?** To determine your eligibility for a duty disability benefit, the department will consider any relevant information submitted by you, your employer, your physician, or otherwise available, including:

(a) Information and determinations by the department of labor and industries or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

(d) Your membership records, maintained by the department; and

(e) Any other relevant information.

(7) **If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement?** Yes, you may apply for a disability retirement if you are eligible for a service retirement, as long as you are under age sixty. If you are sixty years old or older, you must apply for a service retirement; see subsection (14) of this section.

(8) **When will the department evaluate my eligibility for a duty disability benefit?** The department will evaluate your eligibility for a duty disability benefit once it receives:

(a) All three parts of your properly completed application and supporting documentation;

(b) If your disability is the result of an occupational disease, written documentation from L&I that you have qualified for benefits under Title 51 RCW; and

(c) Other documentation requested by the department.

(9) **If my application is approved, when will my benefit begin?** If your application for a duty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, your disability benefit accrues from the first day of the calendar month following the date you separate from service. You will be eligible for a retroactive payment of the benefits that accrued between your separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue until you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for benefits, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) What are my options if my application is denied? If your application for a duty disability benefit is denied, you have the following options:

(a) If you continue to work in a PERS position, you may reapply for a duty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you were totally incapacitated at the time of your separation from employment.

(b) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(11) What happens if I am receiving a duty disability benefit and I die before age sixty? If you are receiving a duty disability benefit and you die before you reach age sixty, your beneficiary will receive a lump sum distribution of the accumulated contributions in your account, according to RCW 41.40.220(3).

(12) What information must I provide to the department if I am receiving a duty disability benefit? If you are receiving a duty disability benefit, you must report the following to the department:

(a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;

(b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

(13) Is my medical condition monitored while I am receiving disability retirement? The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

(14) How long will I receive a monthly disability benefit? You will receive a monthly disability benefit until you reach age sixty. Your benefit may be recalculated or discontinued under certain circumstances. At age sixty you will become eligible for a service retirement as provided in RCW 41.40.220(2).

(a) Your benefit will be recalculated if you return to employment; see subsection (15) of this section for more information.

(b) Your benefit will be discontinued if:

(i) You return to active PERS membership;

(ii) A doctor determines that you are no longer totally incapacitated; or

(iii) You refuse to submit to medical examinations required by RCW 41.40.310.

(c) When you become eligible for a service retirement at age sixty, you must apply for your retirement benefit; it will not start automatically. The service credit used to calculate your service retirement benefit includes both the service credit earned for services performed and the service credit credited to your account during your period of duty disability.

(15) If I return to employment, how will my monthly disability benefit be recalculated? The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference of your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your monthly disability benefit will be reduced or discontinued.

(i) If the difference between your current compensation and your allowable earnings is less than \$350, your disability benefit will be **reduced** by this difference.

Example: Due to a work-related accident, Martha separated employment and began receiving \$350 per month in duty disability benefits. Martha became gainfully employed in a new job earning \$1,800 per month. Martha's compensation at the time of separation adjusted for inflation is \$2,000. Because Martha's current compensation (\$1,800) is greater than her allowable earnings (\$2,000 - \$350 = \$1,650) by \$150 (an amount less than \$350) her benefit will be reduced by \$150. Martha's reduced disability benefit will be \$200 (\$350 - \$150).

(ii) Your benefit will be **discontinued** if your current compensation is greater than your allowable earnings by an amount equal to or greater than your disability benefit.

Example: Due to a work-related accident, Rebecca separated employment and began receiving \$350 per month in duty disability benefits. Rebecca became gainfully employed in a new job earning \$2,750 per month. Rebecca's compensation at the time of separation adjusted for inflation is \$2,500. Because Rebecca's current compensation (\$2,750) is greater than her allowable earnings (\$2,500 - \$350 = \$2,150) by an amount (\$600) that is greater than her disability benefit (\$350), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings your benefit will not be reduced or discontinued.

Example: Ted separated employment due to a work-related accident and began receiving \$350 per month in duty disability benefits. Ted became gainfully employed in a new job earning \$1,000 per month. Ted's compensation at the time of separation adjusted for inflation is \$3,000. Because Ted's current compensation (\$1,000) is less than his allowable earnings (\$3,000 - \$350 = \$2,650), his benefit will not be reduced.

(16) Is my PERS Plan 1 duty disability benefit taxable? You should consult with your tax advisor regarding all payments you receive from the department. The department does not:

- (a) Guarantee that payments are exempt from federal income tax;
- (b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;
- (c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or
- (d) Assume any liability for your compliance with the Internal Revenue Code.

(17) Are PERS Plan 1 duty disability benefits subject to court or administrative orders? Your PERS Plan 1 duty disability benefits may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 duty disability benefit make me eligible for a benefit from the other system? If you are a member of more than one retirement system, your PERS Plan 1 duty disability benefit does not qualify you to receive a benefit from any other system. See chapters 41.54 RCW and 415-113 WAC.

NEW SECTION

WAC 415-108-434 PERS Plan 1 nonduty disability benefits. This section covers benefits provided in RCW 41.40.230 through 41.40.250 for PERS Plan 1 members who incur a disability outside the performance of duty. You may also be eligible for benefits from the department of labor and industries, the department of social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) Am I eligible for a PERS Plan 1 nonduty disability benefit? You are eligible for a PERS Plan 1 nonduty disability benefit if the department determines that all of the following are true:

- (a) You are a PERS Plan 1 member and have been employed for at least five years;
- (b) You separate from PERS employment;
- (c) At the time you separate from PERS employment, you are totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;
- (d) Your disability is likely to be permanent;
- (e) Your disability was not incurred during the performance of your job duties; and

(f) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054.

(2) What is the PERS Plan 1 nonduty disability benefit? If you qualify to receive a nonduty disability benefit, you will receive a benefit under RCW 41.40.235 or, if you were a PERS Plan 1 member on February 25, 1972, you may irrevocably choose to receive a benefit under RCW 41.40.250.

If you are eligible to receive a benefit under RCW 41.40.235, your benefit will equal two percent of your average final compensation for each year of service credit, reduced by two percent for every year or fraction of a year that your age is less than fifty-five. For example, if you are fifty years old, your monthly disability benefit will be reduced by ten percent.

(a) Your monthly disability benefit will not exceed sixty percent of your average final compensation.

(b) The degree of your disability or impairment will not affect the amount of your benefit.

(c) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.

(d) Your monthly disability benefit will be actuarially reduced if you choose a benefit option with a survivor feature. See WAC 415-108-326.

(3) How do I apply? To apply for a nonduty disability benefit the following documents must be submitted to the department:

(a) A properly completed three-part disability retirement application, consisting of:

(i) Part 1: Application for disability retirement. You must complete and sign the application. If you are married, your spouse must sign consenting to the option you choose. Your signature(s) must be notarized.

(ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.

(iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by a person licensed according to Washington state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

(c) Any other material you want the department to consider.

(4) Who is responsible for expenses related to my application? You are responsible for all costs associated with your application for benefits.

(5) What is the time limit for filing an application for a nonduty disability benefit? There is no time limit for filing an application for a nonduty disability benefit. However, you must prove that you were totally incapacitated at the time you separated from PERS employment.

(6) What information will the department use to determine whether I am entitled to a nonduty disability benefit? To determine your eligibility for a nonduty disability benefit, the department will consider any relevant infor-

mation submitted by you, your employer, or your physician, or otherwise available, including:

- (a) Information and determinations by the department of labor and industries or a self-insurer;
- (b) Medical, vocational, and other information about your disability;
- (c) Your job description;
- (d) Your membership records, maintained by the department; and
- (e) Any other relevant evidence.

(7) If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement? Yes, if you are eligible for both you may elect a disability retirement or a service retirement. If you elect a service retirement, you may not later change to a disability retirement.

(8) When will the department evaluate my eligibility for benefits? The department will evaluate your eligibility for a nonduty disability benefit once it receives all three parts of your properly completed application, supporting documentation, and all other information requested by the department.

(9) If my application is approved, when will my benefit accrue? If your application for a nonduty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, you will be eligible for a retroactive payment of the benefit that accrued between the month following your date of separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue **until** you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for a benefit, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) What are my options if my application is denied?

(a) If your application is denied and you continue in or resume PERS employment, you may reapply for a nonduty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you meet the requirements in subsection (1) of this section.

(b) If your application is denied, you may petition for review of the department's decision under the provisions of chapter 415-04 WAC.

(11) What happens if I die within sixty days of applying for nonduty disability benefits? If you die within sixty days of the date the department receives your application for

a nonduty disability benefit, the beneficiary you name on the application may choose to receive either:

(a) A lump sum amount equal to the contributions in your PERS account; or

(b) A monthly benefit calculated according to whichever of the following methods will give your beneficiary the greatest benefit:

(i) A benefit calculated according to subsection (2) of this section and the benefit option indicated on your application; or

(ii) If otherwise qualified, the benefit provided in RCW 41.40.270 (4)(a).

(12) What information must I provide to the department if I am receiving nonduty disability benefits? If you are receiving nonduty disability benefits, you must report the following to the department:

(a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;

(b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

(13) Is my medical condition monitored while I receive disability benefits? The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

(14) How long will I receive a monthly disability benefit? During your lifetime, you will receive a monthly disability benefit unless one of the following occurs:

(a) If you return to gainful employment, your monthly disability benefit will be recalculated, as set forth in subsection (15) of this section.

(b) If you return to active PERS membership, your disability benefit will be discontinued.

(c) If a doctor determines that you are no longer totally incapacitated, your disability benefit will be discontinued.

(d) If you refuse to submit to medical examinations required by RCW 41.40.310, your disability benefit will be discontinued.

(15) If I return to employment, how will my monthly disability benefit be recalculated? The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference of your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your benefit will be reduced or discontinued.

Example of benefit being reduced: Due to a nonduty-related disability, Joe separated from service and began receiving a disability benefit of \$1,000 per month. Joe became gainfully employed earning \$2,500 per month. Joe's compensation at the time of separation adjusted for inflation is \$3,000. Because Joe's current compensation, \$2,500, is greater than his allowable earnings (\$3,000 - \$1,000 = \$2,000) by \$500, his benefit will be reduced by \$500. Joe's

reduced disability benefit will be \$500 per month (\$1,000 - \$500).

Example of benefit being discontinued: Due to a non-duty-related disability, Heidi separated from service and began receiving a disability benefit of \$1,000 per month. Heidi became gainfully employed earning \$4,000 per month. Heidi's compensation at the time of separation adjusted for inflation is \$3,000. Because Heidi's current compensation, \$4,000, is greater than her allowable earnings (\$3,000 - \$1,000 = \$2,000) by an amount (\$2,000) that is greater than her disability benefit (\$1,000), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings, then your benefit will not be reduced or discontinued. For example: Due to a nonduty-related disability, you separated from service and began receiving a disability benefit of \$1,000 per month. You become gainfully employed earning \$1,000 per month. Your compensation at the time of separation adjusted for inflation is \$3,000. Because your current compensation, \$1,000, is less than your allowable earnings (\$3,000 - \$1,000 = \$2,000), your disability benefit will not be reduced or discontinued.

(16) Is my PERS Plan 1 nonduty disability benefit taxable? You should consult with your tax advisor regarding all payments you receive from the department. The department reports disability benefits to the Internal Revenue Service as required by federal law and does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property, or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(17) Are disability benefits subject to court or administrative orders? Your nonduty disability benefit may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 nonduty disability make me eligible for a benefit from the other system? If you are a member of more than one retirement system, you may be entitled to additional benefits under portability law. See chapters 41.54 RCW and 415-113 WAC.

Title of Rule and Other Identifying Information: WAC 415-104-482 What is the LEOFF Plan 2 catastrophic disability allowance?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on July 21, 2009, at 10:30 a.m.

Date of Intended Adoption: July 22, 2009.

Submit Written Comments to: Sarah White, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on July 21, 2009.

Assistance for Persons with Disabilities: Contact Sarah White, rules coordinator, by July 14, 2009, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement HB 2932 (2006), which provided a benefit for members of the law enforcement officers' and fire fighters' retirement system (LEOFF) Plan 2 who incur a catastrophic disability in the line of duty. To be eligible for this benefit, a LEOFF Plan 2 member must be totally disabled in the line of duty so that he or she is unable to perform any substantial gainful activity, and the disability is expected to last for at least twelve months or result in death. If eligible, the member will receive an allowance equal to 70% of his or her final average salary.

Reasons Supporting Proposal: This bill is in effect and this rule will assist plan members, retirees, employers, and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.26.470.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Cathy Cale, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

June 4, 2009

Sarah White

Rules Coordinator

WSR 09-13-013

PROPOSED RULES

DEPARTMENT OF RETIREMENT SYSTEMS

[Filed June 4, 2009, 2:19 p.m.]

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Preproposal statement of inquiry was filed as WSR 06-08-072.

NEW SECTION

WAC 415-104-482 What is the LEOFF Plan 2 catastrophic disability allowance? Under RCW 41.26.470, two types of disability retirement are available to members of LEOFF Plan 2 who become disabled in the line of duty: Duty disability retirement benefits as described in WAC 415-104-480 and catastrophic disability retirement benefits as described in this section. If you are not eligible for a cata-

strophic disability allowance under this section, you may still be eligible for duty disability benefits.

(1) Am I eligible for a catastrophic disability allowance? You are eligible for a catastrophic disability allowance if the department determines all of the following are true:

(a) You incurred a physical or mental disability in the line of duty, as defined in subsection (13) of this section;

(b) You separated from LEOFF-eligible employment due to your disability;

(c) Your disability is so severe that you are unable to do your previous LEOFF eligible work, and considering your education, transferable skills, and work experience, you cannot engage in any other kind of substantial gainful activity in the labor market;

(d) Your condition has lasted or is expected to last at least twelve months, or your condition is expected to result in death; and

(e) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

(2) If I am receiving a retirement allowance for service, can I qualify for a catastrophic disability allowance? You are eligible for a catastrophic disability allowance in lieu of your service retirement allowance if the department determines you separated from LEOFF-eligible service due to a duty disability and you otherwise meet the eligibility requirements in subsection (1) of this section.

(3) How do I request a catastrophic disability allowance? To request a catastrophic disability allowance, please contact the LEOFF unit at the department of retirement systems. You, your physician, and your employer will be required to provide information regarding your catastrophic disability.

(4) What information will the department use to determine whether I am entitled to an allowance under this section? The department will consider information submitted by you, your physician, and your employer, and information otherwise available to the department, including:

(a) Medical and vocational information;

(b) Information from and determinations made by the department of labor and industries, the Social Security Administration, or a self-insurer;

(c) Your job description at the time you separated from LEOFF Plan 2 service;

(d) Financial records;

(e) Your membership records, maintained by the department; and

(f) Any other relevant information.

(5) Who determines my eligibility? The LEOFF plan administrator determines your eligibility for a catastrophic disability benefit. The plan administrator will rely substantially on determinations that have been made by the Social Security Administration unless there is information available that would produce a different determination.

(6) What are my options if my request is denied? If your request is denied, you have the following options:

(a) You may apply for duty disability benefits under WAC 415-104-480; and/or

(b) You may petition for review under chapter 415-04 WAC.

(7) If my request is approved, when will my monthly allowance begin to be paid? If your request is approved, you will begin to receive a catastrophic disability allowance in the month following the approval. Your first payment will include a retroactive payment of benefits that have accrued, but not yet been paid. The date your allowance for catastrophic disability accrues is determined as follows:

(a) If you separated from LEOFF Plan 2 employment due to a catastrophic disability, your allowance will accrue from the first of the month following your separation date.

(b) If you are receiving a duty disability allowance or a service retirement allowance, and you are subsequently approved for a catastrophic disability, your allowance will accrue from:

(i) The first of the month following the month in which a specific, one-time event, verified by medical records, occurred that clearly caused your duty disability to become a catastrophic disability; or

(ii) If the department determines there is not a one-time event that caused your disability to become catastrophic, the first of the month following the month in which the department receives your request for a catastrophic disability allowance.

Example: John has been receiving a duty-disability allowance under WAC 415-104-480 since June 1, 2005, when he separated service as a firefighter due to a back injury he incurred in the line of duty.

Example of (b)(i) of this subsection: A one-time event. On January 15, 2007, John accidentally twisted his back causing a catastrophic disability. Because John's catastrophic disability was clearly the result of a specific one-time event, his catastrophic disability allowance will accrue from February 1, 2007, the first of the month following the month in which the event occurred.

Example of (b)(ii) of this subsection: No specific event. John's back gradually worsened until his disability qualified as a catastrophic disability. On May 15, 2007, John applied for a catastrophic disability allowance. His allowance will accrue from June 1, 2007, the first of the month following the month the department received his application.

(8) How much is a catastrophic disability allowance? The base catastrophic disability allowance is equal to seventy percent of your final average salary (FAS).

(a) Your allowance combined with other disability benefits, such as Title 51 RCW benefits or Social Security disability benefits, may not exceed one hundred percent of your FAS. If necessary, your catastrophic disability allowance will be reduced so that your combined allowance does not exceed one hundred percent of your FAS. Your catastrophic disability allowance will not be reduced below your accrued retirement allowance as defined in subsection (13) of this section.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, the allowance calculated in (a) of this subsection will be actuarially reduced to cover the cost of providing benefits over two lifetimes.

(c) If you have been retired for at least one year by July 1st of each year, you will receive a cost-of-living adjustment

each July 1 based on the percentage change, if any, in the consumer price index.

