

**WSR 09-23-008**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed November 5, 2009, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-115.

Title of Rule and Other Identifying Information: WAC 308-56A-160 Model year—How determined.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on December 22, 2009, at 10:00 a.m.

Date of Intended Adoption: December 30, 2009.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail [dbrown@dol.wa.gov](mailto:dbrown@dol.wa.gov), fax (360) 902-7821 or 902-7822, by December 21, 2009.

Assistance for Persons with Disabilities: Contact Dale R. Brown by December 21, 2009, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is required to comply with RCW 46.12.440 and 46.16.680 and SB 5719.

Reasons Supporting Proposal: Relating to the title and registration requirements for kit vehicles.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.12.440 and 46.16.680.

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

Name of Agency Personnel Responsible for Drafting: Dale Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Sheila Hadden, 1125 Washington Street S.E., Olympia, WA, (360) 902-3718.

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

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

November 5, 2009

Walt Fahrer

Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-12-006, filed 5/22/03, effective 6/22/03)

**WAC 308-56A-160 Model year—How determined.**

(1) **How is a model year assigned to a vehicle?** The model year for a vehicle is the model year assigned by the manufacturer ~~((or in the case of homemade vehicles, it is the year the vehicle was built))~~. If an original manufacturer has not assigned a model year, or your vehicle is rebuilt, homemade, a street rod, or assembled vehicle, the following criteria will be used to establish the model year:

(a) When possible, the model year will be determined from the vehicle identification number (VIN). When the VIN

does not identify the production date, corresponding production records of the original manufacturer must be used.

(b) The model year for a homemade vehicle will be the year of inspection for the purpose of making an application for certificate of ownership.

(c) The model year for assembled vehicles will be determined at the time of inspection based on the date of manufacture of the vehicle that the newly assembled vehicle most closely resembles.

(2) **Are there standards for assigning model years that manufacturers must follow?** Manufacturers must adopt standards for assigning model years based on ~~((either))~~ the date of manufacture ~~((or features of the vehicle))~~ as outlined in 46 CFR. ~~((The standards must be such that all vehicles assigned a model year that are manufactured in the same year with the same features are assigned the same model year.))~~ Manufacturers must designate the model year on the manufacturer's certificate of origin (MCO), manufacturer's statement of origin (MSO) or similar documents.

(3) **How are model years assigned to vehicles that are incomplete~~((, such as certain recreational vehicles))~~?** Manufacturers of chassis or incomplete vehicles sold to ~~((motor home or recreational vehicle))~~ manufacturers who issue separate MCOs/MSOs need not assign model year to ~~((these vehicles))~~ the chassis or incomplete vehicle. The final stage manufacturer of these vehicles must assign the model year as provided in subsection (2) of this section. In the event a model year is assigned by both the incomplete vehicle manufacturer and the completing manufacturer, the completing manufacturer assigned model year will be used on the certificates of ownership and registration.

(4) ~~((How will a model year be assigned to my vehicle if the manufacturer did not assign one? If an original manufacturer has not assigned a model year, or your vehicle is rebuilt, homemade, a street rod, assembled or a kit vehicle, the Washington state patrol or other person authorized by the director to make vehicle inspections will use the following criteria to establish the model year:~~

~~(a) The model year for a homemade vehicle will be the year of inspection for the purpose of making an application for certificate of ownership.~~

~~(b) When possible, the model year will be determined from the vehicle identification number (VIN). When the VIN does not identify the production date, corresponding production records of the original manufacturer must be used.~~

~~(c) The model year for assembled vehicles will be determined by the Washington state patrol based on the date of manufacture of the vehicle that the vehicle most closely resembles.~~

~~(d) The model year of a kit vehicle as defined in RCW 46.04.251 will not be the model year of the vehicle the kit replicates.~~

~~(5))~~ For purposes of this section the following terms will have the meanings indicated:

(a) "Manufacture" means to produce or assemble vehicles or vehicle equipment in the customs territory of the United States or to import.

(b) "Manufacturer" means ~~((any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanu-~~

~~factured vehicles. Manufacture includes the assembling, altering, or converting of a vehicle to the extent the vehicle qualifies for a change in the series and body type appearing on its title, MCO/MSO or similar documents.~~

~~(b)):~~

~~(i) A person engaged in the business of manufacturing vehicle or vehicle equipment, including predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary of Transportation in 49 CFR; and~~

~~(ii) If more than one person is the manufacturer of a vehicle, the person specified under regulations prescribed by the Secretary of Transportation in 49 CFR.~~

~~(c) "Incomplete vehicle" means an assemblage consisting of, as a minimum:~~

- ~~(i) Frame and chassis structure;~~
- ~~(ii) Power train;~~
- ~~(iii) Steering system;~~
- ~~(iv) Suspension system; and~~
- ~~(v) Braking system.~~

~~To the extent that those systems are to be part of the completed vehicle that requires further manufacturing operation; other than the additions of readily attachable components, such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, to become a completed vehicle.~~

~~((e)) (d) "Model" means a name that a manufacturer applies to a family of vehicles of the same type, make, line, series, and body type.~~

~~((e)) (e) "Assembled and homemade vehicles" have the meaning provided in WAC 308-56A-455.~~

## WSR 09-23-048

### PROPOSED RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 10, 2009, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-036.

Title of Rule and Other Identifying Information: Subject of Possible Rule Making: Rules for the development and governance of skill centers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.245.030.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The office of superintendent of public instruction (OSPI) will work in cooperation with the workforce training and education coordinating board, skills centers directors, and school administrators to review and revise the rules.

Hearing Location(s): OSPI, Brouillet Conference Room, 600 Washington Street S.E., Olympia, WA 98504-7200, on January 5, 2010, at 11:00 a.m. - 12 noon.

Date of Intended Adoption: January 5, 2010.

Submit Written Comments to: Kathleen Lopp at Kathleen.lopp@k12.wa.us, by December 15, 2009.

Assistance for Persons with Disabilities: Contact Wanda Griffin by December 28, 2009, TTY (360) 664-3631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Reasons Why Rules on this Subject May be Needed and What They Might Accomplish: OSPI shall review and revise the guidelines for skills centers to encourage skill center programs. The new rules will define rules for skill center governance, development of new skill centers, satellite and branch campuses and capital projects.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: OSPI will work in cooperation with the workforce training and education coordinating board, skills centers directors, and school administrators to review and revise the rules.

Reasons Supporting Proposal: Process for Developing New Rule: Negotiated rule making.

Statutory Authority for Adoption: RCW 28A.245.030.

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

Name of Agency Personnel Responsible for Drafting: Kathleen Lopp, WTCEB, Skills Center Directors, OSPI, 600 Washington Street S.E., Olympia, WA, (360) 725-6249; Implementation and Enforcement: 600 Washington Street S.E., Olympia, WA, (360) 725-6249.

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

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

November 10, 2009

Randy I. Dorn

State Superintendent

## Chapter 392-600 WAC

### WASHINGTON STATE SKILL CENTER RULES

#### NEW SECTION

**WAC 392-600-010 Definitions.** (1) A "skill center" is a regional career and technical education partnership. It is established to provide access to comprehensive, industry-defined career and technical programs of study that prepare students for careers, employment, apprenticeships and post-secondary education. A skill center is operated by a host school district and governed by an administrative council in accordance with an interdistrict cooperative agreement, or as otherwise provided by legislation.

(2) An "interdistrict cooperative agreement" is a joint resolution by the board of directors of all participating school districts designating the host district as the legal applicant.

(3) The "host district" is a member of the skill center cooperative selected to be responsible for the planning, construction, administration, operation and fiscal services of the

skill center. A single district forming a skill center is the host district.

(4) The "administrative council" serves as the governing body of the interdistrict cooperative and makes policy for the operation of the skill center. The administrative council is comprised of the superintendent of each member school district where skill center facilities are sited and the applicable college president participating in the cooperative agreement. In the case of a single school district forming an autonomous skill center, the school board of directors shall serve as the administrative council.