Example: Michael separates from service on June 1, 2005, and is approved for a catastrophic disability allowance. Since his FAS is \$5,800, Michael's catastrophic disability allowance from the department is \$4,060 per month ($\$5,800 \times 70\% = \$4,060$). Michael is also approved for a Social Security benefit in the amount of \$1,800 per month. Michael's combined benefit equals \$5,860 ($\$4,060 + \$1,800$). This is \$60 over 100% of his FAS ($\$5,860 - \$5,800$), so Michael's catastrophic disability benefit will be reduced by that amount; his new monthly benefit from the department is \$4,000 ($\$4,060 - \60). In January 2006, Michael received a 4.1% COLA for his Social Security benefit. The department will recalculate his benefit as follows:

January 2006 Social Security benefit, with COLA	$\$1,800 \times 4.1\% = \$73.80 + \$1,800$	= \$1,873.80
Total combined benefit	$\$4,060 + \$1,873.80$	= \$5,933.80
Amount over 100% of FAS	$\$5,933.80 - \$5,800$	= \$133.80

Since Michael's combined benefit is \$133.80 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$3,926.20 ($\$4,060 - \133.80). Michael's benefit cannot be reduced more than the amount of his accrued retirement allowance. To determine his accrued retirement allowance, the department multiplies Michael's FAS, \$5,800, by his years of service credit, 30, by 2% ($\$5,800 \times 30 \times 2\%$). Michael's accrued retirement allowance is \$3,480. Since his benefit does not fall below his retirement allowance, Michael will receive \$3,926.20 from the department per month.

In July 2006, Michael received a 3% COLA for his catastrophic disability benefit. The department will recalculate his benefit as follows:

July 2006 catastrophic disability benefit, with COLA	$\$5,800 \times 3\% = \$174 + \$5,800 = \$5,974 \times 70\%$	= \$4,181.80
Total combined benefits	$\$4,181.80 + \$1,873.80$	= \$6,055.60
Amount over 100% of FAS	$\$6,055.60 - \$5,974$	= \$81.60

Since Michael's combined benefit is \$81.60 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$4,100.20 ($\$4,181.80 - \81.60). This is compared to his accrued retirement allowance, \$3,584.40 ($\$5,974 \times 30 \times 2\%$); since his benefit does not fall below his retirement allowance, Michael will receive \$4,100.20 from the department per month.

(9) Is my catastrophic disability allowance taxable?

You should consult with your tax advisor regarding all payments you receive from the department. The department does not:

- (a) Guarantee that payments are exempt from federal income tax;
- (b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;
- (c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or
- (d) Assume any liability for your compliance with the Internal Revenue Code.

(10) If I withdrew my contributions prior to December 2, 2004, and am approved for a catastrophic disability allowance, what will I receive?

You may apply for a catastrophic disability allowance even if you withdrew your accumulated contributions prior to December 2, 2004. If you are approved for a catastrophic disability allowance, your monthly allowance will be calculated as follows:

- (a) If you repay the entire amount you withdrew in a lump sum payment, you will receive a monthly allowance calculated according to subsection (8) of this section.
- (b) If you do not repay the entire amount you withdrew, your monthly allowance will be actuarially reduced to offset the amount of your previous withdrawal.

(11) Can my catastrophic disability allowance be discontinued?

- Your catastrophic disability allowance will be discontinued if:
- (a) Medical/vocational examination reveals that your disability no longer prevents you from performing substantial gainful activity; or
 - (b) Your earnings exceed the threshold for substantial gainful activity.

The department may require comprehensive medical/vocational examinations and/or submission of earnings information to evaluate your eligibility for continued benefits according to the provisions of RCW 41.26.470. You are required to contact the department if your medical/vocational or financial situation changes.

(12) If my catastrophic disability allowance terminates, may I qualify for duty disability benefits?

If you are no longer eligible for a catastrophic disability allowance, but have a disability that prevents you from returning to a LEOFF-eligible position, the department will determine if you qualify for duty disability benefits under WAC 415-104-480.

- (a) The department may request additional information from you, your physician, or others upon which to base the determination.

(b) If the department determines you are eligible, you will begin receiving a duty disability allowance under WAC 415-104-480 in lieu of your catastrophic disability allowance.

(13) **Definitions.** As used in this section:

(a) **Accrued retirement allowance** means a duty disability monthly allowance under WAC 415-104-480.

(b) **Earnings** are any income or wages received, which are reportable as wages or self-employment income on IRS form 1040.

(c) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(d) **Line of duty** means any action or activity performed in the service of your employer that is required or authorized by law, rule, regulations, or condition of employment or service.

(e) **Substantial gainful activity** means any activity that produces average earnings, as defined in (b) of this subsection, in excess of eight hundred sixty dollars a month in 2006, adjusted annually as determined by the department based on federal Social Security disability standards. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(f) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

WSR 09-13-016

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 5, 2009, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-089.

Title of Rule and Other Identifying Information: WAC 308-124C-030 Successful applicants must apply for license.

Hearing Location(s): 2000 4th Avenue West, 2nd Floor Conference Room, Olympia, WA, on July 23, 2009, at 10:00 a.m.

Date of Intended Adoption: July 23, 2009, or after.

Submit Written Comments to: Jerry McDonald, P.O. Box 2445, Olympia, WA 98507, e-mail jmcdonald@dol.wa.gov, fax (360) 570-7051, by July 10, 2009.

Assistance for Persons with Disabilities: Contact Gale Mitchell by June 5, 2009, TTY (360) 664-8885 or (360) 664-6526.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A new set of laws become effective July 1, 2010. The new law changes the prelicense clock hour requirements for licensure. This rule will allow current applicants to become licensed only until the new law becomes effective.

Reasons Supporting Proposal: The rule notifies applicants of the current laws expiring and the new laws that will affect new applicants.

Statutory Authority for Adoption: RCW 18.85.040.

Statute Being Implemented: RCW 18.85.130, 18.85.090 and 18.85.095.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA, (360) 664-6524.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is for individual applicants and not small business enterprises. The department of licensing is not one of the named agencies under this RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed change has no financial impact upon the department.

June 5, 2009

Jerry McDonald

Assistant Administrator

AMENDATORY SECTION (Amending Order PM 683, filed 10/7/87)

WAC 308-124A-030 Successful applicants must apply for license. Examination results are valid ~~((for one year only))~~ until July 1, 2010. Any person who has passed the examination for real estate broker or real estate salesperson licensure must become licensed ~~((within one year from the date of such examination))~~ by June 30, 2010. Failure to comply with this provision will necessitate fulfilling the requirements of RCW 18.85.101 or 18.85.111 and the taking and passing of ~~((another))~~ a new examination prior to licensure.

This section is effective until July 1, 2010.

WSR 09-13-020

PROPOSED RULES

GAMBLING COMMISSION

[Filed June 5, 2009, 12:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-079.

Title of Rule and Other Identifying Information: Amending WAC 230-14-047 Standards for electronic video pull-tab dispensers.

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

Date of Intended Adoption: August 14, 2009.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The petitioner is requesting that electronic video pull-tab dispensers be allowed to dispense a bundled pull-tab after all plays have been completed. Currently, pull-tabs must be dispensed when (not after) the ticket is read on the video screen.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: ZDI Gaming, Inc., licensed manufacturer, private.

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

May 18, 2009
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 621, filed 1/11/08, effective 2/11/08)

WAC 230-14-047 Standards for electronic video pull-tab dispensers. Electronic video pull-tab dispensers must be approved by us prior to use, meet the requirements below, and may incorporate only the features below and not perform additional functions.

(1) Electronic video pull-tab dispensers must dispense a paper pull-tab as defined in WAC 230-14-010 and follow the rules for:

- (a) Pull-tabs; and
- (b) Flares; and
- (c) Authorized pull-tab dispensers.

(2) Electronic video pull-tab dispensers that use a reading and displaying function must:

- (a) Use a video monitor for entertainment purposes only; and
- (b) Open all, or a portion of, the pull-tab in order to read encoded data that indicates the win or loss of the pull-tab if the dispenser is equipped to automatically open pull-tabs; and
- (c) Dispense the pull-tab to the player and not retain any portion of the pull-tab; and
- (d) Read the correct cash award from the pull-tab either when it is dispensed or when the pull-tab is reinserted into the dispenser; however, a bundled pull-tab may be dispensed after all plays have been completed; and

(e) Display the cash award from the pull-tab, one pull-tab at a time; and

(f) Provide:

(i) An electronic accounting of the number of pull-tabs dispensed; and

(ii) A way to identify the software version and name; and

(iii) A way to access and verify approved components; and

(iv) Security on the dispenser to prevent unauthorized access to graphic and prize amount displays.

(3) Gift certificates or gift cards used in electronic video pull-tab dispensers must:

(a) Be purchased with cash, check or electronic point-of-sale bank transfer before use in the dispenser; and

(b) Be convertible to cash at any time during business hours; and

(c) Subtract the cash value for the purchase of the pull-tab one pull-tab at a time.

WSR 09-13-022
PROPOSED RULES
FOREST PRACTICES BOARD

[Filed June 5, 2009, 2:22 p.m.]

Continuance of WSR 09-09-132.

Preproposal statement of inquiry was filed as WSR 05-2-097 [05-20-097].

Title of Rule and Other Identifying Information: Achieving desired future conditions in riparian management zones. This rule proposal amends WAC 222-30-021(1) to change timber harvest and leave tree requirements in riparian management zones adjacent to Type S and F Waters as defined in WAC 222-16-030. It pertains to forest lands in western Washington.

Hearing Location(s): The forest practices board held hearings in Centralia, Port Townsend, Ellensburg, and Mount Vernon on December 16 and 18, 2008, January 6 and 8, 2009, respectively. The board is continuing to accept comments by mail, e-mail, fax, and during the board meetings on May 20 and August 12, 2009.

Date of Intended Adoption: August 12, 2009.

Submit Written Comments to: Patricia Anderson, DNR Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by August 12, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 222-30-021 provides prescriptions and options to harvesting trees in forested "riparian management zones" as defined in WAC 222-16-010. Pursuant to RCW 76.09.370, the forest practices board incorporates a scientific-based adaptive management process to determine the effectiveness of forest practices rules in aiding Washington's salmon recovery effort. Under this adaptive management process, a scientific study was completed by the forest practices board's cooperative monitoring, evaluation, and research committee. The study, entitled *Validation of the Western Washington Riparian Desired Future Condition (DFC) Performance Targets in the Washington State Forest Practices Rules with Data From Mature,*

Unmanaged, Conifer-Dominated Riparian Stands, found that basal area per acre of mature, unmanaged conifer-dominated riparian stands are greater than the values used in the current rule.

In response to the DFC study findings, the board is considering three alternative rule amendments to WAC 222-30-021(1). The anticipated effect of all of the alternatives is to increase the basal area retained in riparian management zones.

- The first alternative would increase the target basal area per acre stand requirement for all site classes to three hundred twenty-five square feet at age one hundred forty.
- The second alternative would increase the target basal area per acre the same as the first alternative, and would also:
 - Allow the basal area per acre of the required twenty inner zone conifer leave trees to be credited towards meeting the stand requirement; and
 - Expand the table, "Option 2. Leaving trees closest to water," to include site classes III and IV on streams greater than ten feet in width.
- The third would increase the target basal area per acre the same as the first alternative, and also allow the basal area per acre of the required twenty inner zone conifer leave trees to be credited towards meeting the stand requirement.

Reasons Supporting Proposal: The proposed rule changes are based on recommendations resulting from the scientifically based adaptive management process outlined in WAC 222-12-045. Through this process, the board has determined that the forest practices rules should be adjusted to ensure that appropriate riparian buffers are maintained on forest land subject to the Forest Practices Act.

Statutory Authority for Adoption: RCW 76.09.040 and 76.09.370(6).

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; **Implementation:** Mary McDonald, 1111 Washington Street S.E., Olympia, (360) 902-1415; and **Enforcement:** Julie Sandberg, 1111 Washington Street S.E., Olympia, (360) 902-1407.

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

Small Business Economic Impact Statement

See WSR 08-13-087.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Gretchen Robinson, P.O. Box 47012,

Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.wa.gov.

May 21, 2009

Peter Goldmark

Chair

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ((the)) board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See ((the)) board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is ((140)) one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) 325 sq. ft.
II	((275)) 325 sq. ft.

Site Class	Desired future condition target basal area per acre (at 140 years)
III	((258)) <u>325</u> sq. ft.
IV	((224)) <u>325</u> sq. ft.
V	((190)) <u>325</u> sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See ~~((the))~~ board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;
- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75-))~~ seventy-five foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than ~~((25%))~~ twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;
- Not more than ~~((10%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and
- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hundred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.
- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.
- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.
- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of ~~((75))~~ seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.
- The number of residual conifer trees per acre in the inner zone will equal or exceed ~~((57))~~ fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ~~((40))~~ ten feet wide and RMZs in site class I and II for streams greater than ~~((40))~~ ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within ~~((30))~~ thirty feet of the core zone for streams less than or equal to ~~((40))~~ ten feet wide and harvest is not permitted within ~~((50))~~ fifty feet of the core zone for streams greater than ~~((40))~~ ten feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;
- A minimum of ~~((20))~~ twenty conifers per acre, with a minimum ~~((12-))~~ twelve inch dbh, will be retained in any portion of the inner zone where even-age harvest occurs. These riparian leave trees will ~~((not))~~ be counted ~~((or considered))~~ towards meeting applicable stand requirements ~~((not can))~~. The number of riparian leave trees cannot be reduced below ~~((20))~~ twenty for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.
- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ~~((40))~~ ten trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ~~((40))~~ ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activi-

ties. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ~~((20))~~ twenty riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ~~((20))~~ twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ~~((12))~~ twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of ~~((12"))~~ twelve inches dbh or greater are

not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;

(V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological or historical sites registered with the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(g); or

(VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of ~~((12))~~ twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((10))~~ ten trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((10"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((10"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

***(2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30-))~~ thirty foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((10%))~~ ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((50-))~~ fifty foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the

upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ~~((50%))~~ fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of ~~((100))~~ one hundred feet in length. If an operating area is located more than ~~((500))~~ five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ~~((1,000))~~ one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional ~~((2))~~ two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than ~~((20%))~~ twenty percent in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See ~~((the))~~ board manual section 7 for riparian design and layout guidelines.

***(1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See ~~((the))~~ board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The

width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is ~~((140))~~ one hundred forty years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	((285)) <u>325</u> sq. ft.
II	((275)) <u>325</u> sq. ft.
III	((258)) <u>325</u> sq. ft.
IV	((224)) <u>325</u> sq. ft.
V	((190)) <u>325</u> sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See ~~((the))~~ board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;
- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75-))~~ seventy-five foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred

feet downstream of the proposed harvest unit (or the length of the stream, if less);

- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall or:

◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than ~~((25%))~~ twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;
- Not more than ~~((40%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and
- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and
- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hundred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.
- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	Core zone width (measured from outer edge of bank-full width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.
- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.
- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of ~~((75))~~ seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.
- The number of residual conifer trees per acre in the inner zone will equal or exceed ~~((57))~~ fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bank-full width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	83'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ~~((10))~~ ten feet wide and RMZs in site class I and II for streams greater than ~~((10))~~ ten feet wide. Harvest must comply with the following:

- Harvest is not permitted within ~~((30))~~ thirty feet of the core zone for streams less than or equal to ~~((10))~~ ten feet wide and harvest is not permitted within ~~((50))~~ fifty feet of the core zone for streams greater than ~~((10))~~ ten feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;
- A minimum of ~~((20))~~ twenty conifers per acre, with a minimum ~~((12-))~~ twelve inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be counted or considered towards meeting applicable stand requirements nor can the number be reduced below ~~((20))~~ twenty for any reason.
- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.
- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ~~((10))~~ ten trees per acre.

Option 2. Leaving trees closest to water.

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ~~((10))~~ ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be

reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ~~((20))~~ twenty riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater

Application	Leave tree spacing	Tree species	Minimum dbh required
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ~~((20))~~ twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ~~((12))~~ twelve inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of ~~((12"))~~ twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).
- (VI) Archaeological or historical sites registered with the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(g); or
- (VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of ~~((12))~~ twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((10))~~ ten trees per acre. If this strategy is chosen, a complete

forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

***2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30-))~~ thirty foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((10%))~~ ten percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((50-))~~ fifty foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ~~((50%))~~ fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of ~~((100))~~ one hundred feet in length. If an operating area is located more than ~~((500))~~ five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ~~((1,000))~~ one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional ~~((2))~~ two-sided buffers according to the following priorities:

(A) Low gradient areas;

(B) Perennial water reaches of nonsedimentary rock with gradients greater than ~~((20%))~~ twenty percent in the tailed frog habitat range;

(C) Hyporheic and ground water influence zones; and

(D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-021 *Western Washington riparian management zones. These rules apply to all typed waters on forest land in Western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in

this section. See ~~((the))~~ board manual section 7 for riparian design and layout guidelines.

*** (1) Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See ~~((tables for))~~ management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the ~~((inner zone))~~ RMZ rules. See ~~((the))~~ board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed ~~((in))~~ within the fifty-foot core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option as described in this section. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"Stand requirement" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions~~((The following table defines basal area targets when the stand is 140 years old.~~

Site Class	Desired future condition target basal area per acre (at 140 years)
I	285 sq. ft.
H	275 sq. ft.
HH	258 sq. ft.
IV	224 sq. ft.
V	190 sq. ft.

~~Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See the board manual section 7.) of three hundred twenty-five square feet per acre for all site classes at age one hundred forty. The growth modeling program provided by the department must~~

be used to calculate whether a particular stand meets the stand requirement and is on a trajectory towards the desired future condition basal area target.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

(A) The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(I) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the ~~((combined core and))~~ inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than ~~((57))~~ fifty-seven conifer trees per acre ~~((8))~~ eight inches or larger dbh in the conversion area;
- There are fewer than ~~((100))~~ one hundred conifer trees per acre larger than ~~((4))~~ four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a ~~((75-))~~ seventy-five foot buffer with trees at least ~~((40))~~ forty feet tall on both sides of the stream for ~~((500))~~ five hundred feet upstream and ~~((500))~~ five hundred feet downstream of the proposed harvest unit (or the length of the stream, if less);
- If the landowner has previously converted hardwood-dominated stands, then post-harvest treatments must have been performed to the satisfaction of the department.

(II) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than ~~((500))~~ five hundred feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.
- Type S and F (Type 1, 2, or 3) Water: Up to ~~((50%))~~ fifty percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:
 - ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a ~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall or:
 - ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a

~~((75-))~~ seventy-five foot buffer of trees at least ~~((40))~~ forty feet tall.