(5) The "skill center core campus" is the facility housing a majority of the skill center students enrolled. It is operated by the skill center. The cooperative shall manage and maintain the core campus.

(6) A "single school district skill center" is a single school district with an annual headcount enrollment at or exceeding twelve thousand students in grades nine through twelve that offers skill center programs.

(7) An "emerging skill center" is a new core or branch skill center having an approved application still in the development phase, but not yet offering programs.

(8) A "skill center branch campus" is a common school or higher education facility which provides three or more programs at a location other than the skill center core campus. Each branch campus must be approved by the superintendent of public instruction.

(9) A "skill center satellite program" is a facility or site which provides less than three programs at a location other than the skill center core campus. Each satellite program must be approved by the superintendent of public instruction and shall only be hosted by a core campus. If the satellite program is housed in another skill center's service area, approval by both skill center administrative councils is required.

#### NEW SECTION

**WAC 392-600-020 Skill center interdistrict cooperative agreements.** An interdistrict cooperative agreement, as defined in WAC 392-600-010, shall include and set forth the following:

(1) The administration of the school facility and of the program or services to be offered;

(2) The estimated number of students to be served from each district;

(3) The estimated amount of any operating costs of the program that are not funded from state or federal sources and the method of sharing the unfunded costs;

(4) Financial terms by which each participating district will share in the cost of construction or modernization and operation of school facilities to comply with WAC 392-347-023;

(5) Terms by which the skill center may be dissolved in accordance with the provisions for dissolution of skill centers as outlined in WAC 392-600-120;

(6) Duration of the interdistrict cooperative agreement:

(a) The initial interdistrict cooperative agreement must be a minimum of ten years;

(b) The minimum period of operation prior to dissolution consideration must be in accordance with the provisions for dissolution of skill centers as outlined in WAC 392-600-120;

(c) The renewal or amendments to agreements shall be submitted for approval of the superintendent of public instruction, career and technical education.

(7) Ownership of all capital equipment and skill center facilities;

(8) Distribution of assets and liabilities or the payments to be made to the participating districts;

(9) Relationship and governance structure of branch campuses, if applicable;

(10) Responsibilities for services to be provided by participating school districts directly to the skill center. These shall include, but are not limited to:

(a) Transportation;

(b) Special education;

(c) Other noncore skill center needs of the student.

(11) Programs eligible for consideration and approval by OSPI shall be:

(a) Voluntary student enrollment;

(b) Tuition-free;

(c) Necessary for the express purpose of:

(i) Providing educational programs not otherwise available;

(ii) Avoiding unnecessary duplications of specialized or unusually expensive programs and facilities.

#### NEW SECTION

**WAC 392-600-030 Administrative councils.** Skill center administrative councils shall:

(1) Establish policies and procedures;

(2) Be responsible for equipment replacement, facility maintenance, and ongoing operation of the skill center, including a branch campus/satellite program, to meet current industry and educational standards;

(3) Offer programs that are approved by the superintendent of public instruction for career and technical education enhancement as defined in WAC 392-121-138, or provide basic support to students enrolled in skill center programs: Programs that are approved by the superintendent of public instruction for vocational enhancement shall provide a minimum of five hundred forty hours of instruction per year;

(4) Skill center programs may be less than the equivalent of three consecutive fifty-minute periods if offered as an extension of the student's one whole full-time equivalent-funded school year;

(5) Submit an application to the superintendent of public instruction, career and technical education, requesting approval to operate a satellite program eligible for skill center funding;

(6) Select an official name to be submitted to the superintendent of public instruction, career and technical education, which will include the phrase "skill center" modified by the specific unique name given locally. The specific name given should be different than the name of any school district participating in the skill center cooperative;

(7) Have three years from the date of approval to establish a financial plan, including the operation and capital funds

which will contribute to the ongoing site, facility, equipment, and maintenance and operation of the skill center to be reviewed annually;

(8) Serve the majority of student enrollment at its core campus.

Skill centers that serve or intend to serve less than a majority of students at the core campus must submit a waiver request to the superintendent of public instruction, career and technical education

#### NEW SECTION

**WAC 392-600-040 Skill center facilities and capital funding.** (1) A skill center administrative council, as defined in WAC 392-600-010, in need of core or branch facility investments may request state capital funding through the state capital budget process.

(a) Existing skill center core and branch campuses requesting major capital project funding within the ten year capital budget planning cycle shall submit a capital plan to the superintendent of public instruction, school facilities and organization, for their skill center facilities by December 1st of each odd-numbered year.

(b) Emerging skill center core or branch campuses in need of new or remodeled permanent housing as identified in the feasibility study or feasibility study waiver request, may initiate through their administrative council and host district a request to the superintendent of public instruction, school facilities and organization, for a capital plan for predesign, design and subsequently for capital construction by May 1st of each year.

(c) The capital budget plan must identify a local contribution as provided in RCW 28A-245-030(3). The local contribution may be determined based on the total expected value of the project cost to include all phases of construction as proposed in the ten year plan. The local contribution must receive prior approval from the superintendent of public instruction, school facilities and organization, and may include the following:

- (i) Local project funding from cooperating districts;
- (ii) Fair market value of land as determined by a state certified general appraiser;
- (iii) In-kind labor for capital planning, design, construction or capital project management; and
- (iv) Other capital services provided by the cooperating districts.

(d) All capital plan submissions shall conform to the office of financial management's capital budget guidelines. Activities surrounding program development and operational oversight are not allowable capital expenditures.

(2) Minor works. A skill center administrative council may request state funding for core, branch or satellite facility minor works projects through the biennial capital budget.

(a) Project requests shall be received by the superintendent of public instruction, school facilities and organization, by May 1st of each even-numbered year.

(b) All projects must conform to the office of financial management's capital budget guidelines.

(3) Ten year plan. The state superintendent or designee, in cooperation with the skill center directors and a represen-

tative of each emerging skill center, shall prepare a prioritized list of skill center capital projects to include major construction and minor works funding levels for the ten year plan required by RCW 28A-245-030(3).

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

#### NEW SECTION

**WAC 392-600-050 Enrollment.** A skill center core campus shall submit a plan to the superintendent of public instruction, career and technical education that demonstrates they will meet the following conditions within three years from the date programs begin.

(1) A skill center must serve a minimum of one hundred fifty full-time equivalent students in a minimum of three different programs. A district must partner with an established skill center as a branch campus until the proposed skill center reaches one hundred fifty full-time equivalent students; exemptions include existing skill centers as of the date of formal adoption of skill center rules;

(2) No more than seventy percent of full-time equivalent students served by the skill center consortium may be resident students of the host district, except for single school district skill centers;

(3) The skill center will enter a two year probation period if a skill center is not able to meet enrollment requirements as set forth in this section. During this period, the superintendent of public instruction, career and technical education, will provide guidance and assistance to the skill center to help meet the enrollment requirements. Skill centers unable to meet the enrollment requirements at the end of the two year probation period will begin dissolution procedures as described in WAC 392-600-120;

(4) Skill center academic courses not approved as skill center career and technical education courses shall only report as basic education enrollment;

(5) Exemptions may be granted by OSPI career and technical education for start-up and existing skill centers operating prior to the 2010-11 school year.

#### NEW SECTION

**WAC 392-600-060 Enrollment apportionment.** (1) A skill center shall only receive the enhanced skill center funding for its programs after the date on which program approval is issued by the superintendent of public instruction, career and technical education.

(2) The core or branch campus district hiring the instructional staff and providing skill center programs to the student shall report the monthly student enrollment to the superintendent of public instruction, school apportionment and financial services, for state funding purposes, unless otherwise provided for by the interlocal agreement.

(3) Satellite programs shall not provide a monthly count of students directly to the superintendent of public instruction, for apportionment purposes and shall not be direct funded.

(4) Exemptions may be granted by the superintendent of public instruction, career and technical education, for start-up

and existing skill centers operating prior to the 2010-11 school year.