- Not more than ~~((25%))~~ twenty-five percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(III) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than ~~((20))~~ twenty inches dbh shall not be harvested;
- Not more than ~~((10%))~~ ten percent of the conifer stems greater than ~~((8))~~ eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and
- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than ~~((8))~~ eight inches dbh.

(IV) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and
- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of ~~((150))~~ one hun-

dred fifty conifer trees greater than ~~((8))~~ eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(V) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated data bases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the application process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

No inner zone management RMZ widths for Western Washington

Site Class	RMZ width	((Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	<u>Combined core and inner zone width</u> (measured from outer edge of ((core zone)) bankfull width or outer edge of CMZ)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
			I	200'	50'	((83')) <u>133'</u>
II	170'	50'	((63')) <u>113'</u>	((78')) <u>128'</u>	57'	42'
III	140'	50'	((43')) <u>93'</u>	((55')) <u>105'</u>	47'	35'
IV	110'	50'	((23')) <u>73'</u>	((33')) <u>83'</u>	37'	27'
V	90'	50'))	((10')) <u>60'</u>	((18')) <u>68'</u>	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory

to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.
- Thinning cannot decrease the proportion of conifer in the stand.
- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of ~~((75))~~ seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.
- The number of residual conifer trees per acre in the inner zone will equal or exceed ~~((57))~~ fifty-seven.

Option 1. Thinning from below.

Site class	RMZ width	Core zone width (measured from outer edge of bank-full width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) Option 2. Leaving trees closest to the water. ((Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to 10 feet wide and RMZs in site class I and II for streams greater than 10 feet wide. Harvest must comply with the following:

- Harvest is not permitted within 30 feet of the core zone for streams less than or equal to 10 feet wide and harvest is not permitted within 50 feet of the core zone for streams greater than 10 feet wide;

- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of 20 conifers per acre, with a minimum 12-inch dbh, will be retained in any portion of the inner zone where harvest occurs. These riparian leave trees will not be counted or considered towards meeting applicable stand requirements nor can the number be reduced below 20 for any reason.

- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area for basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of 10 trees per acre.) The objective of this option is to retain an RMZ width that will maintain current riparian functions. The stand must provide sufficient residual conifer trees in the combined core and inner zones to reach the target basal area of three hundred twenty-five square feet per acre at age one hundred forty.

Inner zone harvest may occur under option 2 if the projected future basal area within the combined width of the core and inner zones exceeds the target basal area. The combined core and inner zone width must be determined using the leaving trees closest to the water table below; the future basal area must then be calculated using the growth model program provided by the department. The model will produce a minimum inner zone floor width. (The minimum floor width

extends outward from the outer edge of the fifty-foot core zone.)

Harvest is permitted under option 2 in the following order:

- If the projected basal area within the combined core and inner zones exceeds the target basal area, an even-age harvest may occur starting at the outermost portion of the inner zone and progressing to the inner zone floor edge.

In any portion of the inner zone where an even-age harvest method occurs, at least twenty conifer trees per acre with a minimum dbh of twelve inches must be retained. The basal area of these trees will be counted towards meeting applicable stand requirements.

- If the projected basal area within the combined core and inner zones still exceeds the target basal area, the conifer trees otherwise required to be left in the outer zone may be harvested on a basal-area-for-basal-area basis; however, only a maximum of ten conifer trees per acre may be harvested in the outer zone. (Tree counts, minimum size and placement of outer zone trees are specified below in (c) of this subsection.)

Option 2. Leaving trees closest to water.

Site class	Total RMZ width	((Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water))	Combined core and inner zone width (measured from outer edge of bankfull width or outer edge of CMZ)				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
			core and inner zone width ((measured from outer edge of core zone))	minimum floor ((distance)) width ((measured from outer edge of core zone))	core and inner zone width ((measured from outer edge of core zone))	minimum floor ((distance)) width ((measured from outer edge of core zone))		
I	200'	50'	((84')) 134'	((30')) 80'	((84')) 134'	((50')) 100'	66'	66'
II	170'	50'	((64')) 114'	((30')) 80'	((70')) 120'	((50')) 100'	56'	50'
III	140'	50'))	((44')) 94'	((30')) 80'	((**)) 105'	((**)) 80'	46'	((**)) 35'
IV	110'		74'		83'	80'	36'	27'
V	90'		61'		68'		29'	22'

((**Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.))

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ((40)) ten trees per acre.

(C) When the basal area requirement cannot be met, as explained in (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding

corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ((20)) twenty riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in Western Washington. Riparian leave trees must be left uncut throughout all future harvests:

Outer zone riparian leave tree requirements

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ((20)) twenty riparian leave trees to be left can be reduced in number under the circumstances delineated in (c)(iv) of this subsection. The riparian leave trees must be left on the landscape according to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of ((12)) twelve inches or greater, must be left

dispersed approximately evenly throughout the outer zone. If riparian leave trees of ~~((12"))~~ twelve inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in subsection (ii) below.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be ~~((8))~~ eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

(I) Seeps and springs;

(II) Forested wetlands;

(III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;

(IV) Areas where riparian leave trees may provide windthrow protection;

(V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological or historical sites registered with the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(g); or

(VII) Sites containing evidence of Native American cairns, graves or glyptic records. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of ~~((12))~~ twelve inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.** A landowner may design a LWD placement plan in cooperation with the department of fish and wildlife. The plan must be consistent with guidelines in ~~((the))~~ board manual section 26. The landowner may reduce the number of trees required to be left in the outer zone to the extent provided in the approved LWD placement plan. Reduction of trees in the outer zone must not go below a minimum of ~~((10))~~ ten trees per acre. If this strategy is chosen, a complete forest practices application must include a copy of the WDFW approved hydraulics project approval (HPA) permit.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than ~~((6"))~~ six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((40"))~~ ten inches dbh will offset conifer in the outer zone at a three-to-one ratio.

*** (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((30-))~~ thirty foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((10%))~~ ten percent of the surface area of the zone:

(A) Ground based equipment;

(B) Skid trails;

(C) Stream crossings (other than existing roads); or

(D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((50-))~~ fifty foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

Required no-harvest, 50-foot buffers on Type Np Waters.

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.

(iii) No timber harvest is permitted in an area within ~~((50))~~ fifty feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((56-))~~ fifty-six foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) and 222-16-031.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ~~((50%))~~ fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-sided buffers). Buffered segments must be a minimum of ~~((100))~~ one hundred feet in length. If an operating area is located more than ~~((500))~~ five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ~~((1,000))~~ one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional ~~((2))~~ two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than ~~((20%))~~ twenty percent in the tailed frog habitat range;
- (C) Hyporheic and ground water influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

WSR 09-13-025
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed June 8, 2009, 1:28 p.m.]

Supplemental Notice to WSR 09-10-086.
 Preproposal statement of inquiry was filed as WSR 09-07-071.

Title of Rule and Other Identifying Information: Vision test and medical screening for issuance of driver's license.

Hearing Location(s): Highways-Licenses Building, Conference Room 413 (check in at counter on first floor), 1125 Washington Street S.E., Olympia, WA, on July 21, 2009, at 3:00 p.m.

Date of Intended Adoption: July 22, 2009.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351 by July 20, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-104-010 to base nighttime driving restriction on visual acuity; amend WAC 308-104-014 and 308-104-019 to update medical screening questions on driver's license application.

Reasons Supporting Proposal: Amendment to WAC 308-104-010 is based on input received from interested stakeholders.

Statutory Authority for Adoption: RCW 46.01.110, 46.-20.041, 46.20.091, 46.20.120, and 46.20.130.

Statute Being Implemented: RCW 46.20.041, 46.20.-091, 46.20.120, and 46.20.130.

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: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

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 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

June 8, 2009
Doron Maniece
Assistant Director

AMENDATORY SECTION (Amending WSR 07-02-104, filed 1/3/07)

WAC 308-104-010 Vision test. (1) A person applying for a driver's license or instruction permit shall be required to take a vision test administered by the department.

(a) Any person (~~((with))~~ with visual acuity worse than 20/40 Snellen with both eyes combined either corrected or uncorrected, or with some apparent significant visual limitation, must have an eye examination by a competent vision authority.

(b) If an applicant's vision cannot be corrected so it will be 20/40 Snellen for visual acuity and if the applicant's vision is between 20/50 Snellen and 20/100 Snellen, or if an applicant's other vision problems cannot be corrected, he or she must submit to a reexamination.

(c) An applicant whose vision cannot be corrected to at least 20/100 Snellen range will be deemed to have failed the portion of the driver's license examination specified by RCW 46.20.130 (1)(a) pertaining to eyesight and ability to see, and will be deemed to have failed to demonstrate that he or she is qualified to drive.

(d) An applicant whose (~~(optometrist or ophthalmologist answers "no" to the question "In your professional opinion, can this individual see adequately to safely operate a vehicle at night.")~~) vision cannot be corrected to at least 20/70 Snellen range will be deemed to have failed to demonstrate that he or she is qualified to drive at night.

(2) The department may waive the requirement for a vision test for any person applying to renew his or her driver's license by mail or electronic commerce if the person certifies on the application that his or her vision acuity is no less than 20/40 Snellen for visual acuity, either corrected or uncorrected, and that there are no other vision problems.

(3) The department shall refer for reexamination any person who uses bioptic or telescopic lenses to meet licensing standards for the issuance of any driver's license or instruction permit.

AMENDATORY SECTION (Amending WSR 05-15-064, filed 7/12/05)

WAC 308-104-014 Application for driver's license or identicard. A person applying for an original driver's license,

instruction permit, or identification card must provide the following information:

(1) The person's full name, current mailing and residential address, and telephone number;

(2) The person's physical description, including sex, height, weight, and eye color;

(3) The person's date and place of birth;

(4) The person's Social Security number, if the Social Security number is required by state or federal law. If the person's Social Security number is not required by state or federal law, the person may voluntarily provide his or her Social Security number in order to assist the department in verifying identity;

(5) The person's mother's maiden name and whether the person is one of multiple siblings born at the same time;

(6) If the application is for a driver's license or instruction permit, whether the person has been previously licensed, where such license was issued, and under what name;

(7) If the application is for a driver's license or instruction permit, whether the person has ever had his or her driver's license or driving privilege suspended, revoked, cancelled, disqualified, withheld, or denied, and if so, where and when such driving sanction was imposed and the reason for such action;

(8) If the application is for a driver's license or instruction permit, whether the person has had a (~~(loss of consciousness or control within the last six months that))~~ mental or physical condition or is taking any medication which could impair his or her ability to operate a motor vehicle;

(9) If the application is for a driver's license and the person is under the age of eighteen, a declaration by the person's parent, guardian, or employer that he or she has read and understands the intermediate license restrictions, and a declaration by the person that he or she has read and understands the intermediate license restrictions;

(10) The person's signature and, if the application is for a driver's license or instruction permit and the person is under the age of eighteen, the signature of the person's custodial parent or legal guardian; and

(11) Any supplementary documentation as may be necessary to verify any of the information required by this section.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 07-22-031, filed 10/29/07)

WAC 308-104-019 Renewal of driver's license or identicard by electronic commerce—Eligibility. An applicant for a driver's license renewal or identicard renewal may apply by electronic commerce if he or she has received an authorization notice from the department.

(1) The department may send an authorization notice to a person whose valid driver's license is about to expire if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

- (b) Has previously been issued a digital driver's license;
 - (c) Is at least twenty-four and not more than sixty-five years of age;
 - (d) Has a valid Social Security number on file with the department;
 - (e) Has a valid mailing address on his or her driving record as maintained by the department;
 - (f) Does not have a commercial driver's license, enhanced driver's license or identicaid, instruction permit, or agricultural permit;
 - (g) Has not paid a fee owed to the department with a check that has been dishonored;
 - (h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and
 - (i) Does not have any actions pending against his or her driver's license or driving privileges.
- (2) A person applying for driver's license renewal by electronic commerce must:
- (a) Certify that (~~within the last six months he or she has not had a loss of consciousness or control that~~) he or she has had no mental or physical condition or is not taking any medication which could impair his or her ability to operate a motor vehicle safely;
 - (b) Make the necessary certification under WAC 308-104-010(2); and
 - (c) Complete the required application and pay all applicable fees.
- (3) The department may send an authorization notice to a person whose valid identicaid is about to expire if the person:
- (a) Is eligible to renew his or her identicaid by electronic commerce under the provisions of RCW 46.20.117 (3)(b);
 - (b) Is at least twenty-four years of age; and
 - (c) Has previously been issued a digital identicaid.
- (4) A person applying for identicaid renewal by electronic commerce must complete the required application and pay all applicable fees.
- (5) The department may specify the means and establish procedures by which a person may make an application under this section.

WSR 09-13-028
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed June 8, 2009, 2:46 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article IX—Asbestos Control Standards: Section 9.02 Definitions, Section 9.03 Asbestos Survey Requirements, Section 9.04 Notification Requirements, Section 9.07 Procedures for Nonfriable Asbestos-Containing Roofing Material, Section 9.08 Alternate Means of Compliance, Section 9.09 Disposal of Asbestos [Asbestos]-Contain-

ing Waste Material, and Section 9.10 Compliance with Other Rules; SRCAA Regulation I, Article X, Section 10.09—Asbestos Project and Demolition Notification Waiting Period and Fees.

Hearing Location(s): Spokane Regional Clean Air Agency, 3104 East Augusta Avenue, Spokane, WA 99207, on August 6, 2009, at 9:00 a.m.

Date of Intended Adoption: August 6, 2009.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by 4:30 p.m. on August 4, 2009.

Assistance for Persons with Disabilities: Contact Barbara Nelson by 4:30 p.m. on July 30, 2009, (509) 477-4727.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add "moving a facility" to the definition of demolition. Define "facility." When someone presumes a material is asbestos-containing material (ACM) and it's not associated with an asbestos survey, the person making the determination must include a description, approximate quantity, and location of presumed ACM. Clarify that the notification waiting period shall not begin for incomplete notifications. Clarify the section on multiple asbestos projects/demolitions. Require that asbestos removal contractors submit a notification prior to removing ten or more linear feet of ACM, or forty-eight or more square feet of ACM, from an owner-occupied, single-family residence. Add a provision that allows the control officer to temporarily waive notification fees if a state of emergency is declared by an authorized local, state, or federal governmental agency. Clarify what constitutes the last completion date on record for purposes of filing an amendment. Limit the number of structures that can be filed on a single notification to five. Allow nonfriable roofing removal under the exception for hazardous conditions. Make alternative means of compliance work plans available to landfill owners/operators.

Reasons Supporting Proposal: Asbestos is a known human carcinogen. The goal is to prevent and minimize asbestos fiber release in order to protect public health.

Statutory Authority for Adoption: RCW 70.94.141(1), 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

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

Name of Proponent: Spokane regional clean air agency (SRCAA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

June 8, 2009
Matt Holmquist
Compliance Administrator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-14 issue of the Register.

WSR 09-13-046
PROPOSED RULES
OFFICE OF THE
STATE TREASURER
[Filed June 11, 2009, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-093.

Title of Rule and Other Identifying Information: Chapter 389-12 WAC, Practice and procedure—Public depositaries, these rules govern the operation of the public deposit protection commission (PDPC). The rules set forth reporting requirements and operational procedures followed by financial institutions to become a public depositary and maintain qualification to hold public funds while allowing the PDPC to preserve the viability and success of the program.

Hearing Location(s): Office of the State Treasurer, General Administration Building, Room 125, 210 11th Avenue S.W., Olympia, WA 98504, on July 22, 2009, at 1:00 p.m.

Date of Intended Adoption: July 22, 2009.

Submit Written Comments to: Shad Pruitt, P.O. Box 40202, Olympia, WA 98504-0202, e-mail shad.pruitt@tre.wa.gov, fax (360) 586-6890, by July 17, 2009.

Assistance for Persons with Disabilities: Contact Shad Pruitt by July 17, 2009, TTY Dial 7-1-1 for telecommunications relay services.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend and update the existing procedures followed by financial institutions that hold public funds in accordance with the Public Deposit Protection Act, as amended by chapter 9, Laws of 2009.

Reasons Supporting Proposal: To make rules consistent with recent legislative changes to the Public Deposit Protection Act and respond to industry developments.

Statutory Authority for Adoption: RCW 39.58.040.

Statute Being Implemented: Chapter 39.58 RCW.

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

Name of Proponent: Washington state treasurer, governmental.

Name of Agency Personnel Responsible for Drafting: Shad Pruitt, 210 11th Avenue S.W., Room 125, Olympia, WA 98504, (360) 902-8904; Implementation and Enforcement: Nancy Adams, 210 11th Avenue S.W., Room 125, Olympia, WA 98504, (360) 902-9077.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not regulate or have an economic impact on any small business. The rule only impacts financial institutions participating as public depositaries in Washington state.

A cost-benefit analysis is not required under RCW 34.05.328. The office of the state treasurer (OST) is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, OST does not voluntarily make the section applicable to the adoption of this rule, and, to date, JARRC has not made the section applicable to the adoption of these rules.

June 11, 2009
Shad Pruitt
Deputy Treasurer

AMENDATORY SECTION (Amending Order 86-I, Resolution No. 86-003, filed 6/19/86)

WAC 389-12-010 Promulgation. The public deposit protection commission, hereinafter referred to as the "commission," after due and proper notice, and pursuant to the provisions of chapter 193, Laws of 1969 1st ex. sess., as last amended by chapter ~~((s-25 and 160))~~ 9, Laws of ~~((1986))~~ 2009, hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations ~~((effective July 1, 1986))~~.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-020 Definitions. Unless the context requires otherwise:

(1) ~~("Public depositary" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability and whose charter has been approved by the commission to hold public deposits.~~

~~(2) "Financial institution" means any of the following which are located in this state and are lawfully engaged in business:~~

~~(a) Bank depositaries—Any branch of a bank engaged in the banking business in this state in accordance with RCW 30.04.300, and any state bank or trust company or national banking association.~~

~~(b) Thrift depositaries—Any state chartered mutual savings bank or stock savings bank, any state or federally chartered savings and loan association (including federally chartered savings bank-))~~ "Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

(2) "Depositor" means a state or local government with public funds on deposit with a public depositary as defined in chapter 39.58 RCW.

(3) "Investment deposits" ((shall)) means time deposits, savings deposits, and money market deposit accounts of public funds available for investment((—Savings deposits shall mean an interest-bearing deposit of public funds that is subject to withdrawal and that is not payable on a specified date

or at the expiration of a specified time after the date of deposit. Time deposit shall mean a single maturity or multiple maturity interest bearing investment deposit of public funds, which is either evidenced by a certificate of deposit issued by a public depository, or reflected in a book-entry system of such depository approved by federal regulatory authorities, state supervisor of banking and/or state supervisor of savings and loan associations, and which is payable to a treasurer on a date certain. Such certificate shall not be negotiable, nor an interest in an investment deposit transferable, except between treasurers and/or public depositories. Money market deposit account shall mean an account established with a public depository in accordance with Public Law No. 97-320, the Garn-St. Germain Depository Institutions Act of 1982 as defined in Regulation D, Title 12 Code of Federal Regulations (CFR) Part 204. "Investment deposits" also means certificates of deposit issued in accordance with the following conditions:

(a) The funds are initially invested in an authorized Washington state public depository;

(b) The public depository arranges for the investment of the funds in certificates of deposit issued by one or more federally insured banks or savings and loan associations wherever located, for the depositor;

(c) The full amount of the deposit, principal and interest, of each such certificate of deposit is insured by an agency of the federal government;

(d) The public depository acts as custodian for the depositor with respect to all such certificates of deposit issued for the depositor; and

(e) At the same time that funds are invested and the corresponding certificates of deposit are issued, the public depository receives an amount on deposit from other federally regulated financial institutions wherever located equal to or greater than the amount of funds initially invested by the depositor.

All such investment deposits invested in accordance with conditions (a) through (e) of this subsection shall not be subject to any additional security or collateral requirement.

(4) "Commission report" ~~((shall))~~ means a formal accounting rendered by all public depositories to the commission, which details pertinent information of each depository ~~((as of the close of the last business day of each calendar quarter; the))~~ in a format supplied by the commission.

(5) "Commission report date" means the last day of each calendar quarter.

(6) "Commission report due date" means the commission report is due in the office of the commission ~~((not))~~ no later than ((thirty days after the end of each calendar quarter)) the date a depository's financial report is due to its federal regulatory authority. ((In addition, each public depository shall submit to the commission a nonquarter monthly reporting of))

(7) "Monthly report" means a report prepared by all public depositories to the commission, which details insured and uninsured public funds and other pertinent information of each depository in a format supplied by the commission. ~~((This report shall be due))~~

(8) "Monthly report date" means the last day of each calendar month.

(9) "Monthly report due date" means the monthly report is due in the office of the commission no later than eight working days after the ~~((end of each nonquarter month))~~ monthly report date or other date as set by the commission.

(10) "Financial report" means the consolidated statement of condition and income required by the Federal Financial Institution Examination Council or the thrift financial report required by the Office of Thrift Supervision.

~~((5))~~ (11) "Date of loss" ~~((shall))~~ means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

(a) The date of the taking of possession of the financial institution by a supervisory agency; or

(b) The date of the appointment of the receiver or conservator for a financial institution; or

(c) The date of the commencement of a voluntary liquidation proceeding for a financial institution; or

(d) The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or

(e) The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

~~((6))~~ (12) "Depository pledge agreement" means a written ~~((tri-party))~~ tripartite agreement, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, to the federal reserve bank of San Francisco, the federal home loan bank of Seattle, ~~((the trust department of the public depository;))~~ or ~~((any))~~ such other ((institution as)) third-party safekeeping agent approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman, who shall be the state treasurer. Upon completion, the agreement shall be approved by the board of directors or loan committee of the financial institution~~((s))~~. The agreement must be continuously, from the time of its execution, an official record of the ~~((bank))~~ financial institution. Copies of the meeting minutes which reflect this are to be provided to the commission.

~~((7))~~ (13) "Segregation of collateral" means the transfer and delivery of eligible securities by a public depository pursuant to a depository pledge agreement ~~((RCW 39.58.050))~~. A public depository ~~((wishing))~~ must submit a written request to the commission to reduce the amount of securities pledged as collateral ~~((must submit a written request to the commission))~~. The trustee holding the collateral shall not allow a reduction of securities without the prior written approval of the commission. When a public depository pledges eligible securities whose payments include a periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

~~((8))~~ (14) "Net worth" of a public depository means:

(a) For a bank depository, the aggregate of capital, surplus, undivided profits and all capital notes and debentures which are subordinate to the interest of depositors;

(b) For a thrift depository, the aggregate of such capital stock, guaranty fund, general reserves, surplus, undivided profits, and all capital notes and debentures which are subordinate to the interest of depositors, as are eligible for inclusion in otherwise determining the net worth of a mutual savings bank, stock savings bank, or savings and loan association, excluding appraised equity capital, income capital certificates, net worth certificates, and deferred losses on loans sold; the same as defined in RCW 39.58.010.

Net worth for ~~(both bank and thrift)~~ public depositories headquartered outside Washington state may be adjusted by the commission to reflect the depositories' proportional net worth position in Washington state.

~~((9))~~ (15) "Corporate fiduciary" for the purposes of these rules means a financial institution as defined herein which is possessed of statutorily granted trust authority: Provided, That for the purposes of this definition such financial institution need not be located or doing business in the state of Washington.

~~((10))~~ (16) "Out-of-state bank" for the purposes of these rules means a financial institution which has its principal place of business outside the state of Washington.

~~((11))~~ (17) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-030 New public depositories. Any financial institution in the state of Washington eligible under the act, in order to become a public depository, must be approved by the commission and segregate collateral in the manner as set forth in these rules prior to the receipt of public deposits. Until such time as public depositories have submitted four consecutive commission reports to the commission as required by RCW 39.58.100, they shall at all times be required to pledge and segregate eligible securities, valued at market value, in an amount equal to not less than 10% of ~~((#))~~ uninsured public funds on deposit in said depository ~~(During the interim period in which a financial institution is required to file four consecutive reports, each such institution shall report to the commission on each commission report date in a format supplied by the commission), or such other sum or measure established by the commission by rule or noticed resolution.~~

NEW SECTION

WAC 389-12-035 Withdrawing public depositories. No public depository shall be released from its duties and liabilities until such financial institution has reported four accurate, consecutive commission reports indicating a zero balance of public funds on deposit. At such time, upon request

by a public depository, the commission shall terminate a financial institution's status as a public depository.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-040 Computation and report of maximum liability. On each commission report date each public depository shall ~~(recalculate)~~ calculate its maximum liability in a format ~~(to be)~~ supplied by the commission. ~~((Such))~~ The commission report shall, in addition to other information required by the commission in its discretion, ~~((show))~~ include the ~~((current))~~ amount of insured and uninsured public deposits of Washington state and its political subdivisions for the most recent commission report date, ~~((such))~~ the uninsured public deposits as shown on the four most recent commission reports (i.e., current report and three immediately preceding reports), the average of ~~((these))~~ uninsured public deposits for the four most recent commission report ~~((periods))~~ dates, and the depository's maximum liability as defined in chapter 39.58 RCW ((39.58.010(6))).

The ~~((quarterly))~~ commission report ~~(to the commission)~~ shall be received in the office of the commission ~~((not later than thirty days following each calendar quarter end))~~ by the commission report due date, and shall ~~((have attached a completed copy of the balance sheet and deposit liabilities portion of))~~ also include schedules, as determined by the commission, from the public depository's most recent ((consolidated)) financial report ((of condition or consolidated statement of condition as reported)) to ((the depository's primary regulator)) its federal regulatory authority. Any public depository failing to submit its commission report by the commission report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

At the end of each calendar quarter, the commission shall provide each public depository the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Depositories ~~((will))~~ shall use this ~~((figure for the current report period and))~~ amount to monitor their total public funds on deposit for the ensuing quarter, unless notified of a revised ~~((figure))~~ amount by the commission.

Upon written request from a public depository the commission may, for good cause shown, extend the commission report due date for commission reports for a period not to exceed ~~((ten))~~ five days.

If the maximum liability has increased from the previous commission report or if aggregate public deposits exceed the limitations prescribed in ~~((section 19, chapter 177, Laws of 1984))~~ RCW 39.58.135, the depository shall immediately increase its collateral and the commission shall be so notified.

Each public depository shall provide to the commission a copy of any changes, amendments, or alterations to the public depository's financial report as submitted to ~~((appropriate))~~ its federal regulatory authority which relate to (a) deposits of states and political subdivision, and/or (b) net worth.

A monthly report of insured and uninsured public funds, and other pertinent information shall, in a format supplied by the commission, be submitted by each public depository to

the commission no later than ~~((eight working days following the end of each month))~~ the monthly report date. If applicable, adjustments to the depositaries' last reported net worth and/or additional collateral being pledged shall be listed on the monthly report. The monthly report shall be submitted to the commission every month ~~((, except for those months in which the quarterly report must be submitted to the commission))~~. Any public depository failing to submit its monthly report by the monthly report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

NEW SECTION

WAC 389-12-045 Maximum liability established by resolution. Pursuant to RCW 39.58.010, the commission may from time to time set by resolution such other sum or measure to determine the maximum liability of a public depository. In setting such other sum or measure, the commission shall consider factors including, but not limited to, the overall market conditions for financial institutions, the extent to which public deposit protections might be lessened, and the effects such change may have on other public depositories.

NEW SECTION

WAC 389-12-047 Computation of maximum liability—Transition. The purpose of this section is to reconcile the computation of the maximum liability of a public depository in consideration of its definition prior to and subsequent to the enactment of chapter 9, Laws of 2009.

The maximum liability with reference to a public depository's liability under chapter 39.58 RCW shall be:

(1) A sum equal to ten percent of:

(a) All uninsured deposits held by a public depository that has not incurred a loss by the then most recent commission report date; or

(b) The average of the balances of total public deposits reported prior to enactment of chapter 9, Laws of 2009 and uninsured public deposits reported subsequently on the public depository's four most recent commission report dates, whichever amount is greater; or

(2) Such other sum or measure as the commission may set by resolution.

For example, the computation of a public depository's maximum liability on March 31, 2009, will be greater of the uninsured public funds held on March 31, 2009; or the average of uninsured public funds held on March 31, 2009, plus total public funds held on December 31, 2008, September 30, 2008, and June 30, 2008.

This section shall have no prospective application to a public depository that has not withdrawn its participation pursuant to WAC 389-12-035 once a public depository has four consecutive commission report dates subsequent to the effective date of chapter 9, Laws of 2009.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-050 Valuation. Securities pledged as collateral by a public depository shall be reported at par and market value.

Market value shall be computed as of the date of segregation or the last preceding commission report date, whichever is later. When the commission report is submitted, each depository shall provide, in a format supplied by the commission, a current listing of those securities pledged and their ~~((then))~~ current par and market ~~((and par))~~ value as of the commission report date.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-060 Deposit of collateral. Except for the exchange or substitution of securities having a like or greater market value, the trustee shall not permit the withdrawal of any security without advance written approval of the commission.

The trustee, under a depository pledge agreement, shall inform the commission whenever assets are delivered to or by the trustee by mailing to the commission, within twenty-four hours following such deposit or withdrawal, a copy of the receipt signed by the party that accepted delivery of such assets.

No costs, fees and expenses incidental to the functioning of the pledge agreement shall be a charge against the commission or its interest in the securities pledged.

Each public depository shall at all times maintain eligible collateral segregated and pledged with its trustee having a value at least equal to its maximum liability as defined in the act or such other sum or measure set by the commission and under these rules and regulations. Compliance with the foregoing requirement shall be the public depository's responsibility regardless of the frequency and form of reports required by the commission.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-065 Aggregate deposit limitations. Whenever the public funds on deposit in a public depository exceed the limits set forth in ~~((section 19, chapter 177, Laws of 1984))~~ RCW 39.58.135, such depository shall immediately:

(1) Notify the commission; and

(2) Provide additional collateral, if necessary, to provide one hundred percent collateralization of such excess deposits.

When a depository's net worth position is reduced, such depository shall determine if any ~~((public))~~ or state treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the public depository shall immediately notify the commission and provide the commission with a detailed accounting of deposits. The public depository shall also advise the commission of its intent to:

(1) Provide one hundred percent collateralization of the excess deposits; or

(2) Allow the treasurer to withdraw such deposits in accordance with ~~((section 18, chapter 177, Laws of 1984))~~ RCW 39.58.130.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-071 Minimum standards for the financial condition of public depositories. Notwithstanding any other provisions of chapter 39.58 RCW and chapter 389-12 WAC, a public depository ~~((must maintain a specified ratio of net worth to assets of not less than three percent))~~ shall be classified into capital categories as provided under regulations implementing section 38 of the Federal Deposit Insurance Act (FDIA) issued by the federal regulatory authority for that public depository. ~~If ((such ratio for) a public depository ((shall fall below three percent)) is categorized as under-capitalized for purposes of section 38 of the FDIA,~~ the public depository shall pledge securities as collateral, valued at current market value, in a total amount at least equal to one hundred percent of its ~~((current))~~ uninsured public deposits~~((: Provided, That)), or take other actions as determined by the commission; however,~~ the commission may, at any time, in its discretion, require a public depository to pledge additional collateral after consultation with the appropriate regulatory authorities.

The collateral pledged under this section shall not be less than the maximum liability as required in RCW 39.58.050(1), but may include collateral required by RCW 39.58.130, 39.58.135, and WAC 389-12-065.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-075 Collateral level to be maintained. Whenever a public depository must pledge securities as collateral in accordance with RCW 39.58.130, 39.58.135, WAC 389-12-065, and 389-12-071, the depository must monitor its uninsured public funds on deposit on a daily basis and maintain securities, valued at current market value, accordingly.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-080 Maximum deposit limitation. In determining the maximum deposit limitation of any financial institution, a treasurer or state treasurer, unless advised to the contrary by the commission, may assume that each public depository's net worth has remained unchanged from that stated in the most recently rendered commission report.

AMENDATORY SECTION (Amending Order 77-XIII, filed 9/27/77)

WAC 389-12-090 Additional reports, inspections, audits. The commission may from time to time require such additional reports as will facilitate the performance of its functions. All public depositories are required to submit to such inspections and/or audits of their public deposits and/or eligible collateral as the commission may from time to time require. Any public depository failing to respond timely to a

request from the commission shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-100 Violations—~~((Penalty))~~ Sanction. ~~((Violations of))~~ If a public depository fails to comply with any of these rules, or of any of the provisions of the act ((shall be grounds for cancellation, suspension, or revocation of a financial institution's authority)), or any policies of the commission, the commission may at its option deny or revoke the authority of such depository to act as a public depository, or otherwise suspend such depository from receiving or holding public deposits until such time as the depository complies with the commission's rules and policies.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-130 Financial institution mergers. The maximum liability of a public depository under chapter 39.58 RCW shall not be altered or diminished by any merger, ~~((take over))~~ take over, or acquisition ~~((except to the extent that)).~~ Such liability ((is)) shall be assumed by agreement or operation of law by the successor entity or resulting financial institution and no assets subject to a depository pledge agreement shall be released by the commission or the trustee until such assumed liability is evidenced by the deposit of assets pursuant to the depository pledge agreement of the successor entity or resulting financial institution.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-140 Demand deposit account with financial institution located outside the state of Washington. A treasurer or state treasurer may, with the approval of the commission, establish a demand deposit account with an out-of-state bank or an alien bank. Prior to establishing such account, a treasurer or state treasurer shall submit, in writing, for review by the commission, the following information: (1) Detailed information setting forth the justification for such account, projected cash flows, and other benefits which will accrue to the public entity through the establishment of such account; (2) period of time such account will be in use; (3) reasons such account cannot be established with a public depository; (4) name and location of financial institution or alien bank and name and telephone number of contact person at financial institution or alien bank; (5) extent of deposit insurance provided by financial institution or alien bank; (6) most recent fiscal year end and quarterly financial report, if any, provided to regulatory agency and/or shareholders by financial institution or alien bank; (7) proposed method of ensuring safety of deposits if not fully covered by deposit insurance, and (8) such other information as the commission reasonably may require.

The account shall not be established until it shall have been authorized by a resolution of the commission or action authorized by the chair, setting forth the terms and conditions

for such account. A copy of such resolution will be forwarded to the public entity and the state auditor.

Accounts authorized under this section are not considered to be protected against loss by the Public Deposit Protection Act.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-200 Purpose. The purpose of this chapter shall be to ensure compliance by the Washington public deposit protection commission with the provisions of chapter 42.56 RCW, chapter ((+) 274, Laws of ((1973 (Initiative 276); Disclosure Campaign finances Lobbying Records; and in particular with sections 25—32 of that act)) 2005, dealing with public records.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-220 Description of ~~((central and field organization of))~~ the Washington public deposit protection commission. The Washington public deposit protection commission is a state agency empowered to perform all duties prescribed by law with respect to the collateralization of public funds. The administrative offices of the ~~((Washington public deposit protection))~~ commission ~~((and its staff))~~ are located in the Office of the State ~~((treasurer's office in the))~~ Treasurer, Legislative Building, Olympia, Washington.

AMENDATORY SECTION (Amending WSR 99-20-082, filed 10/5/99, effective 11/5/99)

WAC 389-12-230 Operations and procedures. The Washington public deposit protection commission is charged with the duty of protecting public funds on deposit by Washington's public treasurers and the state treasurer in the event of a default of a public depository, and such other duties as set forth in chapter 39.58 RCW.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-240 Public records available. All public records of the Washington public deposit protection commission ~~((as defined in WAC 389-12-210))~~ are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by ~~((section 31, chapter 1, Laws of 1973 and WAC 389-12-210))~~ chapter 42.56 RCW, chapter 274, Laws of 2005.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-250 Public records officer. The Washington public deposit protection commission's public records shall be in the charge of the public records officer designated by the agency. The person so designated shall be located in the administrative office of the agency. The public records officer shall be responsible for the following: The implementation of the Washington public deposit protection commis-

sion's rules and regulations regarding release of public records, coordinating the staff of the commission in this regard, and generally insuring compliance by the staff with the public records disclosure requirements ~~((of chapter 1, Laws of 1973)).~~ Persons submitting public record requests pursuant to these rules should submit those requests to Public Records Officer, Public Deposit Protection Commission, Office of the State Treasurer, Legislative Building, Olympia, Washington 98504.