#### NEW SECTION

##### **WAC 392-600-070 Single school district skill centers.**

(1) A single school district's board of directors shall be the skill center administrative council and shall operate in accordance with WAC 392-600-030.

(2) It shall have an advisory committee comprised of the district superintendent and representatives from business/industry reflective of the proposed programs.

#### NEW SECTION

**WAC 392-600-080 Skill center feasibility study procedures.** (1) Two or more school districts, through a joint resolution designating a lead district, may request funding to conduct a feasibility study for a skill center core or branch campus to the superintendent of public instruction, school facilities and organization. The lead district will be the primary contact for the superintendent of public instruction, and will be responsible for disseminating information to member districts.

(2) In the case of branch campuses, the existing skill center host district and administrative council shall be the applicant or co-applicant.

(3) In addition:

(a) Feasibility study funding requests received before May 1st of each year will be submitted in OSPI's capital budget request.

(b) Two or more school districts, through a joint resolution, may request a waiver to the feasibility study requirement by demonstrating an existing skill center cooperative relationship and addressing the required elements of a feasibility study set forth by the superintendent of public instruction, school facilities and organization. Waivers may be granted by the state superintendent of public instruction.

(c) After legislative approval to fund the feasibility study, the superintendent of public instruction, school facilities and organization, shall issue a grant notification letter to the lead district for the appropriated funding to complete the feasibility study. The grant notification letter shall include the required elements of the study.

(d) The lead district shall return a completed feasibility study to the superintendent of public instruction, school facilities and organization, within one year from the grant notification letter.

(e) Participating school districts wanting to proceed with the creation of a skill center shall submit a written application to the superintendent of public instruction, school facilities and organization which shall include, but not be limited to, the interdistrict cooperative agreement requirements as prescribed in WAC 392-600-020. The application for the interdistrict cooperative shall be received within two school years of submitting the feasibility study.

(f) The superintendent of public instruction shall have final approval of the interdistrict cooperative agreement and the designation for the interdistrict cooperative to become an emerging skill center. The lead district shall receive a letter

from the superintendent of public instruction regarding the outcome of the superintendent of public instruction review.

#### NEW SECTION

**WAC 392-600-090 Emerging skill centers.** Emerging skill centers, as defined in WAC 392-600-010, shall:

(1) Develop policies and procedures to ensure cooperation and avoid unnecessary duplication of programs within the skill center member districts.

(2) Follow the superintendent of public instruction, career and technical education, course approval application process.

(3) All career and technical education course offerings provided by the skill center must be submitted for approval by the skill center and not by the participating districts.

(4) Apply for a school entity code through the superintendent of public instruction, information technology.

All existing skill centers must meet the rules herein set forth by June 30, 2014.

#### NEW SECTION

**WAC 392-600-100 Branch campuses.** (1) The superintendent or designee from the branch campus shall serve on the core campus host district council.

(2) The branch campus shall:

(a) Receive interdistrict cooperative approval from the superintendent of public instruction as described in WAC 392-600-020;

(b) Have programs reviewed and approved by the core campus host district before submitting to the superintendent of public instruction, career and technical education.

(3) A skill center branch campus may submit a request to the superintendent of public instruction, career and technical education, to be considered as a skill center core campus if it meets the following standards:

(a) Develops interdistrict agreements that meet the standards in WAC 392-600-020;

(b) Meets or has a plan to meet the enrollment requirements in WAC 392-600-050;

(c) Provides a minimum of three approved instructional programs;

(d) Receives a written release from the core campus.

(4) A branch campus may not establish a branch campus or a satellite program.

#### NEW SECTION

**WAC 392-600-110 Satellite programs.** (1) Existing core skill centers may request approval through the superintendent of public instruction, career and technical education, for satellite programs. If a satellite program is located at a comprehensive high school, written approval from district career and technical education director and superintendent is required.

(2) A satellite program shall not report the monthly student enrollment directly to the superintendent of public instruction, apportionment financial services. State apportionment funding shall be paid only through the core campus host district.

(3) Program approvals will be submitted to the superintendent of public instruction, career and technical education, through the core campus.

(4) Interlocal agreements shall be developed as necessary with:

- (a) School districts;
- (b) Private or other entities.

#### NEW SECTION

**WAC 392-600-120 Dissolution of skill centers.** (1) A skill center administrative council, as defined in WAC 392-600-010, seeking to dissolve the operation of a skill center campus shall request prior approval from the superintendent of public instruction before dissolution and shall conform to the following:

(a) Skill centers receiving state funding for construction or major modernization shall not initiate procedures for the dissolution of the operation of a skill center prior to the end of the useful life of the facility or thirty years after the state funded facility's construction completion date, whichever is less.

(b) Any skill center facilities which were constructed, or have received major modernization, with state funding shall revert to the school district in which the facility is physically located and shall be counted as instructional space in the district's inventory.

(c) Request for dissolution outside the terms of the inter-district cooperative agreement may be approved when, in the judgment of the superintendent of public instruction, there is substantiation of sufficient cause.

(2) Skill centers unable to meet enrollment requirements during the probationary period as described in WAC 392-600-060 shall enter into the skill center dissolution process. Within thirty days after conclusion of the probationary period the skill center administrative council shall submit in writing, for approval by the superintendent of public instruction, one of the following dissolution options:

(a) Partner with an existing skill center to become a branch campus or satellite program. The proposed core campus skill center administrative council must submit a resolution proposal for the new branch campus or satellite program.

(b) Remove skill center status and no longer qualify for enhanced skill center funding as described in WAC 392 121-465.

(c) Proceed with dissolution as outlined in the skill center interdistrict cooperative agreement.

**WSR 09-23-068**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Division of Child Support)  
[Filed November 13, 2009, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-14-073.

Title of Rule and Other Identifying Information: The division of child support (DCS) proposes to adopt changes to chapter 388-14A WAC to implement SSB 5166 (chapter 408, Laws of 2009) and to make certain changes to clarify procedures. DCS adopted emergency rules under WSR 09-15-183 which were effective on July 26, 2009, the effective date of the new law. This CR-102 continues the regular rule-making process.

Amending WAC 388-14A-4500 What is the division of child support's license suspension program?, 388-14A-4505 The notice of noncompliance and intent to suspend licenses, 388-14A-4510 Who is subject to the DCS license suspension program?, 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?, 388-14A-4520 Signing a (~~repayment~~) payment agreement may avoid certification for noncompliance, 388-14A-4525 How to obtain a release of certification for noncompliance and 388-14A-4530 (~~Administrative hearings~~) What happens at an administrative hearing regarding license suspension (~~are limited in scope~~); and new sections WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?, 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?, 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?, and 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (behind Goodyear Courtesy Tire) (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 January 5, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 6, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 5, 2010.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 22, 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 Washington legislature adopted SSB 5166 (chapter 408, Laws of 2009) regarding license suspension for noncompliance with child support orders. DCS must adopt rules to implement this legislation, which took effect on July 26, 2009. DCS adopted emergency rules under WSR 09-15-183 which were effective on that date. DCS proposes to adopt changes to chapter 388-14A WAC to implement SSB 5166 and to make certain changes to clarify procedures.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: SSB 5166 (chapter 408, Laws of 2009), RCW 34.05.060, 43.20A.550, 74.04.-

055, 74.04.057, 74.20A.310, 74.20A.320(10), 74.20A.350 (14).

Statute Being Implemented: SSB 5166 (chapter 408, Laws of 2009), which amends RCW 74.20A.320 and adds four new sections to chapter 74.20A RCW.

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

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

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

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

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

November 13, 2009  
Stephanie E. Vaughn  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-24 issue of the Register.

**WSR 09-23-072**  
**PROPOSED RULES**  
**OFFICE OF**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No R 2008-16—Filed November 16, 2009, 9:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-107.

Title of Rule and Other Identifying Information: Carrier health plan disclosure.

Hearing Location(s): Insurance Commissioner's Office (OIC), 5000 Capitol Boulevard, Room TR 120, Tumwater, WA 98504-0255, on December 22, 2009, at 10:00 a.m.

Date of Intended Adoption: December 29, 2009.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, e-mail [donnad@oic.wa.gov](mailto:donnad@oic.wa.gov), fax (360) 586-3109, by December 21, 2009.

Assistance for Persons with Disabilities: Contact Lori Villaflores by December 21, 2009, TTY (360) 586-0241 or (360) 725-7087.

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

- Eliminating the requirement that carriers file health plan disclosure information with the OIC.
- Requiring carriers to prominently post and display health plan disclosure information on their web sites, provide disclosure information in other forms

of electronic communication and paper copies upon request.

Anticipated Effects, Including Any Changes in Existing Rules:

- Carriers will no longer file health disclosure information with the OIC.
- Prospective enrollees have easier access to the most current health disclosure information when selecting a health benefit plan.

Reasons Supporting Proposal:

- Advances in types of electronic communication allow updated health disclosure information to be available in more accurate and timely forms of communication.
- A larger percentage of the population today utilizes electronic communication as an acceptable, comfortable and everyday way of sending and receiving communications. This rule reflects that reality.
- The rule eliminates a filing requirement that the commissioner determined was unnecessary and potentially created confusion for consumers.
- The rule supports the commissioner's business goals of administrative simplification by streamlining the process of disclosing health plan information to consumers, thereby reducing costs for the industry as well as the OIC.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.510.

Statute Being Implemented: RCW 48.43.510.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No domestic small businesses are affected by this proposed rule. Therefore, no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7040, fax (360) 586-3109, e-mail [donnad@oic.wa.gov](mailto:donnad@oic.wa.gov).

November 16, 2009

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

**WAC 284-43-820 Health plan disclosure(~~s—Prescription drugs, preventive care, generally~~) requirements.** ((1) A carrier that offers a health plan may not offer to sell a health plan to an enrollee or to any group representa-

tive, agent, employer, or enrollee representative without first offering to provide, and providing upon request, the following information using a standardized summary format filed with the commissioner and consistent with WAC 284-43-815 before purchase or selection:

(a) A listing of covered benefits, including prescription drug benefits, if any, and how consumers may be involved in decisions about benefits;

(b) A listing of exclusions, reductions, and limitations to covered benefits, including definitions of terms such as formulary, generic versus brand name, medical necessity or other coverage criteria and policies regarding coverage of drugs, including how drugs are added or removed from the formulary;

(c) A statement of the carrier's policies for protecting the confidentiality of health information;

(d) A statement of the cost of premiums and any enrollee cost-sharing requirements;

(e) A summary explanation of the carrier's grievance process;

(f) A statement regarding the availability of a point-of-service option, if any, and how the option operates; and

(g) A convenient means of obtaining a complete and detailed list of covered benefits including a copy of the current formulary, if any is used, a list of participating primary care and specialty care providers, including disclosure of network arrangements that restrict access to providers within any plan network. The offer to provide the information referenced in this subsection (1) must be clearly and prominently displayed on any information provided to any prospective enrollee or to any prospective group representative, agent, employer, or enrollee representative.

(2) Upon the request of any person, including a current enrollee, prospective enrollee, or the insurance commissioner, a carrier must provide written information regarding any health care plan it offers, that includes the following written information:

(a) Any documents, instruments, or other information referred to in the medical coverage agreement;

(b) A full description of the procedures to be followed by an enrollee for consulting a provider other than the primary care provider and whether the enrollee's primary care provider, the carrier's medical director, or another entity must authorize the referral;

(c) Procedures, if any, that an enrollee must first follow for obtaining prior authorization for health care services;

(d) A written description of any reimbursement or payment arrangements, including, but not limited to, capitation provisions, fee-for-service provisions, and health care delivery efficiency provisions, between a carrier and a provider or network;

(e) Descriptions and justifications for provider compensation programs, including any incentives or penalties that are intended to encourage providers to withhold services or minimize or avoid referrals to specialists;

(f) An annual accounting of all payments made by the carrier which have been counted against any payment limitations, visit limitations, or other overall limitations on a person's coverage under a plan;

(g) A copy of the carrier's grievance process for claim or service denial and for dissatisfaction with care; and

(h) Accreditation status with one or more national managed care accreditation organizations, and whether the carrier tracks its health care effectiveness performance using the health employer data information set (HEDIS), whether it publicly reports its HEDIS data, and how interested persons can access its HEDIS data.

(3) Each carrier shall provide to all enrollees and prospective enrollees a list of available disclosure items.

(4) Nothing in this section requires a carrier or a health care provider to divulge proprietary information to an enrollee, including the specific contractual terms and conditions between a carrier and a particular provider.

(5) No carrier may advertise or market any health plan to the public, including to any employer as a plan that covers services that help prevent illness or promote the health of enrollees unless it:

(a) Provides all clinical preventive health services provided by the basic health plan, authorized by chapter 70.47 RCW;

(b) Monitors and reports annually to enrollees on standardized measures of health care and satisfaction of all enrollees in the health plan. Standardized measures for this purpose, include HEDIS, consumer assessment of health plans (CAHP) or other national standardized measurement systems adopted by national managed care accreditation organizations or state agencies that purchase managed health care services and approved by the commissioner; and

(c) Makes available upon request to enrollees its integrated plan to identify and manage the most prevalent diseases within its enrolled population, including cancer, heart disease, and stroke. Such plans must include means to identify enrollees with these diseases, implement evidence-based screening, education, monitoring and treatment protocols, track patient and provider adherence to these protocols, measure health outcomes, and regularly report results to enrollees.

(6) No carrier may preclude or discourage its providers from informing an enrollee of the care he or she requires, including various treatment options, and whether in the providers' view such care is consistent with the plan's health coverage criteria, or otherwise covered by the enrollee's medical coverage agreement with the carrier. No carrier may prohibit, discourage, or penalize a provider otherwise practicing in compliance with the law from advocating on behalf of an enrollee with a carrier. Nothing in this section shall be construed to authorize a provider to bind a carrier to pay for any service.

(7) No carrier may preclude or discourage enrollees or those paying for their coverage from discussing the comparative merits of different carriers with their providers. This prohibition specifically includes prohibiting or limiting providers participating in those discussions even if critical of a carrier.

(8) Each carrier must communicate enrollee information required in this act by means that ensure that a substantial portion of the enrollee population can make use of the information.)) (1) Health plan disclosure information must com-



ply with and include each requirement listed in RCW 48.43.-510.

(2) Health plan disclosures must be current and:

(a) Provided by paper copy upon request;

(b) Provided by electronic communication upon request;

(c) Clearly identified as health plan disclosures; and

(d) Prominently displayed and accessible on the carrier's web site.

(3) Each disclosure must be written in a manner that is easily understood by the average plan participant.

(4) Each carrier must provide to all enrollees and prospective enrollees a list of available disclosure items, including instructions on how to access and request copies of health disclosure information in paper and electronic forms, and web site links to the entire health plan disclosure information.

### WSR 09-23-074

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed November 16, 2009, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-058.

Title of Rule and Other Identifying Information: The department is amending WAC 388-530-4100 Washington preferred drug list (PDL) and 388-530-4150 Therapeutic interchange program (TIP); and creating WAC 388-530-4125 Generics first for a client's first course of treatment.

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 December 22, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 23, 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 DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 22, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 8, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jenisha.johnson@dshs.wa.gov](mailto:jenisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to maximize appropriate prescription drug use in a cost-effective manner by increasing the percentage of prescribers who prescribe generics.

Reasons Supporting Proposal: These amendments are required to implement ESSB 5892 which authorizes state purchasing health care programs to maximum appropriate prescription drug use in a cost-effective manner.

Statutory Authority for Adoption: RCW 74.04.050, 74.09.700, and 74.08.090; chapter 575, Laws of 2009 (ESSB 5892).

Statute Being Implemented: Chapter 575, Laws of 2009 (ESHB 5892).