AMENDATORY SECTION (Amending Order 84-01, filed 1/13/84)

WAC 389-12-270 Requests for public records. In accordance with requirements of chapter 42.56 RCW, chapter ((+) 274, Laws of ((1973, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures)) 2005:

(1) A request shall be made in writing upon ~~((a))~~ the form ~~((prescribed by the Washington public deposit protection commission which shall be available at its administrative office))~~ set forth in these rules herein or a substantially similar form. The form shall be presented to the public records officer, or to any member of the commission's staff, if the public records officer is not available, at the administrative office of the commission during customary office hours. ~~((The))~~ Any request on a form other than the form provided in these rules shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request ~~((was))~~ is made;
- (c) The ~~((nature of the request))~~ specified record requested;
- (d) ~~((If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;~~
- ~~((e) If the requested matter is not identifiable by reference to the commission's current index, an appropriate description of the record requested.~~

(2) ~~In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.)~~ The postal or electronic address at which the requester will accept written communication.

(2) All record requests shall be for a writing as that term is defined in statute, relating to the conduct of the public deposit protection commission, and prepared, owned, or retained by the commission. Requests shall be made by mail or verifiably received and acknowledged electronic mail.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-280 Inspection and copying. No fee shall be charged for the inspection of public records. Records shall be made available for inspection in accordance with

chapter 42.56 RCW. Inspection shall occur at a time mutually agreed by the agency and requestor during customary office hours at a designated office location of the office of the state treasurer in Olympia, Washington. If copies are requested, the commission shall charge a fee of not to exceed ((25)) 15 cents per page, or actual costs as provided in RCW 42.56.070, of copy for providing copies of public records. This charge shall not exceed the amount necessary to reimburse the commission for its actual costs incident to such copying.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-290 Exemptions. (1) The commission reserves the right to ~~((determine))~~ assert that a public record requested in accordance with the procedures outlined in WAC 389-12-270, is exempt from disclosure under ~~((the provisions of section 31, chapter 1, Laws of 1973))~~ Washington law.

(2) ~~((In addition, pursuant to section 26, chapter 1, Laws of 1973,))~~ The commission reserves the right to delete ((identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such deletion in writing)) information exempted from disclosure under Washington law.

(3) All denials of requests for public records ~~((must))~~ shall be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-300 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such a decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the state treasurer as chairman of the commission. The chairman shall consider the matter and either affirm or reverse such denial or call a special meeting of the Washington public deposit protection commission as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the ~~((system))~~ commission has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-310 Records index. It is unduly burdensome for the commission to prepare and maintain an index of their materials since there is no appropriation provision for administrative staff and all of the duties prescribed by statute are conducted by state treasurer staff members, in addition to their regularly assigned duties regardless of overtime requirements and without regard to additional pay. All records of the commission are and will be made available in accordance with the due processes as set forth in these rules and other applicable law.

AMENDATORY SECTION (Amending Order XII, filed 11/28/73)

WAC 389-12-320 Request for commission's decisions and other matters—Procedure. All communications with the commission including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.56 RCW, chapter ((+)) 274, Laws of ((+1973)) 2005, and these rules, requests for copies of the commission's decisions and other matters, shall be addressed as follows: ((Washington)) Public Deposit Protection Commission, ((e/ø)) Office of State Treasurer, Legislative Building, Olympia, Washington, 98504.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 389-12-260 Office hours.

WSR 09-13-052

PROPOSED RULES

ENVIRONMENTAL HEARINGS OFFICE

[Filed June 12, 2009, 9:00 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 461-08-330 Board decision making on appeals. WAC 461-08-330 is a procedural rule which establishes which appeals the shorelines hearings board will hear as short-board appeals. Short-board appeals are appeals heard by a three board member panel. The three board member panel must have at least one but not more than two members of the pollution control hearings board.

Hearing Location(s): Environmental Hearings Office, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, on July 24, 2009, at 9:30 a.m.

Date of Intended Adoption: October 13, 2009.

Submit Written Comments to: Kay Brown, Environmental Hearings Office, 4224 6th Avenue S.E. Building 2, Lacey, WA 98504-0903, e-mail eho@eho.wa.gov, fax (360) 438-7699. Please submit comments by July 24, 2009.

Assistance for Persons with Disabilities: Contact Robyn Bryant by phone at (360) 459-6327.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the amendment to WAC 461-08-330 is to incorporate the legislature's amendment to RCW 90.58.185 into the agency's rules. The amendment, contained in SB 6165 that was passed in the 2009 regular session, becomes effective July 25, 2009. It allows the chair of the hearings board to designate cases for review by a short-board panel.

Reasons Supporting Proposal: The legislature amended RCW 90.58.185 in the 2009 regular session to allow greater flexibility in utilizing short-board panels as a cost-saving measure.

Statutory Authority for Adoption: RCW 90.58.175, 90.-58.185, chapter 34.05 RCW.

Statute Being Implemented: RCW 90.58.185.

Name of Proponent: Environmental hearings office, governmental.

Name of Agency Personnel Responsible for Drafting: Kay Brown, Environmental Hearings Office, (360) 459-6327; **Implementation and Enforcement:** Kathleen D. Mix, Environmental Hearings Office, (360) 459-6327.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No statement is required for adoption of rules because this rule amendment does not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because WAC 461-08-330 is a rule dealing with procedures for an agency hearing. See RCW 34.05.328 (5)(c)(i).

June 12, 2009

Kathleen D. Mix, Chair
Pollution Control Hearings Board

AMENDATORY SECTION (Amending WSR 07-03-074, filed 1/17/07, effective 2/17/07)

WAC 461-08-330 Board decision making on appeals.

The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW 90.58.185, petitions for review that involve a single-family residence or an appurtenance to a single-family residence, including a dock or pier for a single-family residence, and petitions for review involving a penalty of fifteen thousand dollars or less, may be heard by a panel of three board members. The chair of the hearings board may also designate other cases for review by a short-board appeal panel. In designating these cases, the chair shall consider factors such as the complexity and precedential nature of the case and the efficiency and cost-effectiveness of using a short board versus a full board. A short-board appeal panel must have at least one but not more than two members of the pollution control hearings board. Two members of the panel must agree to issue a final decision. The decision of the panel is the final decision of the full board.

(2) **Full-board appeals.** All other appeals are full-board appeals. Four members of the board constitute a quorum for

making a decision and may act even if the other two members are unavailable or have not yet been appointed.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental hearings office to be the presiding officer.

WSR 09-13-059

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed June 15, 2009, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-06-056 and 09-10-048.

Title of Rule and Other Identifying Information: The university's rules regarding the small works roster are being updated.

Hearing Location(s): Lighty 401, WSU Pullman, Pullman, WA, on July 23, 2009, at 3:00 p.m.

Date of Intended Adoption: September 4, 2009.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by July 23, 2009.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by July 21, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university's rules regarding the small works roster are being updated.

Reasons Supporting Proposal: To comply with RCW 39.04.155 and chapter 236-28 WAC.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Rob Corcoran, Executive Director, Facilities Operations, McCluskey 107, Pullman, WA 99164-1150, (509) 335-9018; **Implementation and Enforcement:** Lawrence E. (Ev) Davis, Associate Vice President for Facilities Operations, McCluskey 105, Pullman, WA 99164-1150, (509) 335-9024.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

June 15, 2009

Ralph T. Jenks, Director
Procedures, Records, and Forms and
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

WAC 504-50-010 Purpose and authority. This chapter of the Washington Administrative Code is adopted pursu-

ant to RCW 39.04.155, authorizing Washington State University to adopt procedures to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property in lieu of other procedures for such work with an estimated cost of ~~((two))~~ three hundred thousand dollars ~~(((\$200,000))~~) (\$300,000) or less. The University, in establishing a small works roster, shall use the procedures set forth in this chapter.

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

WAC 504-50-020 Project construction cost. Whenever the estimated cost of any construction... or improvement of real property does not exceed ~~((two))~~ three hundred thousand dollars ~~(((\$200,000))~~) (\$300,000), the University is authorized to use the small works roster in lieu of public advertisement for bids. In the event that the legislature further increases the small works roster limit, the University is authorized to use the small works roster for any projects up to the legislatively authorized limit. No project shall be broken into units or phases for the purpose of avoiding the maximum dollar amount of a contract that may be met using the small works roster.

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

WAC 504-50-050 Contractors application form—Information required. In response to the notifications above, or at any time, contractors desiring to be included on a small works roster established by Washington State University, may submit a completed application in a format prescribed by the director, department of facilities operations. Copies of the form may be obtained from the department of facilities operations and will contain the following information:

- (1) Name of contracting firm, including designation as corporation, partnership, sole proprietorship, or otherwise;
- (2) Address of contracting firm;
- (3) Telephone number;
- (4) Fax number;
- (5) E-mail address;
- (6) State contractor's license number;
- (7) Name of the owner or chief operating officer;
- (8) State of Washington department of revenue tax number;
- (9) Indication of type of construction firm by categories enumerated on the form;
- (10) An indication of those counties, enumerated on the form, in which the contractor is interested in being considered for projects;
- (11) Indication of whether contractor is certified as a minority or women's business enterprise pursuant to chapter 326-20 WAC;
- (12) Three references of satisfactorily completed contracts of a value of not less than twenty-five thousand dollars within the past two years.

Upon receipt of the application, the University shall evaluate the qualifications of the firm for inclusion on the small works roster, ~~((in accordance with WAC 504-XX-~~

~~050;))~~ enter the information set forth therein into its small works roster, and send a copy of the information which is entered to the applicant contractor. Contractors should not consider themselves to be enrolled in a small works roster until they have received this verification.

It is the responsibility of the contractor to notify the agency of any incorrect information set forth on the notice of verification and to notify the agency of any change in the information set forth in its application, as such changes may occur from time to time.

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

WAC 504-50-060 Qualification requirements. To qualify for placement on the Washington State University small works roster, contractors must demonstrate the following in experience and qualifications:

- (1) Be a licensed contractor in the state of Washington;
- (2) Have successfully completed at least three projects, each with a value of not less than twenty-five thousand dollars within the past two years;
- (3) ~~((Have some experience in public works contracts;~~
- ~~(4))~~ Have two years experience in the area of expertise for which listing is sought.

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

WAC 504-50-070 Denial or removal of contractors from small works roster—Reasons, notice, and hearing. A contractor may be denied placement on or, after such placement, may be removed from a small works roster for any of the following reasons:

- (1) The information set forth in the contractor's application is not accurate;
- (2) The contractor fails to notify the University of any changes in the information set forth in its original application for placement on the small works roster within thirty days of the effective date of such change;
- (3) The contractor has failed to respond to ~~((three consecutive))~~ five solicitations for bids on jobs offered through the small works roster;
- (4) The contractor's past performance has demonstrated the firm not to be a responsible bidder as defined in RCW 43.19.1911(9) and 39.04.350;
- (5) The contractor fails to complete and return to the University any periodic update submitted by the University to determine the contractor's ongoing interest in maintaining its placement on the small works roster.

(6) Whenever the University believes that grounds exist for denying an application for placement on a small works roster, or removing the name of a contractor from a small works roster, notice of said grounds shall be given to the contractor by first class mail. If the contractor fails to object or request a hearing within twenty days after the mailing of said notice, then the denial or removal shall be made effective.

AMENDATORY SECTION (Amending WSR 01-13-103, filed 6/20/01, effective 7/21/01)

WAC 504-50-080 Procedures for use. When using a Small Works Roster, the University shall obtain telephone, written, or electronic quotations for public works contracts from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911, as follows:

(1) A contract awarded from a small works roster need not be advertised. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This paragraph does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. In those cases where there are fewer (~~that~~) than five contractors on the appropriate small works roster, quotations will be invited from all contractors on the roster.

(2) If the estimated cost of the work is from one hundred fifty thousand dollars to (~~two~~) three hundred thousand dollars, the University may choose to solicit bids from less than all the appropriate contractors on the appropriate small works roster but must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The University has the sole option of determining whether this notice to the remaining contractors is made by:

- (a) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done;
- (b) Mailing a notice to these contractors; or
- (c) Sending a notice to these contractors by facsimile or other electronic means.

(3) For purposes of this resolution, "equitably distribute" means that the University may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services. At the time bids are solicited, the University representative shall not inform a contractor of the terms or amount of any other contractor's bid for the same project.

(4) A written record shall be made by the University representative of each contractor's bid on the project and of any conditions imposed on the bid. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(5) The University shall award the contract for the public works project to the lowest responsible bidder provided that, whenever there is a reason to believe that the lowest acceptable bid is not the best price obtainable, all bids may be rejected and the University may call for new bids. In addition to price, the University shall take into account the following:

- (a) The ability, capacity, and skill of the bidder to perform the contract;
- (b) The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
- (c) Whether the bidder can perform the contract within the time specified by the University;
- (d) The quality of the bidder's performance of previous contracts or services;
- (e) The previous and existing compliance by the bidder with laws relating to the contract or services;
- (f) Such other information as may be secured having a bearing on the decision to award the contract.

WSR 09-13-070

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 16, 2009, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-006.

Title of Rule and Other Identifying Information: WAC 392-500-030 Pupil tests and records—Certain tests, questionnaires, etc.—Limitations.

Hearing Location(s): OSPI, Old Capitol Building, Brouillet Conference Room, 600 Washington Street, Olympia, WA 98504, on July 22, 2009, at 1:00 p.m.

Date of Intended Adoption: July 23, 2009.

Submit Written Comments to: Rudi Bertschi, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Rudi.Bertschi@k12.wa.us, fax (360) 753-6712, by July 21, 2009.

Assistance for Persons with Disabilities: Contact Penny Coker by July 17, 2009, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes parental consent requirements regarding student surveys.

Statutory Authority for Adoption: RCW 28A.150.070, 28A.150.290.

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: Rudi Bertschi, OSPI, (360) 725-6368; Implementation and Enforcement: Martin Mueller, OSPI, (360) 725-6175.

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 11, 2009

Randy I. Dorn

Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-500-030 Pupil tests and records—Certain tests, questionnaires, etc.—Limitations. No written or oral test, questionnaire, survey, or examination shall be used to elicit the personal beliefs or practices of a student or his parents as to ((sex or)) religion except with the written consent of parent or guardian.

WSR 09-13-087
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 16, 2009, 11:48 a.m.]

The Washington department of fish and wildlife is withdrawing the CR-102 filed as WSR 09-12-022 on May 22, 2009. The department anticipates filing a new CR-102 within the next few months.

Please let Lori Preuss know if you have any questions or need additional information.

Lori Preuss
Rules Coordinator

WSR 09-13-088
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed June 16, 2009, 12:14 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-919-990 Fees and renewal cycles, physician and surgeon and 246-918-990 Physician assistants. Amending impaired physician program surcharge and retired active physician licensing fees to implement 2009 SHB 1765 and 2009 2SHB 1899.

Hearing Location(s): Department of Health, 101 Israel Road S.E., Town Center 1, Room 163, Tumwater, WA 98501, on July 21, 2009, at 3:00 p.m.

Date of Intended Adoption: July 21, 2009.

Submit Written Comments to: Julie Kitten, 243 Israel Road S.E., Tumwater, WA 98504, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2795, by July 21, 2009.

Assistance for Persons with Disabilities: Contact Julie Kitten by July 7, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules increase the annual impaired provider surcharge fee to \$50.00 for physicians, surgeons, and physician assistants. The annual surcharge fee is assessed in two-year cycles on each license renewal or new license for practitioners licensed under chapters 18.71 and 18.71A RCW. The proposed rules will also provide for a two-year renewal cycle for retired active physicians to align with the cycle for physicians, and

correct the impaired physician program statute cited for physician assistants. In addition, the proposed rules will implement 2SHB 1899 that exempts licensed retired active physicians who reside and practice in Washington from paying all fees except the impaired physician program surcharge.

Reasons Supporting Proposal: SHB 1765 (chapter 98, Laws of 2009) requires that physicians and physician assistants pay \$50.00 per year for the impaired physician program. 2SHB 1899 (chapter 403, Laws of 2009) exempts retired active physicians who reside and practice in Washington from paying all fees except the impaired physician program surcharge. These changes and the housekeeping change require amendments to the fee rules to create accurate rules.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 18.71.310, 18.71A.-020, 18.71.080, 18.130.250, 43.70.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Dianna Staley, 310 Israel Road S.E., Tumwater, WA, (360) 236-4997; Implementation and Enforcement: Julie Kitten, 243 Israel Road S.E., Tumwater, WA, (360) 236-2757.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(f), an SBEIS is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

June 16, 2009

Mary C. Selecky
Secretary of Health

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants((certified physician assistants, physician assistant-surgical assistants, acupuncture physician assistants)):	
Application (annual)*	((\$50.00)) \$125.00
Two-year renewal*	((70.00)) 220.00
Expired license reissuance	50.00
Duplicate license	15.00
((Impaired physician program surcharge *(assessed at \$35.00 on each application and for each year of the renewal period as required in RCW 18.71.310(2))	-35.00
UW library fee	25.00)

*Includes: The application or renewal fee, the Washington physician health program surcharge (RCW 18.71A.020(3)) assessed at \$50.00 per year, and the fee to access the University of Washington (UW) HEAL-WA web site (RCW 43.70.110) assessed at \$25.00 per year.

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-919-990 Physician and surgeon fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses ~~((and retired active physician licenses. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment))~~.

(2) Postgraduate training limited licenses must be renewed every year to correspond to the program's date. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(3) A retired active physician ~~((licenses shall be renewed every year. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required~~

payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment)) who resides and practices in Washington and obtains or renews a retired active license is exempt from all licensing fees except for the impaired physician program surcharge authorized by RCW 18.71.310.