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

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

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; Implementation and Enforcement: Siri A. Childs, PharmD, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. Siri Childs, Pharmacy Administrator, DSHS, HRSA, Division of Healthcare Services, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1564, fax (360) 586-9727, e-mail [childsa@dshs.wa.gov](mailto:childsa@dshs.wa.gov).

November 13, 2009

Stephanie E. Vaughn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

**WAC 388-530-4100 Washington preferred drug list (PDL).** Under RCW 69.41.190 and 70.14.050, the department((;)) and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL((;)) under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL((;)) that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee((;)) and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug(~~(s)~~) which the department determines as covered(~~(s)~~) is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs that have been studied by the evidence-based practice center and have been reviewed by the P&T committee may be included in the Washington PDL.

(11) When a brand name drug has been reviewed by the P&T committee, the department may immediately designate an available, less expensive, equally effective, generic equivalent as a preferred drug.

(12) The dispensing of a brand name drug in a drug class on the Washington PDL as a client's first choice of treatment within that therapeutic class may be subject to restrictions under WAC 388-530-4125 and 388-530-4150(8).

#### NEW SECTION

**WAC 388-530-4125 Generics first for a client's first course of treatment.** The department uses point-of-sale (POS) claim messaging to communicate to pharmacies to use a preferred generic drug for the client's first choice of treatment in specific drug classes.

(1) The department may require preferred generic drug(s) on the Washington preferred drug list (PDL) be used before any brand name drugs for a client's first course of treatment within that therapeutic class of drugs, when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition; and

(b) The drug use review (DUR) board established under WAC 388-530-4000 has reviewed the drug class and recommended to the department that the drug class is appropriate to require generic drugs as a client's first choice of treatment.

(2) For drug classes selected by the department which meet the criteria of subsection (1) of this section, only preferred generic drugs are covered for a client's first course of treatment, except as identified in subsection (3) of this section.

(3) Endorsing practitioners' prescriptions written "Dispense as written (DAW)" for preferred and nonpreferred brand name drugs in the specific drug classes on the Washington PDL reviewed by the DUR board will be subject to authorization to establish medical necessity as defined in WAC 388-500-0005.

AMENDATORY SECTION (Amending WSR 08-21-107, filed 10/16/08, effective 11/16/08)

**WAC 388-530-4150 Therapeutic interchange program (TIP).** This section contains the department's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and

70.14.050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

(a) Within therapeutic classes on the Washington PDL;

(b) Studied by the evidence-based practice center(s);

(c) Reviewed by the pharmacy and therapeutics (P&T) committee; and

(d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

(a) When the ~~((pharmacy and therapeutics (P&T)))~~ P&T(~~(s)~~) committee determines that TIP does not apply to the therapeutic class on the PDL; or

(b) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner(~~(s)~~) under the provisions of chapter 182-50 WAC and RCW 69.41.190(2).

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) With the exception of subsection (7) and (8) of this section, when an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

(c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage(~~(s) and samples~~)):

(a) Antipsychotic;

(b) Antidepressant;

(c) Antiepileptic;

~~(d)~~ Chemotherapy;

~~((e))~~ (e) Antiretroviral;

~~((f))~~ (f) Immunosuppressive; or

~~((g))~~ (g) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

(7) The department may impose nonendorsing status on an endorsing practitioner only under the following circumstances:

(a) The department runs three quarterly reports demonstrating that, within any therapeutic class of drugs on the Washington PDL, the endorsing practitioner's frequency of prescribing DAW varies from the prescribing patterns of the endorsing practitioner's department-designated peer grouping with a ninety-five percent confidence interval; and

(b) The medical director has:

(i) Delivered by mail to the endorsing practitioner the quarterly reports described in subsection (7)(a) of this section which demonstrate the endorsing practitioner's variance in prescribing patterns; and

(ii) Provided the endorsing practitioner an opportunity to explain the variation in prescribing patterns as medically necessary as defined under WAC 388-500-0005; or

(iii) Provided the endorsing practitioner two calendar quarters to change his or her prescribing patterns to align with those of the department-designated peer groupings.

(c) The nonendorsing status restrictions imposed under this section will remain in effect until the quarterly reports demonstrate that the endorsing practitioner's prescribing patterns no longer vary in comparison to his or her department designated peer-grouping over a period of four calendar quarters, with a ninety-five percent confidence interval.

(8) For a client's first course of treatment within a therapeutic class of drugs, the endorsing practitioner's option to write DAW does not apply when:

(a) There is a less expensive, equally effective therapeutic alternative generic product available to treat the condition;

(b) The drug use review (DUR) board established under WAC 388-530-4000 has reviewed the drug class and recommended to the department that the drug class is appropriate to require generic drugs as a client's first course of treatment.

(9) In accordance with WAC 388-501-0165, the department will request and review the endorsing practitioner's medical justification for preferred and nonpreferred brand name drugs and nonpreferred generic drugs for the client's first course of treatment.

**WSR 09-23-075**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed November 16, 2009, 10:19 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The department is amending WAC 388-556-0600 Mental health services.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on December 22, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 23, 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 December 22, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 8, 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: Correcting errant WAC cross reference.

Reasons Supporting Proposal: It will eliminate confusion for people who read this rule by directing them to the correct WAC citations.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is just a "housekeeping" change to correct an errant WAC citation.

A cost-benefit analysis is not required under RCW 34.05.328. Because this is just a "housekeeping" change to correct an errant WAC citation, it is exempt under RCW 34.05.328 (5)(b)(iv).

November 9, 2009

Stephanie E. Vaughn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-24-053, filed 11/30/00, effective 12/31/00)

**WAC 388-556-0600 Mental health services.** Mental health-related services are available to eligible clients under chapter ((388-862)) 388-865 WAC and WAC 388-531-1400.

**WSR 09-23-077**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed November 16, 2009, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-16-102.

Title of Rule and Other Identifying Information: The department is amending WAC 388-408-0020 When am I not allowed to be in a TANF or SFA assistance unit?

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 December 22, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 23, 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 DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 22, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by December 8, 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 community services division, economic services administration is proposing to revise WAC 388-408-0020 When am I not allowed to be in a TANF or SFA assistance unit?, clarifying that adoptive children are always to be included in such units, regardless of adoption support received.

Reasons Supporting Proposal: The proposed amendment will correct language in this WAC which may be seen as contradicting other assistance unit rules.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.20.330.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.20.330.

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: Tom Berry, 712 Pear S.E., Olympia, WA 98504-5470, (360) 725-4617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not have an economic impact on small businesses. The proposed amendments only clarify policy regarding inclusion of adoptive children in TANF or SFA assistance units.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this 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."

November 4, 2009

Stephanie E. Vaughn

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 01-03-121, filed 1/22/01, effective 3/1/01)

**WAC 388-408-0020 When am I not allowed to be in a TANF or SFA assistance unit?** Some people cannot be in an AU for TANF or SFA. This section describes who cannot

be in your TANF or SFA AU and how this will affect your benefits.

(1) We do not include the following people in your TANF or SFA AU:

(a) ~~((An adopted child if:~~  
(i) ~~The child gets federal, state, or local adoption assistance; and~~

(ii) ~~Including the child in the AU and counting the adoption assistance income would reduce your AU's benefits.~~

~~((b))~~ A minor parent or child who has been placed in Title IV-E, state, or locally-funded foster care unless the placement is a temporary absence under WAC 388-454-0015;

~~((c))~~ (b) An adult parent in a two-parent household when:

(i) The other parent is unmarried and under the age of eighteen; and

(ii) We decide that your living arrangement is not appropriate under WAC 388-486-0005.

~~((d))~~ (c) A court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* (in the place of a parent) if they are not a relative of one of the children in the AU as defined under WAC 388-454-0010; or

~~((e))~~ (d) Someone who gets SSI benefits.

(2) If someone that lives with you cannot be in the AU:

(a) We do not count them as a member of the AU when we determine the AU's payment standard; and

(b) We do not count their income unless they are financially responsible for a member of the AU under WAC 388-450-0095 through 388-450-0130.

## WSR 09-23-080

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed November 16, 2009, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-078.

Title of Rule and Other Identifying Information: Chapter 46.79 RCW, Hulk haulers and scrap processors.

Hearing Location(s): 2424 Bristol Court S.W., 3rd Floor, Conference Room 346, Olympia, WA 98502, on January 5, 2010, at 2:30 p.m.

Date of Intended Adoption: February 10, 2010.

Submit Written Comments to: Mary Morris, P.O. Box 9039, Olympia, WA 98507, e-mail mmorris@dol.wa.gov, fax (360) 586-6703, by December 30, 2009.

Assistance for Persons with Disabilities: Contact Cathy Bentley by December 30, 2009, TTY (360) 664-8885 or (360) 902-3600.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Exempt common carriers from the hulk hauler licensing requirements when transporting demolished vehicles for hire between vehicle wreckers and/or scrap processors.

Reasons Supporting Proposal: Clarifying language that promotes a consistent application of law.

Statutory Authority for Adoption: RCW 46.79.080.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Charles R. Coach, 2424 Bristol Court S.W., Olympia, WA 98507, (360) 664-6453; and Enforcement: Daniel N. Devoe, 2424 Bristol Court S.W., Olympia, WA 98507, (360) 664-6451.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not propose any additional duties on the industry.

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

November 16, 2009

Walt Fahrer

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 93-08-076, filed 4/6/93, effective 5/7/93)

**WAC 308-65-010 Definitions—General. Common carrier.** Common carrier means any person who undertakes to transport property for the general public by motor vehicle for compensation as outlined in chapter 81.80 RCW. For the purposes of this chapter, common carriers licensed under the provisions of chapter 81.80 RCW are exempt from the hulk hauler licensing requirements when transporting demolished vehicles for hire between vehicle wreckers and/or scrap processors licensed by the state or country in which they operate, and the ownership interest in the vehicles is transferred directly between the vehicle wreckers and/or scrap processors.

Deals in vehicles. For the purposes of this chapter, deals in vehicles means to obtain an ownership interest in a vehicle for the purpose of transporting and/or selling the vehicle to a licensed vehicle wrecker or scrap processor by obtaining ownership as set forth in WAC 308-65-080.

Demolish. To demolish means ~~((the))~~ to completely destroy a vehicle, vehicle salvage, and all parts by rendering ((of vehicle salvage into)) it completely unusable except for recyclable ((metals)) material, for example, by means of a hydraulic crusher, hydraulic baler and shears or a shredder operated by a licensed scrap processor.

Hulk hauler. Any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed vehicle wrecker or scrap processor in substantially the same form in which they are obtained.

**AMENDATORY SECTION** (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

**WAC 308-65-130 Scrap processor—Procedures for acquiring vehicles for demolition. On what ownership documents may I acquire vehicles?** Supporting acquisition. A scrap processor may acquire vehicles for demolition if the transferor can furnish ownership documents, in the form of a certificate of title properly endorsed, from a state issuing a title, or a certificate of registration and notarized bill of sale from a jurisdiction issuing a registration certificate only or other approved ownership documents as follows:

(1) Affidavit of lost or stolen title and release of interest from the owner.

(2) Affidavit of sale of a junk vehicle from the landowner who has complied with RCW 46.55.230.

(3) Bills of sale pursuant to WAC 308-63-020 for vehicles from nontitle jurisdictions, for vehicles that have had their titles surrendered to a state after having been declared a total loss, and for vehicles of the type to which titles are not issued.

(4) Affidavit of sale from a registered tow truck operator.

(5) A court order.

(6) Invoice or bill of sale from wrecker.

(7) Scrap processors may acquire vehicle salvage from out-of-state provided that the out-of-state salvage company submits an affidavit certifying its rightful and true possession of the vehicles or parts contained in the bulk shipment and that he/she has complied with all statutes, rules and regulations relating to such vehicles in the state or province of origin.

(8) Vehicle parts may be acquired by use of an invoice or bill of sale which describes the part and identifies the seller by name and address.

Common carriers transporting vehicles for hire between vehicle wreckers and/or scrap processors licensed by the state or country in which they operate must provide ownership documents as outlined in WAC 308-65-080, or an affidavit of certification for the load that includes the origin and destination of the load and lists each vehicle on the load by VIN number, year, make, and model. The certification must be signed by the shipper under the penalty of perjury indicating the load of demolished vehicles has been processed in accordance with all statutes, rules and regulations relating to such vehicles in the state or province of origin, and meet the criteria listed in this chapter.

## WSR 09-23-084

### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed November 16, 2009, 5:18 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amending WAC 246-840-095 Temporary practice permits, temporary practice permits are issued to applicants who need to complete a fingerprint card but have completed all other requirements for licensure. The temporary practice permit allows practice for six months with a one time extension if the fingerprint card is not yet completed. The amendments make it very clear about the process for requesting and receiving an extension.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Tumwater, WA 98502, on January 15, 2010, at 9:30 a.m.

Date of Intended Adoption: January 15, 2010.

Submit Written Comments to: Terry J. West, Deputy Executive Director, Department of Health, P.O. Box 47864, Olympia, WA 98504, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by January 8, 2010.

Assistance for Persons with Disabilities: Contact Terry J. West by January 4, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The original rule adopted August 2009 created a temporary practice permit for nurses applying for endorsement with an out-of-state address. The temporary practice permit is issued for six months with one extension. The amendments clearly outline the process for an applicant to obtain an extension.

Reasons Supporting Proposal: The amendments make it easier for an applicant to request an extension.

Statutory Authority for Adoption: RCW 18.130.075 and 18.130.064.

Statute Being Implemented: RCW 18.130.075 and 18.130.064.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Recommend adoption for clarification.

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Terry J. West, Department of Health, P.O. Box 47864, Olympia, WA 98504, (360) 236-4712.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only correct typographical errors, make address or name changes, or clarify the language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

November 16, 2009

Paula R. Meyer, MSN, RN  
Executive Director

AMENDATORY SECTION (Amending WSR 09-17-053, filed 8/13/09, effective 9/13/09)

**WAC 246-840-095 Temporary practice permits.** ~~((A new rule is needed to create a temporary practice permit.))~~ The nursing care quality assurance commission (NCQAC) conducts background checks on applicants to assure safe patient care. Completion of a fingerprint-based national ~~((criminal))~~ background check may ~~((require additional time))~~ cause a delay in licensing.

(1) The NCQAC may issue a temporary practice permit ((when the)) to an applicant ((is licensed)) who holds an unrestricted, active license in another state ((with licensing standards)) which has substantially equivalent ((to)) licensing standards to those in Washington. The applicant must not be

subject to denial of a license or issuance of a conditional or restricted license ((under this chapter)).

~~((1) If there are no violations identified because of the preliminary background check, and the applicant meets all other licensure conditions, the NCQAC may issue a temporary practice permit allowing time to complete the national criminal background check requirements.~~

~~The NCQAC issues a temporary practice permit valid for six months. At the fifth month, if the department of health has not received information from the Federal Bureau of Investigations (FBI), the applicant must contact the NCQAC office.~~

~~A one time extension of six months may be granted for good cause documented as beyond the control of the applicant. The applicant must file a request for extension petition with the department of health indicating their fingerprint card has not been received from the FBI. The request must be filed at least thirty days before the temporary practice permit expires.~~

~~(2) The temporary practice permit allows the applicant to work in the state of Washington as a nurse during the time period specified on the permit. The temporary practice permit serves as a license to practice nursing.~~

~~(3) The NCQAC issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.~~

~~(4) The temporary practice permit is no longer valid after the license is issued or action is taken on the application because of the background check.)) (2) A temporary practice permit serves as a license to practice nursing during the time period specified on the permit.~~

(3) A temporary practice permit expires when:

(a) A license is granted;

(b) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

If, at the expiration of the original temporary practice permit, the department has not received information from the fingerprint-based national background check, the NCQAC may renew the temporary practice permit for an additional one hundred eighty days.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application fee(s) and documentation for the license.