(4) The applicants and licensees must pay the following nonrefundable fees:

Title of Fee	Fee
Physicians and surgeons: Chapter 18.71 RCW	
Application (annual)*	((\$425.00)) \$500.00
((Retired active physician license renewal*	100.00
Retired active late renewal penalty	50.00)
Two-year renewal*	((\$25.00)) 675.00
Late renewal penalty	262.50
Expired license reissuance	262.50
Certification of license	50.00
Duplicate license	15.00
Temporary permit	50.00
Application fee for transitioning from a postgraduate training limited license (annual)*	((+00.00)) 175.00

Retired active physicians and surgeons:
(Two-year cycle)

<u>Retired active physician who resides and practices in-state per RCW 18.71.080 and 18.130.250 (Washington physician health program surcharge)</u>	100.00
<u>Retired active physician license renewal*(does not meet in-state exemption)</u>	350.00
<u>Retired active late renewal penalty</u>	50.00

Postgraduate limited license fees: RCW 18.71.095

(One-year cycle)

Limited license application*	((325.00)) 400.00
Limited license renewal*	((325.00)) 400.00
Limited duplicate license	15.00
((Impaired physician program *(assessed at \$35.00 on each application and for each year of the renewal period as required in RCW-18.71.310(2))	35.00
UW library fee	25.00)

*Includes: The application or renewal fee, the Washington physician health program surcharge (RCW 18.71A.020(3)) assessed at \$50.00 per year, and the fee to access the University of Washington (UW) HEAL-WA web site (RCW 43.70.110) assessed at \$25.00 per year.

WSR 09-13-089
PROPOSED RULES
DEPARTMENT OF CORRECTIONS

[Filed June 16, 2009, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-085.

Title of Rule and Other Identifying Information: Chapter 137-78 WAC, Employee assault benefits.

Hearing Location(s): Department of Corrections, 7345 Linderson Way S.W., Conference Room, #1028 ABC, Tumwater, WA 98504, on July 22, 2009, at 11 a.m.

Date of Intended Adoption: July 22, 2009.

Submit Written Comments to: John R. Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail JRNISPEL@DOC1.WA.GOV, fax (360) 664-2009, by July 21, 2009.

Assistance for Persons with Disabilities: Contact Kim French by July 21, 2009, (360) 725-8367.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these amendments are to update the WAC to reflect current department structure and make clear the procedure for approval of assault benefits.

Reasons Supporting Proposal: The WAC should accurately reflect the organizational structure of the department.

Statutory Authority for Adoption: RCW 72.01.090.

Statute Being Implemented: RCW 72.09.240.

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

Name of Proponent: Department of corrections, administrative services division, governmental.

Name of Agency Personnel Responsible for Drafting: John R. Nispel, P.O. Box 41114, Olympia, WA 98504-1114, (360) 725-8365; Implementation and Enforcement: Kathy Gastreich, P.O. Box 41103, Olympia, WA 98504-1103, (360) 725-8587.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This WAC has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

June 16, 2009

E. Vail

Secretary

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-010 Definitions. For the purposes of this chapter the following words shall have the following meanings:

(1) "Assault" means an ~~((intentional))~~ unauthorized touching, including spitting and/or throwing a substance/object, striking, cutting, or shooting ((of a person or the body of another)) by an offender resulting in physical injury to an employee.

(2) "Assault benefits" means reimbursement to employees of some of their costs attributable to being the victim of an offender assault.

(3) ~~(("Administrator, safety and risk management" means the individual who is appointed by the secretary to head the safety and risk management section or his/her designee-))~~ "Assistant secretary" means the executive head of one of the department's organizational divisions.

(4) "Department" means the department of corrections.

(5) "Employee" means any individual who is appointed by the secretary, and who serves under the supervision and authority of the department. The term "employee" shall not include an individual performing personal services under contract or offenders.

(6) "Deputy secretary" is the deputy secretary for the ~~((office of correctional operations))~~ department or his/her designee.

(7) "Doctor" means a person licensed to practice one or more of the following professions: Medicine and surgery; osteopathic; chiropractic; drugless therapeutics; podiatry; dentistry; optometry.

(8) "Offender" means any person in the custody of or subject to the jurisdiction of the department of corrections.

(9) "Secretary" means the secretary of the department of corrections or the secretary's designee.

AMENDATORY SECTION (Amending Order 89-05, filed 7/19/89, effective 8/19/89)

WAC 137-78-020 Eligibility. Employees who apply to the department may be eligible for assault benefits if the ~~((secretary))~~ department finds that each of the following has occurred:

(1) An offender has assaulted the employee and as a result thereof the employee has sustained injuries which have required the employee to miss one or more days of work;

(2) The assault is not attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment;

(3) The assault occurred while the employee was in the performance of his/her official duties; and

(4) The employee has made application for compensation under Title 51 RCW and the claim has been approved for an injury related to the assault.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-030 Application process. Employees who meet the eligibility requirements of WAC 137-78-020 and elect to apply for assault benefits shall submit a signed application for assault benefits ~~((and)),~~ a properly completed report of ~~((personal injury form (DOC 3-133), together with the certificate of the doctor that attended him or her))~~ accident/injury and a copy of his or her L&I Report of Industrial Injury or Occupational Disease form (F242-130-000), to his or her locally designated representative or human resource office within ((ten)) sixty working days of the occurrence of the assault or, if the application could not be reasonably submitted within that period, within ((ten)) sixty working days of the time when application could reasonably have been made.

Applications shall be reviewed through the employee's chain of command. The ~~((deputy secretary shall forward the application, with appropriate recommendations, to the safety and risk management section. The administrator, safety and risk management))~~ department shall grant or deny the request for assault benefits within ~~((ten))~~ thirty working days after ~~((written notification from the employee or the department of labor and industries that the employee's application for compensation under Title 51 RCW has been approved))~~ receipt of the completed application, but may extend that time to gather additional information. A completed application shall include information that the department of labor and industries has approved the employee's claim for benefits related to the assault.

AMENDATORY SECTION (Amending Order 89-05, filed 7/19/89, effective 8/19/89)

WAC 137-78-040 Conditions of reimbursement. (1)

Assault benefits authorized ~~((the employee))~~ by the ~~((secretary))~~ department under this chapter shall not continue longer than the date of termination of ~~((time loss))~~ time loss benefits by the department of labor and industries or three hundred sixty-five consecutive days from the date of the injury, whichever date is earlier, and shall be limited to the following:

(a) For each workday missed due to assault for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay pursuant to RCW 72.09.240 and this chapter; and

(b) In respect to workdays missed due to assault for which the employee shall be reimbursed compensation under chapter 51.32 RCW, the employee shall receive full pay, less any industrial insurance payments for time loss during the period in which assault benefits are received.

(2) As the intent of this chapter is to reimburse the employee the difference of salary compensation paid by the department of labor and industries and the full pay the employee would have received but for the time loss from the injury sustained as a result of an inmate assault, the employee shall not be entitled to receive greater than one hundred percent of his or her base salary as a result of payments by the department of labor and industries and the department unless such overpayment is the result of the employee's election to use accumulated ~~((vacation))~~ annual leave, holiday leave, compensatory time off, or exchange time.

(3) Employees granted assault benefits shall accrue full annual leave, sick leave, and insurance benefits during the time period they are approved to receive assault benefits.

(4)(a) Employees applying to the department for assault benefits may elect to use accrued sick leave until such application is approved or denied, provided that the employee shall return any subsequent overpayment to the department.

(b) The employee's accumulated sick leave hours shall not be reduced for the workdays missed due to the assault, provided that the employee has returned any overpayments to the department.

(c) If the employee fails to return any overpayments to the department, sick leave hours charged to an employee who receives worker's compensation as a result of the time loss

and assault benefits shall be proportionate to the overpayment by the department during the claim period.

(5) The employee shall not be entitled to assault benefits provided in this section for any workday for which the ~~((secretary))~~ department finds ~~((that))~~ the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) While the employee is receiving assault benefits authorized under this chapter, the employee shall continue to be classified as a state employee and receive full service credit.

(7) The employee shall be entitled to assault benefits only for absences ~~((which))~~ that the ~~((chief of the office of employee services))~~ department believes are justified.

(8) No employee eligible to receive or receiving benefits under this chapter shall be entitled to continue to receive benefits should the legislature revoke the reimbursement authorized under this chapter.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-060 Denial of application for assault benefits. If the employee's request for assault benefits is denied by the ~~((safety and risk management administrator))~~ department, the employee may, within ten working days from the date of denial, file a petition ~~((with the office of administrative services (OAS) deputy secretary))~~ for reconsideration, stating the specific grounds upon which the application should be granted. The ~~((OAS deputy secretary))~~ department shall respond within twenty working days from the date the petition was received; provided that the time may be extended to gather additional information.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-78-070 ~~((Appeal from denial of assault benefits))~~ Overpayment(s) disputes. ~~((1))~~ If the employee's petition for assault benefits to the office of administrative services deputy secretary is denied, the employee may appeal that decision to the secretary in accordance with chapter 34.05 RCW and this section. The employee shall file a written petition with the Office of the Secretary at 410 W. 5th, P.O. Box 41101, Olympia, Washington 98504-1101, within thirty days after the denial of assault benefits.

~~((2))~~ If a dispute exists between the employee and department concerning the amount of any overpayment to be repaid the department, the employee may request a hearing in accordance with chapter 34.05 RCW and this section. The employee shall file a written petition with ~~((the Office of))~~ the Deputy Secretary at ~~((410 W. 5th,))~~ P.O. Box 41101, Olympia, Washington 98504-1101, within thirty days after the dispute arises.

WSR 09-13-090
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 16, 2009, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-015.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-0700 and related rules to modify the comprehensive evaluation process for WorkFirst participants.

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 21, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 22, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 21, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by July 7, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to modify and enhance the comprehensive evaluation to improve timely engagement in WorkFirst activities. The current rule states the case manager will use information and recommendations from a work skills assessment and educational evaluation to determine WorkFirst activities. With the proposed change the case manager will complete an employability evaluation to determine WorkFirst activities and refer for a work skills assessment or education evaluation if appropriate.

Reasons Supporting Proposal: These changes are being proposed to allow for streamlining of the comprehensive evaluation process.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.08A.340.

Statute Being Implemented: RCW 74.04.050, 74.08.090, 74.08A.340.

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: Stacey Bushaw, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4622.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by modifying and enhancing the comprehensive evaluation to improve timely engagement in WorkFirst activities.

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

June 12, 2009

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-023, filed 11/29/06, effective 12/30/06)

WAC 388-310-0700 WorkFirst—Comprehensive evaluation. (1) Why do I receive a comprehensive evaluation?

You participate in a comprehensive evaluation with your case manager and other WorkFirst staff to determine:

- (a) Your employment strengths, your educational background, family situation and other factors; and
- (b) Which WorkFirst activities you need to become employed.

(2) What is the comprehensive evaluation and when will it be used?

(a) The comprehensive evaluation is a series of questions, answers and evaluations focused on your strengths, job skills, education and other relevant elements. The results of the comprehensive evaluation are used to determine your ability to find and keep a job in your local labor market and what WorkFirst activities will help you prepare for and find work. It includes:

(i) An employability evaluation with your case manager, discussing important issues that can affect your ability to find a job, like educational background, employment history, child care, family violence or substance abuse. Your case manager will also ask you a few questions to find out if you might benefit from engaging in financial literacy activities such as money management training or any other type of credit counseling service. If so, we will tell you how to get this information(;

~~(ii) A work skills assessment to review your education, employment history, employment strengths and job skills; and~~

~~(iii) Educational and other evaluations).~~

(b) You and your case manager and/or social worker use the information and recommendations from ~~((these evaluations))~~ the comprehensive evaluation to create or modify your individual responsibility plan, adding activities that help you become employable.

(c) After your comprehensive evaluation, you may receive more assessments to find out if you need additional services. For example, you may receive an educational skills assessment and/or evaluation after referral to an education and training activity.

WSR 09-13-093
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 16, 2009, 3:08 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The department is amending WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation.

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 21, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 22, 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 DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on July 21, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by July 7, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to modify the rule to allow for streamlining of the WorkFirst exemption process. The current rule states that we "will" use the case staffing process to determine whether the exemption will be approved. The proposed WAC states that we "may" use the case staffing process.

Reasons Supporting Proposal: These changes are being proposed to allow for streamlining of the WorkFirst exemption process.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, and 74.08A.340.

Statute Being Implemented: RCW 74.04.050, 74.08.-090, and 74.08A.340.

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: Sandy Jsames, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4648.

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. The proposed rule allows for streamlining of the WorkFirst exemption process.

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

gibility and rules concerning liability for care of dependents." The proposed rule allows for streamlining of the WorkFirst exemption process.

June 11, 2009
Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-24-057, filed 12/1/03, effective 1/1/04)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?

You are exempt from mandatory participation if you are:

(a) An older needy caretaker relative:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability:

(i) The disability must be a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities and is expected to last at least twelve months; or

(ii) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are applying for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability); and

(iii) Your disability is verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), and/or regional support network (RSN), or evidence from another medical or mental health professional; and

(iv) Your SSI application status may be verified through the SSI facilitator and/or state data exchange.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, physician, mental health provider, school professional, other medical professional, HCS, MHD, and/or a RSN to require specialized care or treatment that significantly interferes with your ability to look for work or work.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) The disability is verified by documentation from DDD, DVR, HCS, MHD, and/or a RSN, or evidence from another medical or mental health professional.

(2) Who reviews and approves an exemption?

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we ((will)) may use the case staffing process to determine whether the exemption

will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After ~~(the)~~ a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(3) Can I participate in WorkFirst while I am exempt?

(a) You may choose to participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(4) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?

An exemption from participation does not affect your sixty-month time limit (described in WAC 388-484-0005) for receiving TANF/SFA benefits. Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit.

(5) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(6) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(7) For time-limited extensions, see WAC 388-484-0006.

WSR 09-13-094

PROPOSED RULES

**DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed June 16, 2009, 3:11 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The department is repealing WAC 388-517-0400 Medicare coinsurance payment—Extended care patient.

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 21, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 22, 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 21, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by July 7, 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: HRSA is repealing this section because medicare coinsurance, deductibles, and copayments are addressed in WAC 388-517-0320.

Reasons Supporting Proposal: Eliminates redundancy and reduces number of rules.

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

Rule is necessary because of federal law, Social Security Act Section 1902 (a)(10)(E)(iii) and Section 1905 (p)(3)(A)(ii).

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

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504, (360) 725-1344; Implementation and Enforcement: Carole McRae, P.O. Box 45534, Olympia, WA 98504, (360) 725-1250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Per RCW 34.05.328 (5)(b)(vii), client eligibility rules for medical assistance are exempt from this provision.

June 10, 2009

Stephanie E. Schiller
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-517-0400 Medicare coinsurance payment—Extended care patient.

WSR 09-13-098
PROPOSED RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed June 17, 2009, 8:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-098.

Title of Rule and Other Identifying Information: WAC 246-935-060 Eligibility for examination as veterinary technician.

Hearing Location(s): Department of Health, Creekside Three at Center Point, 20435 72nd Avenue South, Conference Room One, Kent, WA 98032, on August 31, 2009, at 11:00 a.m.

Date of Intended Adoption: August 31, 2009.

Submit Written Comments to: Judy Haenke, P.O. Box 47868, Olympia, WA 98504-7868, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by August 27, 2009.

Assistance for Persons with Disabilities: Contact Judy Haenke by August 27, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Veterinary technicians who seek credentialing through education must complete an American Veterinary Medical Association (AVMA) approved program. The AVMA recognizes the Canadian Veterinary Medical Association (CVMA) process for accreditation of Canadian veterinary technologist or technician programs. The AVMA recommends that licensing boards accept education programs approved by the CVMA.

Reasons Supporting Proposal: Recognition of Canadian programs will reduce barriers for graduates of those programs seeking licensure in Washington state. Current regulations do not recognize Canadian accreditation.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Judy Haenke, Program Manager, 310 Israel Road S.E., Tumwater, WA 98310, (360) 236-4947.

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

would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Judy Haenke, Program Manager, 310 Israel Road S.E., Tumwater, WA 98310, phone (360) 236-4947, fax (360) 236-4947, e-mail judy.haenke@doh.wa.gov.

June 16, 2009

Bart Eggen

Executive Manager

AMENDATORY SECTION (Amending WSR 02-02-046, filed 12/27/01, effective 1/27/02)

WAC 246-935-060 Eligibility for examination as veterinary technician. Applicants must meet one of the following criteria to be eligible for the examination.

(1) Completion of ~~((a))~~ an approved postsecondary educational program for animal or veterinary technology.

(a) Completion of a program for animal or veterinary technology approved by the Committee on Veterinary Technician Education and Activities (CVTEA) of the American Veterinary Medical Association (AVMA). The board approves all institutions accredited by, and in good standing with, the AVMA. ((AVMA-accredited programs in veterinary technology means any postsecondary educational program of two or more academic years that has fulfilled the essential criteria established by the Committee on Veterinary Technician Education and Activities and approved by the AVMA House of Delegates (AVMA/NAVTA Liaison Committee Model Practice Act adopted 1992).))

(b) Completion of a program for animal or veterinary technology approved by the Animal Health Technologist/Veterinary Technician Program Accreditation Committee (AHT/VTPAC) of the Canadian Veterinary Medical Association (CVMA). The board approves all institutions accredited by, and in good standing with, the CVMA.

(c) Other institutions applying for board approval must meet the accreditation standards of the CVTEA. It is the responsibility of the institution to apply for approval and of a student to ascertain whether or not a school has been approved by the board.

(d) The examination may ~~((not))~~ be taken ~~((prior to))~~ no sooner than six months ~~((preceding))~~ before graduation from the approved course of instruction.

(2) Graduation from a two-year curriculum in animal health or veterinary technology which is not accredited by the CVTEA or AHT/VTPAC plus a minimum of thirty-six months of full-time experience under the supervision of a licensed veterinarian(s) who must attest to the completion of that experience.