(b) Submit a completed national background check fingerprint card, if required.

(c) Meet all other requirements and qualifications for the license, except for the results from a fingerprint-based national background check, if required.

(d) Provide verification of holding an unrestricted nursing license from another state that has substantially equivalent licensing standards to those in Washington.

(e) Submit a separate application for a temporary practice permit.

**WSR 09-23-093**  
**WITHDRAWAL OF PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 (By the Code Reviser's Office)  
 [Filed November 17, 2009, 9:03 a.m.]

WAC 392-107-215, proposed by the superintendent of public instruction in WSR 09-10-049 appearing in issue 09-10 of the State Register, which was distributed on May 20, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 09-23-094**  
**WITHDRAWAL OF PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 (By the Code Reviser's Office)  
 [Filed November 17, 2009, 9:03 a.m.]

WAC 392-109-065, proposed by the superintendent of public instruction in WSR 09-10-050 appearing in issue 09-10 of the State Register, which was distributed on May 20, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 09-23-095**  
**PROPOSED RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**  
 [Filed November 17, 2009, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-016.

Title of Rule and Other Identifying Information: WAC 136-161-080 Project submittal, selection, and initial allocation of RATA funds to projects.

Hearing Location(s): 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on January 21, 2010, at 2:00 p.m.

Date of Intended Adoption: January 21, 2010.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, e-mail Karen@crab.wa.gov, fax (360) 586-0386, by January 15, 2010.

Assistance for Persons with Disabilities: Contact Karen Pendleton by January 19, 2010, TTY (800) 833-6384 or (360) 753-5989.

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

imum RATA contribution to each northeast region county for 2R projects.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, (360) 753-5989.

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

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

November 9, 2009

Jay P. Weber

Executive Director

AMENDATORY SECTION (Amending WSR 08-16-042, filed 7/29/08, effective 8/29/08)

**WAC 136-161-080 Limitations on allocations of RATA funds to counties.** For any project program period, no county shall receive a RATA fund allocation greater than the following maximum project RATA contribution, or percentage of the forecasted regional apportionment amount:

(1) PSR: No maximum project RATA contribution; 40% limit on percentage of the forecasted regional apportionment amount;

(2) NWR: No maximum project RATA contribution; twenty percent limit on percentage of the forecasted regional apportionment amount;

(3) NER: No maximum project RATA contribution; maximum RATA contribution to each county for 2R projects is seven hundred fifty thousand dollars; twelve and one-half percent limit on percentage of the forecasted regional apportionment amount;

(4) SWR: No maximum project RATA contribution; fifteen percent limit on percentage of the forecasted regional apportionment amount;

(5) SER: No maximum project RATA contribution; percentage varies by county as follows:

- |                        |                  |
|------------------------|------------------|
| (a) Asotin County      | ten percent      |
| (b) Benton County      | fourteen percent |
| (c) Columbia County    | eleven percent   |
| (d) Franklin County    | thirteen percent |
| (e) Garfield County    | ten percent      |
| (f) Kittitas County    | thirteen percent |
| (g) Klickitat County   | fourteen percent |
| (h) Walla Walla County | fourteen percent |
| (i) Yakima County      | twenty percent   |

**WSR 09-23-096**  
**PROPOSED RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**

[Filed November 17, 2009, 9:06 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under 09-17-109.

Title of Rule and Other Identifying Information: WAC 136-130-050 Regional prioritization of RAP projects.

Hearing Location(s): 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, on January 21, 2010, at 2:00 p.m.

Date of Intended Adoption: January 21, 2010.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98504-0913, e-mail [Karen@crab.wa.gov](mailto:Karen@crab.wa.gov), fax (360) 586-0386, by January 15, 2010.

Assistance for Persons with Disabilities: Contact Karen Pendleton by January 19, 2010, TTY (800) 833-6384 or (360) 753-5989.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changing percentages in Categories 2, 3 and 4 for project prioritization of RAP projects in the northeast region. Adding paragraph for proposed 2R project points distribution.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting: Randy Hart, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; Implementation: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, (360) 753-5989; and Enforcement: Jay Weber, 2404 Chandler Court S.W., Suite 240, (360) 753-5989.

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

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

November 9, 2009

Jay P. Weber  
Executive Director

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

**WAC 136-130-050 Project prioritization in northeast region (NER).** Each county in the NER may submit projects requesting RATA funds not to exceed twenty-five percent of the forecasted NER biennial apportionment. Each project shall be rated in accordance with the NER RAP rating procedures. The NER biennial apportionment shall be divided into the following categories at the percentages shown, provided sufficient projects are submitted for prioritization in each category:

Category 1 - Ten percent for bridge projects where RATA funds are used as a match for federal bridge ~~((replacement))~~ funds;

Category 2 - ~~((Forty-five))~~ Thirty percent for reconstruction of rural collectors and arterials; ~~((and))~~

Category 3 - ~~((Forty-five))~~ Thirty percent for resurfacing, restoration, rehabilitation (3R) type projects on rural collectors and arterials; and

Category 4 - Thirty percent for resurfacing and restoration (2R) type projects on rural collectors and arterials.

In the event that no projects or an insufficient number of projects are submitted in any of the above categories to utilize the RATA funds set aside for the category, all remaining funds in that category or categories shall be divided among the remaining categories as the county road administration board deems appropriate. The intent is to divide all available funds into categories having a sufficient number of submitted projects to fully utilize the funds available at each allocation during the biennium.

Bridge projects may be submitted requesting RATA funds under one of the following conditions:

(1) Bridges must be approved for federal bridge ~~((replacement))~~ funding and RATA funds shall be used only as a match for such federal funding. Bridges will be ranked for RATA funding using the WSDOT priority list and may be added to the NER Category 1 priority array at any time during the biennium upon approval of the bridge for federal bridge ~~((replacement))~~ funding.

(2) A stand-alone bridge project may be submitted as an ordinary reconstruction or 3R RAP project provided that its priority rating has been computed by the bridge rating method in the NER RAP rating procedures. Such projects shall not be considered for funding from the bridge reserve described above.

(3) A RAP project may include a bridge when the cost of the bridge does not exceed twenty percent of the total project cost.

NER RAP rating points for reconstruction projects, 3R projects or ~~((non-federal))~~ nonfederal bridge ~~((replacement))~~ projects shall be assigned on the basis of one hundred points for a condition rating and fifty points for a service rating. The priority rating equals the sum of two and one half times the product of the service rating to the 1.25 power and the common logarithm of the number obtained by dividing one hundred by the condition rating. A total of ten points representing local significance may be added to one project included in each county's biennial combined bridge, 3R and reconstruction submittal. A total of up to ten points representing missing links definition may also be added to one project included in each county's biennial combined bridge, 3R and reconstruction submittal. ~~((Prioritization of NER projects shall be on the basis of total NER RAP rating points shown on the appropriate project worksheet and the prospectus form of the project application.))~~

NER RAP rating points for 2R projects shall be assigned on the basis of five points for traffic volume, five points for traffic accidents, fifty points for structure, ten points for



geometry, and fifteen points for roadside safety. A total of fifteen points representing local significance may be added to one 2R project included in each county's biennial submittal.

Prioritization of NER projects shall be on the basis of total NER RAP rating points shown on the appropriate project worksheet and the prospectus form of the project application.

**WSR 09-23-097**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed November 17, 2009, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-094.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on December 22, 2009, at 10:00 a.m.

Date of Intended Adoption: December 29, 2009.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127, by December 22, 2009.

Assistance for Persons with Disabilities: Contact Martha Thomas at (360) 725-7497, no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed WAC 458-40-660 will apply to the first half of 2010.

Further, RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The department proposes to amend the forest land values rule (WAC 458-40-540) to adjust the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2010.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/agenda.aspx>.