(3) Award of a D.V.M. or V.M.D. degree or equivalent from an American Veterinary Medical Association accredited or listed college of veterinary medicine.

(4) Registration, certification, or licensure as an animal health or veterinary technician in one or more states and thirty-six months of full-time experience under the supervision of a licensed veterinarian(s).

(5) Completion of a course in veterinary technician education as a member of the United States military and comple-

tion of a tour of active duty as a veterinary technician or specialist.

(6) Five years full-time experience as an unregistered assistant under the supervision of a licensed veterinarian(s) who must attest to the completion of that experience.

WSR 09-13-101

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 17, 2009, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-22-105.

Title of Rule and Other Identifying Information: Chapter 308-110 WAC, Motorcycle safety program.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on July 22, 2009, at 3:00 p.m.

Date of Intended Adoption: July 23, 2009.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 586-8351 by July 21, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Create a new chapter 308-110 WAC, to establish basic requirements governing the operations and scope of motorcycle skills education courses offered by commercial and noncommercial entities, under contract with the department of licensing. Establish policies and procedures for monitoring and ensuring the ongoing quality of the motorcycle safety program. Provide definitions, application requirements, training requirements, and reporting requirements. Establish administration requirements and provide for audits and inspections. Provide for disciplinary action, suspension, and decertification.

Statutory Authority for Adoption: RCW 46.81A.020, 46.01.110.

Statute Being Implemented: RCW 46.20.520 and chapter 46.81A RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Doron Maniece, Highways-Licenses Building, Olympia, Washington, (360) 902-3850.

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 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

June 17, 2009

Doron Maniece
Assistant Director

Chapter 308-110 WAC

Motorcycle Skills Education Program

Draft 1.0

NEW SECTION

WAC 308-110-010 Adoption—Authority. Pursuant to chapter 46.81A RCW, this chapter is adopted for the purpose of establishing basic requirements governing the operations and scope of motorcycle safety programs offered by commercial businesses and non-commercial entities, under contract with the department, and includes policies and procedures for monitoring and ensuring the ongoing quality of the motorcycle safety program.

NEW SECTION

WAC 308-110-020 Definitions. The definitions of this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Chief instructor" means an instructor holding WMSP Chief Instructor and Motorcycle Safety Foundation (MSF) RiderCoach Trainer certification. A chief instructor may be employed by WMSP or hold a contract with WMSP to perform technical functions, training, and evaluations.

(2) "Department" means the department of licensing.

(3) "Director" means the director of the department of licensing.

(4) "Instructor" means a person, approved by the director, to train students in motorcycle skills education.

(5) "Instructor candidate" means a person, approved by the director, under training to become an instructor.

(6) "Instructor preparation (IP) course" means a series of training events to prepare instructor candidates to certify as instructors.

(7) "Mentor instructor" means an instructor certified by WMSP who assists the program with quality assurance and instructor development activities.

(8) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

(9) "Range" means the area of pavement, approved by the director, on which the riding instruction takes place.

(10) "Sponsor" means a person, business, organization, college, university, or club, who contract with WMSP to provide rider skills training. Sponsors are not agents or employees of the department. Sponsors will conduct courses using only the approved curriculum following all policies and procedures of WMSP.

(11) "Sidecar/Trike Education Program" (S/TEP) means the approved curriculum for three-wheel training.

(12) "Student" means any person enrolled in a motorcycle skills education course.

(13) "Training motorcycle" means either:

(a) A motorcycle used for rider education that may be on loan from a motorcycle dealer, owned by the sponsor, or owned by the department; or

(b) A privately owned motorcycle used by a student attending a WMSP contracted course.

(14) "Training site" means a physical address where the riding instruction portion of motorcycle skills education is conducted. Training sites may include more than one range.

(15) "Trike" means a three-wheeled motorcycle as defined in RCW 46.04.330.

(16) "Washington Motorcycle Safety Program" (WMSP) means the department's motorcycle skills education program.

NEW SECTION

WAC 308-110-030 Instructor candidates—Application—Background check and fingerprint check. (1) Unless waived by the department, an applicant for instructor certification must provide a complete criminal background check, including a fingerprint check and driving abstract.

(2) The department shall review the instructor candidate's criminal background check at the time of initial application. A background check would be considered unacceptable if it contains any conviction of a crime involving violence.

(3) The department shall review the instructor candidate's complete driving abstract at the time of initial application. A driving record would be considered unacceptable if it contains:

(a) An alcohol-related traffic violation within a seven-year period immediately preceding the time of application that resulted in:

(i) A conviction or finding that a traffic infraction was committed for violation of the following:

(A) RCW 46.61.502: Driving under the influence;

(B) RCW 46.61.503: Driver under twenty-one consuming alcohol—Penalties;

(C) RCW 46.61.504: Physical control of vehicle under the influence;

(D) RCW 46.61.519: Alcoholic beverages—Drinking or open container in vehicle on highway—Exceptions.

(E) RCW 46.61.5195: Disguising alcoholic beverage container;

(F) RCW 46.61.520 (1)(a): Vehicular homicide—Penalty;

(G) RCW 46.61.522 (1)(b): Vehicular assault—Penalty; or

(H) RCW 46.61.5249: Negligent driving—First degree; or

(ii) A conviction or finding that a traffic infraction was committed for violation of a substantially similar law, administrative regulation, local law, ordinance, regulation, or resolution of a political subdivision of this state, the federal government, or any other state;

(b) An administrative action imposed under RCW 46.20.3101 within a seven-year period immediately preceding the time of application;

(c) An administrative action imposed under RCW 46.25.090 within a seven-year period immediately preceding the time of application;

(d) Entry into a deferred prosecution agreement for an alcohol dependency-based case within a seven-year period immediately preceding the time of application;

(e) A driver's license suspension, cancellation, revocation, or denial any time within the five-year period immediately preceding the time of application.

(f) More than three moving traffic violations within a twelve-month period or more than four moving traffic violations within a twenty-four-month period, as defined in WAC 308-104-160.

NEW SECTION

WAC 308-110-040 Instructor training. (1) Initial training for instructor candidates will prepare them to teach motorcycle rider safety courses as required under RCW 46.81A.020 (3)(a). The training shall include instruction in motorcycle safety education classroom methods, range management, riding skills instruction, and other principles that prepare an instructor to provide motorcycle safety education as described in these rules and in state law.

(2) The instruction course must be provided by, and under the direct supervision of, a certified chief instructor. The course shall consist of not less than eighty total hours of the approved curriculum covering the following areas:

(a) Education principles and techniques;

(b) Motorcycle riding skills;

(c) Classroom teaching techniques;

(d) Communication skills; and

(e) Course administration.

The department may monitor sponsor-provided instructor candidate training at any time to ensure that the instructor training requirements of this section are being satisfied.

NEW SECTION

WAC 308-110-050 Instructor requirements. All candidates for instructor training shall meet the following minimum requirements:

(1) Be a high school graduate, or equivalent, and be at least twenty-one years of age.

(2) Pass all background checks as required by WAC 308-110-030.

(3) Possess a valid Washington driver license with proper motorcycle endorsement.

(4) Be an experienced motorcyclist who owns and regularly operates a street-legal, registered motorcycle, side-car equipped motorcycle, or trike that complies with all applicable vehicle laws and codes.

(5) Have successfully completed a novice rider course (two-wheel candidate), or basic S/TEP course (three-wheel candidate), within twelve months of the IP course.

(6) Be willing to maintain professional conduct as defined by the director-approved curriculum and the WMSP policies and procedures.

(7) Be in good physical condition. Instructors can have no medical conditions inconsistent with the performance of all instructor duties.

(8) Have a current first aid and cardiopulmonary resuscitation (CPR) certification approved by the program coordinator.

NEW SECTION

WAC 308-110-060 Administration. (1) Sponsors must have written policies covering registration fee collection and refund, drop-out, counsel-out, no-show, and retest guidelines. These policies are to be provided to students before the commencement of class.

(2) Sponsors shall maintain individual student records on forms provided by the department or on substantially similar forms that have been approved by the department. Required information is contained within the current version of the policies and procedures.

(3) Student records must be maintained by sponsors for a period of six years.

NEW SECTION

WAC 308-110-070 Audits and inspections. (1) The department may require that rider education sponsors submit to an inspection or review of the school's operations and records at any time during regular business hours.

(2) The department may schedule annual audits of each sponsor's facilities, operations, records, and procedures.

(3) Records shall be immediately available for inspection at a sponsor's primary place of business.

NEW SECTION

WAC 308-110-080 Reporting requirements. All rider education sponsors shall report to the department:

(1) Any incident involving injury to a student within seventy-two hours of the incident.

(2) Any impending legal action against the sponsor within twenty-four hours of notification of the action.

(3) A properly completed class invoice within twenty calendar days of course completion. The invoice must be accompanied by a course completion report.

(4) Other reports as required by the current version of the policies and procedures.

NEW SECTION

WAC 308-110-090 Disciplinary action. (1) Rider education sponsors and instructors are responsible for knowing and complying with the requirements of WMSP's policies and procedures, as well as the current rider education curriculum.

(2) Any failure to comply with these requirements may lead to disciplinary action affecting a sponsor's contract, instructor's certification, or ability to otherwise provide rider skills education training.

NEW SECTION

WAC 308-110-100 Instructor—Suspension or decertification. (1) WMSP instructor certification may be suspended by the WMSP program manager for up to ninety days for documented behavior that is inappropriate, inadequate, or for failing to maintain standards as defined by WMSP policies and procedures, instructor standards and responsibilities, and/or curriculum principles.

(2) To be reinstated, a suspended instructor must:

(a) Develop a written plan for corrective action in cooperation with the sponsor. The written corrective action plan must be approved by WMSP.

(b) The suspended instructor will teach a minimum of one novice rider course or basic sidecar/trike class, or more as necessary, under the supervision of a chief instructor or WMSP mentor. For each class, a mentor class report will be submitted.

(c) The suspended instructor must demonstrate a working knowledge of WMSP policies and procedures, instructor standards and responsibilities, and curriculum principles.

(d) Following the observed class, the sponsor will schedule a time with the WMSP coordinator or designee to evaluate the suspended instructor. The sponsor and WMSP coordinator or designee will review the course reports. The WMSP coordinator or designee will make a determination if the necessary corrections were implemented satisfactorily.

(3) Suspended instructors must have instructor status reinstated prior to being allowed to instruct any portion of a training course without the supervision of a mentor or WMSP representative.

(4) The WMSP program manager may decertify an instructor for the following actions:

(a) A conviction of a crime involving violence.

(b) An unacceptable driving record as defined in WAC 308-110-030.

(c) Documented unprofessional conduct, or conduct inconsistent with the program standards, as defined in the WMSP policies and procedures.

(d) An inability to meet curriculum standards.

(4) Instructors may appeal a suspension or decertification by requesting a hearing before a department arbitrator. The arbitrator, following the hearing, will make his or her recommendations to the director, who will make a final determination in the matter.

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

WSR 09-13-105**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed June 17, 2009, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-042.

Title of Rule and Other Identifying Information: Chapter 16-170 WAC, Special permit to slaughter, prepare and sell whole, raw poultry.

Hearing Location(s): Washington State Department of Agriculture, Natural Resources Building, Conference Room 259, 2nd Floor, 1111 Washington Street, Olympia, WA 98504-2560, on July 22, 2009, at 9:30 a.m.

Date of Intended Adoption: July 28, 2009.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARule-

sComments@agr.wa.gov, fax (360) 902-2092 by July 22, 2009, 5:00 p.m.

Assistance for Persons with Disabilities: Contact WSDA receptionist by July 15, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2003, the legislature established a one-year temporary special permit under RCW 69.07.103 allowing for the slaughter, preparation and sale of 1,000 or fewer whole, raw pastured chickens. The 2009 legislature expanded coverage of the special permit. The proposed rule amendments include those provisions and allow for:

(1) Slaughter of 1,000 or fewer poultry per year (allowing for other domesticated fowl such as turkeys and ducks) for sale as whole, raw poultry;

(2) A one or two-year special permit - permit expires on December 31;

(3) One-year permit fee - \$75; two-year permit fee - \$125; and

(4) Permit requirements patterned on the state board of health requirements for temporary food service establishments but tailored to the slaughter, preparation and sale of poultry.

Additional amendments are proposed for clarification.

Reasons Supporting Proposal: The 2009 legislature expanded coverage under RCW 69.07.103 (SSB 5350) which directs the department to adopt requirements for special permits. Because of the legislative changes, the department must amend its rules for the special permit to slaughter, prepare and sell whole, raw chicken to comply with SSB 5350. The changes become effective July 26, 2009.

Statutory Authority for Adoption: Chapter 69.07 RCW.

Statute Being Implemented: RCW 69.07.103.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Claudia Coles, P.O. Box 42560, Olympia, WA 98504-2560, (360) 902-1905.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW does not apply to the adoption of a rule(s) described in RCW 34.05.310 (4)(e).

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture is not a named agency in RCW 34.05.328 (5)(a)(i).

June 17, 2009

Jerry Buendel

Assistant Director

Chapter 16-170 WAC

SPECIAL (~~TEMPORARY~~) PERMITS FOR SLAUGHTERING (~~PASTURED CHICKENS~~) POULTRY

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-010 What is the purpose of this chapter? The purpose of this chapter is to implement chapter (~~397, Laws of 2003~~) 69.07 RCW by establishing rules (~~regulating~~) relating to the:

(1) Issuance of special (~~temporary~~) permits regulating the slaughter, preparation and sale of one thousand or fewer whole raw (~~pastured chickens~~) poultry in a calendar year by the agricultural producer (~~of those chickens~~) when the (~~chickens~~) poultry are sold directly to the ultimate consumer at the producer's farm.

(2) Conditions under which (~~the pastured chickens~~) poultry identified in this (~~section~~) chapter are slaughtered, prepared and sold that are generally patterned after those established by the state board of health for temporary food service establishments under chapter 246-215 WAC but are tailored to poultry slaughter, preparation, and sale activities.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-020 What definitions are important to this chapter? (1) In addition to the definitions contained in this section, definitions found in chapters 69.04 and 69.07 RCW, chapter 246-215 WAC and Title 21 CFR may apply.

(2) For the purposes of this chapter, the following definitions apply:

"Adequate" means that which is needed to accomplish the intended purpose in keeping with good public health practices.

"Agricultural producer" means a person or persons who raise (~~pastured chickens~~) poultry and who slaughter and sell one thousand or fewer (~~of the chickens~~) whole raw poultry from their farm directly to the ultimate consumer.

"Authorized person" means a person or persons who work with the agricultural producer in the preparation and slaughter of (~~pastured chickens~~) poultry under this chapter. (~~"Chicken" means the species Gallus domesticus.~~)

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the WSDA.

(~~"Pastured chicken" means a chicken that has lived on pasture, range, or ground covered with vegetation that is suitable for grazing, during at least half the life span of the animal.~~)

"Potable water" means water that is(~~:~~)

(a) Safe and sanitary;

(b) Free from coliform; and

(c) From an approved and monitored source)) in compliance with chapter 16-165 WAC and with the Washington state department of health's drinking water quality standards in chapters 246-290 and 246-291 WAC.

"Poultry" means domesticated fowl that is valued for its meat or eggs such as chickens, turkeys, ducks or geese.

"Sanitize" means to adequately treat ~~((chicken))~~ poultry slaughtering, preparation and sale surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the whole raw ~~((chicken))~~ poultry or its safety for the consumer.

~~(((Temporary)))~~ **Special permit** means a permit to slaughter ~~((chickens covered by this chapter, which is valid for the calendar year for which it is))~~ poultry issued under RCW 69.07.103. The permit expires on December 31st and is issued for either one or two years as requested by the permit applicant.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-030 Who is required to obtain a ~~((temporary))~~ special permit to slaughter, prepare and sell ~~((pastured chickens))~~ poultry? ~~((If you are))~~ An agricultural producer of ~~((pastured chickens))~~ poultry who slaughters and prepares one thousand or fewer ~~((pastured chickens))~~ poultry in a calendar year and sells ~~((those chickens))~~ the poultry as whole raw ~~((chickens))~~ poultry from ~~((your))~~ their farm to the ultimate consumer, ~~((you))~~ must obtain a ~~((temporary))~~ special permit before ~~((you))~~ slaughter of the poultry.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-035 How can I obtain a ~~((temporary))~~ special permit? ~~((You can request))~~ An application for a ~~((temporary))~~ special permit may be obtained by:

Writing to:

Washington State Department of Agriculture
Food Safety Program
P.O. Box 42560
Olympia, WA 98504-2560; or
Calling 360-902-1876; or
Faxing to 360-902-2087; or
Accessing web site <http://agr.wa.gov>.

(2) The department must receive ~~((you))~~ the completed special permit application packet along with check or money order for ~~((seventy five dollars))~~ the permit fee at least six weeks ~~((before you plan to))~~ prior to the planned slaughter ~~((chickens))~~ of poultry. In accordance with RCW 69.07.-103(4), the fee for the special permit is seventy-five dollars for one year, or one hundred twenty-five dollars for two years.

~~((You))~~ (3) The special permit application packet must include:

- (a) A completed application form;
- (b) A diagram of ~~((you))~~ the slaughter/preparation site;
- (c) A description of ~~((you))~~ the processing steps or a process flow diagram;
- (d) The proposed days or dates of slaughter for the current year;
- (e) A description of ~~((you))~~ the rinse water and offal disposal procedures; and

(f) Documentation verifying that the water ~~((you use))~~ used at ~~((you))~~ the slaughter/preparation site complies with the requirements in WAC 16-170-155. If the well, spring or other private water supply, the water must have a passing bacterial test conducted within sixty days of submitting the application to the department. A copy of the test results must be attached to the special permit application.

~~((3))~~ (4) Once WSDA receives ~~((you))~~ the special permit application, ~~((you))~~ the applicant will be contacted ~~((for))~~ to schedule an on-site inspection. The inspection must occur before ~~((you))~~ the special ~~((temporary))~~ permit can be further processed or issued.

~~((4))~~ (5) Once received, ~~((you))~~ the special permit must be prominently and conspicuously posted at ~~((you))~~ the slaughter ~~((facility))~~ site so ~~((you))~~ customers ~~((can))~~ are able to see it.

~~((5))~~ ~~((You are prohibited from))~~ (6) Slaughtering, preparing and selling ~~((chickens))~~ poultry regulated by this chapter ~~((until you receive your))~~ is prohibited prior to receipt of the special ~~((temporary))~~ permit.

NEW SECTION

WAC 16-170-036 What other information must I submit to the department if I am issued a two-year special permit? A two-year special permit holder must submit to the department the following information at least six weeks prior to slaughtering poultry during the second year of the permit:

- (1) The proposed second year days or dates of slaughter; and
- (2) If the site utilized a well, spring or other private water supply, a copy of a passing bacterial test conducted within sixty days prior to submitting the second year slaughter dates to the department.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-037 What type of slaughter/preparation site diagram is required? (1) ~~((You))~~ The site diagram must clearly show the location of all poultry slaughter and preparation equipment, contact work surfaces, chilling equipment, equipment washing and sanitizing sinks or tubs, hand-washing areas, rinse water and offal collection areas and ~~((chicken))~~ poultry rearing areas.

(2) ~~((Everything))~~ All items illustrated on ~~((you))~~ the site diagram under subsection (1) of this section must be clearly labeled.

NEW SECTION

WAC 16-170-041 Must I reapply for a special permit if there is a change in the conditions under which my two-year special permit was issued? (1) If a significant change in the conditions under which the two-year special permit is issued, you must reapply for a special permit under WAC 16-170-035. Significant change under this section means a substantial change in the information previously submitted to the department under WAC 16-170-035.

(2) If the special permit holder was issued a two-year special permit and must reapply for a permit under this sec-

tion, the department will apply fifty dollars of the two-year permit fee towards the new permit application fee.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-050 Must I notify the department before I change the dates I plan to slaughter my ~~((chick-ens))~~ poultry? ~~((If you wish to))~~ The department must be notified at least one week in advance if slaughter ~~((pastured ehickens))~~ of poultry regulated by this chapter is planned on dates other than those ~~((requested in your application, you must notify))~~ previously reported to the department. The department may be notified by mail, e-mail, fax, or by telephone ~~((with))~~ followed by a written confirmation ~~((at least one week before you slaughter any chickens regulated by this chapter)).~~

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-060 What happens when I reach the one thousand ~~((ehicken))~~ poultry limit in the statute? ~~((When you have slaughtered and sold one thousand whole raw pastured chickens to ultimate consumers from your farm in a calendar year, you no longer qualify for a temporary special permit for the remainder of the calendar year.))~~ The special permit issued under this chapter provides for the slaughter of a total of one thousand or fewer whole raw poultry to the ultimate consumer. Agricultural producers who slaughter more than one thousand ~~((ehickens))~~ poultry in a calendar year must comply with the requirements of chapter 69.07 RCW.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-070 What are the site requirements for slaughtering, preparing and selling ~~((ehickens))~~ poultry covered by this chapter? At a minimum, ~~((your))~~ the poultry slaughter/preparation site must:

- (1) Be constructed or assembled to minimize insects, pests, birds, dust, mud and overhead contamination;
- (2) Include adequate lighting to illuminate the areas where ~~((ehickens))~~ poultry are slaughtered, prepared and sold;
- (3) Have an adequate handwashing station;
- (4) Be readily accessible to a toilet facility;
- (5) Include potable running water;
- (6) Include a means of safely disposing of rinse water and offal; and
- (7) Means of properly cooling slaughtered ~~((ehickens))~~ poultry unless the customer takes possession within four hours.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-075 What requirements apply to the equipment used to slaughter, prepare and sell ~~((chick-ens))~~ poultry covered by this chapter? All equipment used

to slaughter, prepare and sell poultry must be readily cleanable and in good repair.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-080 Can a mobile processing unit be used to slaughter, prepare and sell ~~((pastured chickens))~~ poultry covered by this chapter? If the mobile processing unit (MPU) is a self-contained processing unit that meets all of the conditions designed for the sanitary processing of ~~((ehickens))~~ poultry under this chapter, a MPU may be used.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-090 Who can be in my poultry slaughter site while the slaughter-preparation process is taking place? (1) Only authorized persons ~~((can be in your))~~ may be present in the poultry slaughter site while the slaughter-preparation process is taking place. Unauthorized persons must be kept out of the site.

(2) Any authorized person infected with a communicable disease, has open sores or infected cuts on hands, is vomiting or has diarrhea is prohibited from working in ~~((your))~~ the poultry slaughter site.

(3) Authorized persons are prohibited from smoking, eating or drinking while in ~~((your))~~ the poultry slaughter site.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-100 Must I wear protective clothing while slaughtering, processing and selling ~~((pastured ehickens))~~ poultry covered by this chapter? ~~((H))~~ Anyone slaughtering, preparing and selling ~~((pastured chickens))~~ poultry covered by this chapter must:

- ~~((a))~~ (1) Wear clean and adequate clothing.
"Clean and adequate" means that the clothing must be:
 - ~~((i))~~ (a) Clean at the start of the slaughter-preparation-sale process; and
 - ~~((ii))~~ (b) Changed when the clothing becomes soiled when contamination of the raw whole ~~((ehicken))~~ poultry, any process work surface, the equipment used to chill slaughtered ~~((ehickens))~~ poultry or the bags used to transport ~~((ehickens))~~ poultry that are sold becomes imminent; and
 - ~~((iii))~~ (c) Suitable to the specific part of the process (slaughter, preparation or sale) ~~((in which you are engaged)).~~
- ~~((b))~~ (2) Remove hand jewelry that cannot be adequately sanitized during periods when carcasses are handled by hand. If such hand jewelry cannot be removed, impermeable or disposable gloves must be worn.
- ~~((c))~~ (3) Maintain gloves, if they are used in processing, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material.
- ~~((d))~~ (4) Clean and effective hair restraints, such as hairnets or beard nets are not required, but hats, caps, scarves or other head covers are recommended to prevent contamination of the whole raw ~~((ehickens))~~ poultry being slaughtered, prepared and sold.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-110 Can I store personal garments and belongings in my poultry slaughter site? All personal garments and belongings must be stored separately and apart from ~~((your))~~ the poultry slaughter site to ensure that they do not become a source of contamination to the raw whole ~~((chickens))~~ poultry, slaughter and preparation work surfaces and equipment, and the bags used to transport ~~((chickens))~~ poultry that are sold.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-115 Can I store detergents, sanitizers and other materials in my poultry slaughter site? (1) ~~((You can store))~~ Commercially purchased detergents, sanitizers and other materials related to the process may be stored in ((your)) the poultry slaughter site if they are properly labeled with:

- (a) Product name;
 - (b) Chemical description;
 - (c) Directions for use;
 - (d) Any required precautionary and warning statements;
 - (e) First-aid instructions;
 - (f) Name and address of the manufacturer or distributor;
- and
- (g) Any other information required by the U.S. Environmental Protection Agency or other laws or rules.

(2) ~~((You can store))~~ Small "transport" or "use" containers containing detergents, sanitizers or other materials may be stored in ((your)) the slaughter site but only under the following conditions:

- (a) The contents must be properly identified on the container. Labeling the container with the common name is acceptable if the original commercially purchased storage container is on hand and properly identified.
- (b) Food containers must not be used as containers for detergents, sanitizers or toxic materials.
- (c) Containers used for detergents, sanitizers or other materials must not be used as food containers.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-120 Must I wash my hands before slaughtering ~~((chickens))~~ poultry? (1) ~~((You))~~ Anyone involved in the poultry slaughter process must adequately wash ((your)) their hands:

- (a) Before ~~((you begin))~~ the poultry slaughter process begins;
 - (b) Between the slaughtering and preparation steps in the process;
 - (c) Between the poultry preparation and sale steps in the process;
 - (d) After each absence from the poultry slaughter ~~((facility))~~ site; and
 - (e) Any time ~~((your))~~ hands become contaminated.
- (2) "Adequately washing ~~((your))~~ hands" means thoroughly washing ~~((your))~~ hands to prevent contaminating

~~((your))~~ the slaughtered ~~((chickens))~~ poultry. Adequate hand-washing methods consist of:

- (a) Applying soap to ~~((your))~~ hands;
- (b) Using warm water;
- (c) Scrubbing your hands thoroughly; and
- (d) Using methods to rinse and dry ~~((your))~~ hands that prevent contamination.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-125 Are handwashing stations required at my ~~((chicken))~~ poultry slaughter site? (1) Anyone involved in ~~((your chicken))~~ the poultry slaughter process must have access to at least one handwashing station equipped with warm running water, hand soap, and paper towels.

(2) Handwashing stations must be conveniently located in ~~((your))~~ the poultry slaughter site and near ~~((your))~~ toilet facilities.

(3) If handwashing stations are not conveniently located in ~~((your))~~ the poultry slaughter site and near ~~((your))~~ toilet facilities, five-gallon insulated containers with continuous flow spigots filled with warm water between one hundred and one hundred and twenty degrees Fahrenheit with pump type liquid soap, paper towels and five-gallon buckets to catch rinse water are required on-site and near ~~((your))~~ the toilet facilities.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-130 Can I use hand dips at my ~~((chicken))~~ poultry slaughter site? (1) "Hand dips" or "hand sanitizing stations" are recommended but not required in ~~((your chicken))~~ the poultry slaughter site. Sanitizing ~~((your))~~ hands using hand dips or hand sanitizing stations is not a substitute for adequate handwashing methods. ~~((2))~~ However, if ~~((you use))~~ hand dips are used, they must be properly positioned and maintained.

~~((2))~~ (2) "Properly maintained" means sanitizing solutions are:

- (a) Checked and recharged to a strength equal to 100 PPM chlorine or 25 PPM iodine; and
- (b) Changed every four hours while in use.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-135 Do I need a toilet near my ~~((chicken))~~ poultry slaughter site? (1) At least one toilet must be available and conveniently located at ~~((your chicken))~~ the poultry slaughter site.

(2) A domestic toilet is sufficient if ~~((your))~~ the poultry slaughter operation is a family operation where only family members are employed. However, if ((you have)) the operation has employees, ((you must provide)) toilet facilities must be provided at ((your)) the slaughtering site or ((allow your)) employees must be allowed to use ((your)) the domestic toilet.

(3) Portable chemical toilets may be used at the poultry slaughter site if they are conveniently located with a self-closing door, screened to exclude insects, and properly maintained.

(4) All nondomestic toilet areas must be kept clean, free of trash and litter, and in good repair. All doors used to enter the nondomestic toilet area must be self-closing and must not open directly into ~~((your))~~ the poultry slaughter site.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-140 What offal and rinse water disposal requirements apply to my ~~((chicken))~~ poultry slaughter site? ~~((Your chicken))~~ The poultry slaughter site must be designed and maintained to ensure that the:

(1) Offal and rinse water the site generates are readily and safely removed; and

(2) Offal and rinse water do not create an unsanitary condition or contaminate:

(a) The raw whole ~~((chickens that you slaughter))~~ poultry;

(b) Any potable water stored and used at ~~((your))~~ the slaughter site;

(c) Any product contact surfaces at ~~((your))~~ the slaughter site; or

(d) Any bags used to package raw whole ~~((chickens))~~ poultry sold to ~~((your))~~ the ultimate consumers.

(3) ~~((Your))~~ The rinse water disposal system must not allow any backflow from or cross connection between the piping that discharges rinse water and the piping that carries potable water to the ~~((chicken))~~ poultry slaughter area.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-145 How do I store my ~~((chicken))~~ poultry slaughter equipment and utensils to prevent contamination? (1) All of ~~((your chicken))~~ the poultry slaughter equipment and utensils must be stored so they will not become contaminated between uses.

(2) All utensils used to slaughter and prepare ~~((chickens))~~ poultry, such as knives, scrapers, scoops, shovels, cutters, and other hand tools and equipment, must be placed or stored to prevent contact surfaces from being contaminated.

(3) Contaminated equipment and utensils must be cleaned and sanitized before they are used again.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-150 How do I ensure that my ~~((chicken))~~ poultry slaughter contact surfaces are clean and maintained in a sanitary condition? (1) All contact surfaces of equipment, utensils, containers and other articles used in the slaughter and preparation of ~~((chickens))~~ poultry, must be kept free of any residue or contaminant that could contaminate or adulterate (as defined in RCW 69.04.210), the raw whole ~~((chicken))~~ poultry carcass.

(2) Residues and contaminants must frequently be removed from all slaughter and preparation contact surfaces to prevent the residues from becoming:

(a) Unwholesome or unfit for the raw whole ~~((chicken))~~ poultry carcass;

(b) Decomposed, filthy, or putrid; or

(c) Injurious to public health.

(3) All poultry slaughter and preparation contact surfaces must be sanitized:

(a) Before they are used; and

(b) After they are cleaned.

(4) ~~((You must keep))~~ A separate bucket of sanitizer must be kept in ~~((your))~~ the poultry slaughter site for rinsing/storing the wipe down cloths used to sanitize all slaughter equipment and slaughter/preparation contact surfaces. The sanitizing solution in the bucket should be at a minimum 100 ppm (mg/L) for chlorine solution or 50 ppm (mg/L) for iodine solution.

(5) Any noncarcass contact surfaces of equipment used in the slaughter of ~~((chickens))~~ poultry must be kept reasonably free of dirt, old slaughter/preparation residues, foreign material, dust, mold, mildew, slime and other accumulations that occur as a result of the slaughter/preparation operation.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-155 What requirements apply to the water used in my poultry slaughter site? (1) Any water ~~((you use))~~ used in the slaughter, preparation or sale of your ~~((chickens))~~ poultry must be of a safe and sanitary quality, which means the water supply is potable from an approved source and is monitored according to applicable laws and rules.

(2) Processors that operate from single-family residences on private water supplies need only meet bacteriological testing requirements. Optionally, potable water may be hauled onto the poultry slaughter site for use by the processor as long as the transport vehicle and water are of safe and sanitary quality.

(3) Water used from a private water system for the slaughter, preparation or sale of poultry must be sampled and tested at least annually. Copies of ~~((your))~~ water test reports must be on file at ~~((your))~~ the farm and available for review by WSDA during routine slaughter site inspections.

(4) Any ice ~~((you manufacture))~~ manufactured on ~~((your))~~ the farm for use in ~~((your))~~ the poultry slaughter process must be manufactured from potable water.

(5) All ice used at the poultry slaughter site that ~~((you do))~~ is not ~~((manufacture))~~ manufactured on the farm must be from an approved source.

(6) All ice ~~((that you use))~~ used at ~~((your chicken))~~ the poultry slaughter site must be properly handled and stored to protect against contamination.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-170 What requirements apply to the storing and handling of the bags I give my customers to transport the ~~((chickens))~~ poultry they purchase from me?

(1) All bags ~~((that you use))~~ used to package the slaughtered whole ~~((chickens that you sell to your customers))~~ poultry must be new, of food grade quality and properly handled and stored, which means they must be protected from potential sources of contamination when they are handled and stored.

(2) Methods of properly handling and storing ~~((your))~~ bags at ~~((your))~~ the poultry slaughter site include, but are not limited to:

(a) All bags must be stored off of the floor or any other unsanitary surfaces.

(b) All bags must be stored in closed boxes or cartons before they are used.

(c) Bags must be removed from the closed box or carton in a way that prevents contamination.

(d) When a slaughtered whole ~~((chicken))~~ poultry is inserted into a bag, the bag must be handled so it and the ~~((chicken are))~~ poultry is not exposed to contamination by dust, foreign material or other contaminants.

(e) Any bag dropped on the floor or some other unsanitary surface must not be used.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-175 What requirements apply to the chilling and storing of slaughtered ~~((chickens))~~ poultry?

(1) All slaughtered ~~((chickens))~~ poultry must be chilled to a temperature at or below forty-five degrees Fahrenheit within four hours of slaughter unless the customer takes possession of the slaughtered ~~((chickens))~~ poultry during this time.

(2) Chilling poultry may be accomplished through the use of mechanical refrigeration, an ice chest using ice from an approved source (see WAC 16-170-155), or by being immersed in cold running water.

(3) A temperature control (TC) must be used to monitor slaughter cool down temperature by inserting a calibrated thermometer into the thickest portion of the first slaughtered poultry carcass and monitoring the temperature to ensure proper chilling at or below forty-five degrees Fahrenheit within four hours of slaughter.

(4)(a) Slaughtered ~~((chickens))~~ poultry can be stored for up to forty-eight hours before they are sold.

(b) During their storage period, ~~((chicken))~~ poultry carcass temperatures must be kept at or less than forty-five degrees Fahrenheit by mechanical refrigeration equipped with a thermometer or by maintaining the carcasses in a properly designed storage container with the use of a temperature control (TC) as outlined in subsection (3) of this section.

(5) All chilled and/or stored ~~((chicken))~~ poultry carcasses must be protected from physical, chemical, microbial contamination and deterioration.

AMENDATORY SECTION (Amending WSR 04-08-062, filed 4/5/04, effective 5/6/04)

WAC 16-170-180 What recordkeeping requirements apply to my ~~((temporary))~~ special permit ~~((chicken))~~ poultry slaughter operation? (1) At a minimum, ~~((you must keep))~~ the following records must be kept at ~~((your))~~ the special permit holder's farm:

(a) ~~((Your chicken))~~ A record of the poultry slaughter dates;

(b) The number of ~~((chickens))~~ poultry by species slaughtered on each slaughter date and the cumulative total of ~~((chickens))~~ poultry by species slaughtered;

(c) The temperature control log monitoring proper ~~((chicken))~~ poultry slaughter cool down and storage; and

(d) The water testing records if required by WAC 16-170-155.

(2) All records required under subsection (1) of this section must be:

~~((a))~~ Maintained so that the information they intend to convey is clear and understandable.

~~((3))~~ All records must be ~~((b))~~ Available at ~~((your))~~ the farm and available to department inspectors upon request.

~~((4))~~ All records must be ~~((c))~~ Retained at the farm for six months after the expiration of the special permit.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-170-040

How long is my temporary special permit valid?