Reasons Supporting Proposal: RCW 84.33.091 requires that the stumpage values provided in WAC 458-40-660 be updated as of January 1 and July 1 of each year. RCW 84.33.140 requires that the values provided in WAC 458-40-540 be adjusted each year.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091 and 84.33.140.

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

Name of Proponent: Washington state department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement is required for either rule.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 586-0127 (for WAC 458-40-660). The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

November 17, 2009

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-044, filed 12/31/08, effective 1/1/09)

**WAC 458-40-540 Forest land values—((2009)) 2010.**

The forest land values, per acre, for each grade of forest land for the ((2009)) 2010 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2009)) 2010 VALUES ROUNDED
1	1	\$((209)) 210
	2	((207)) 208
	3	((194)) 195
	4	140
2	1	((175)) 176
	2	((170)) 171
	3	((163)) 164
	4	117
3	1	137
	2	133
	3	132
	4	101
4	1	105
	2	102
	3	101
	4	77
5	1	76
	2	69
	3	68
	4	47
6	1	39
	2	36
	3	36
	4	34

LAND GRADE	OPERABILITY CLASS	((2009)) 2010 VALUES ROUNDED
7	1	17
	2	17
	3	16
	4	16
8	1	1

**AMENDATORY SECTION** (Amending WSR 09-14-109, filed 6/30/09, effective 7/1/09)

**WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.** (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July)) January 1 through ((December 31, 2009)) June 30, 2010:

**((TABLE 1—Proposed Stumpage Value Table Stumpage Value Area 1 July 1 through December 31, 2009**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(4)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$254	\$247	\$240	\$233	\$226
		2	254	247	240	233	226
		3	254	247	240	233	226
		4	254	247	240	233	226
Western Redcedar <sup>(2)</sup>	RC	1	642	635	628	621	614
Western Hemlock <sup>(2)</sup>	WH	1	161	154	147	140	133
		2	161	154	147	140	133
		3	161	154	147	140	133
		4	161	154	147	140	133
Red Alder	RA	1	434	427	420	413	406
		2	388	381	374	367	360
Black Cottonwood	BC	1	69	62	55	48	41
Other Hardwood	OH	1	149	142	135	128	121
Douglas-Fir Poles & Piles	DFL	1	667	660	653	646	639
Western Redcedar Poles	RCL	1	1468	1461	1454	1447	1440
Chipwood <sup>(4)</sup>	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks <sup>(5)</sup>	RCS	1	279	272	265	258	251
RC & Other Posts <sup>(6)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(7)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(7)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(4)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Alaska-Cedar.
- <sup>(3)</sup> Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
- <sup>(4)</sup> Stumpage value per ton.
- <sup>(5)</sup> Stumpage value per cord.
- <sup>(6)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(7)</sup> Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table Stumpage Value Area 2 July 1 through December 31, 2009**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(4)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$282	\$275	\$268	\$261	\$254
		2	282	275	268	261	254
		3	282	275	268	261	254
		4	225	218	211	204	197
Western Redcedar <sup>(2)</sup>	RC	1	642	635	628	621	614
Western Hemlock <sup>(2)</sup>	WH	1	168	161	154	147	140
		2	168	161	154	147	140
		3	168	161	154	147	140
		4	168	161	154	147	140
Red Alder	RA	1	434	427	420	413	406
		2	388	381	374	367	360
Black Cottonwood	BC	1	69	62	55	48	41
Other Hardwood	OH	1	149	142	135	128	121
Douglas-Fir Poles & Piles	DFL	1	667	660	653	646	639
Western Redcedar Poles	RCL	1	1468	1461	1454	1447	1440
Chipwood <sup>(4)</sup>	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks <sup>(5)</sup>	RCS	1	279	272	265	258	251
RC & Other Posts <sup>(6)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(7)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(7)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(4)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Alaska-Cedar.
- <sup>(3)</sup> Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
- <sup>(4)</sup> Stumpage value per ton.
- <sup>(5)</sup> Stumpage value per cord.
- <sup>(6)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(7)</sup> Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table  
Stumpage Value Area 3**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$342	\$335	\$328	\$321	\$314
		2	342	335	328	321	314
		3	342	335	328	321	314
		4	316	309	302	295	288
Western-Redcedar <sup>(3)</sup>	RC	1	642	635	628	621	614
Western-Hemlock <sup>(4)</sup>	WH	1	179	172	165	158	151
		2	179	172	165	158	151
		3	179	172	165	158	151
		4	179	172	165	158	151
Red-Alder	RA	1	434	427	420	413	406
		2	388	381	374	367	360
Black-Cottonwood	BC	1	69	62	55	48	41
Other-Hardwood	OH	1	149	142	135	128	121
Douglas-Fir Poles & Piles	DFL	1	667	660	653	646	639
Western-Redcedar Poles	RCL	1	1468	1461	1454	1447	1440
Chipwood <sup>(5)</sup>	CHW	1	9	8	7	6	5
RC-Shake & Shingle-Blocks <sup>(6)</sup>	RCS	1	279	272	265	258	251
		1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

<sup>(1)</sup> Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
<sup>(2)</sup> Includes Western Larch.  
<sup>(3)</sup> Includes Alaska-Cedar.  
<sup>(4)</sup> Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.  
<sup>(5)</sup> Stumpage value per ton.  
<sup>(6)</sup> Stumpage value per cord.  
<sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.  
<sup>(8)</sup> Stumpage value per lineal foot.

**TABLE 4—Proposed Stumpage Value Table  
Stumpage Value Area 4**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$305	\$298	\$291	\$284	\$277
		2	305	298	291	284	277
		3	305	298	291	284	277
		4	298	291	284	277	270
Lodgepole-Pine	LP	1	125	118	111	104	97
Ponderosa-Pine	PP	1	109	102	95	88	81
		2	64	57	50	43	36
Western-Redcedar <sup>(3)</sup>	RC	1	642	635	628	621	614
Western-Hemlock <sup>(4)</sup>	WH	1	176	169	162	155	148
		2	176	169	162	155	148
		3	176	169	162	155	148
		4	176	169	162	155	148
Red-Alder	RA	1	434	427	420	413	406
		2	388	381	374	367	360
Black-Cottonwood	BC	1	69	62	55	48	41
Other-Hardwood	OH	1	149	142	135	128	121
Douglas-Fir Poles & Piles	DFL	1	667	660	653	646	639
Western-Redcedar Poles	RCL	1	1468	1461	1454	1447	1440
Chipwood <sup>(5)</sup>	CHW	1	9	8	7	6	5
RC-Shake & Shingle-Blocks <sup>(6)</sup>	RCS	1	279	272	265	258	251
		1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

<sup>(1)</sup> Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
<sup>(2)</sup> Includes Western Larch.  
<sup>(3)</sup> Includes Alaska-Cedar.  
<sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.  
<sup>(5)</sup> Stumpage value per ton.  
<sup>(6)</sup> Stumpage value per cord.  
<sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.  
<sup>(8)</sup> Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table  
Stumpage Value Area 5**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$292	\$285	\$278	\$271	\$264
		2	292	285	278	271	264
		3	292	285	278	271	264
		4	282	275	268	261	254
Lodgepole Pine	LP	1	125	118	111	104	97
Ponderosa Pine	PP	1	109	102	95	88	81
		2	64	57	50	43	36
Western Redcedar <sup>(3)</sup>	RC	1	642	635	628	621	614
Western Hemlock <sup>(4)</sup>	WH	1	184	177	170	163	156
		2	184	177	170	163	156
		3	184	177	170	163	156
		4	184	177	170	163	156
Red Alder	RA	1	434	427	420	413	406
		2	388	381	374	367	360
Black Cottonwood	BC	1	69	62	55	48	41
Other Hardwood	OH	1	149	142	135	128	121
Douglas-Fir Poles & Piles	DFL	1	667	660	653	646	639
Western Redcedar Poles	RCL	1	1468	1461	1454	1447	1440
Chipwood <sup>(5)</sup>	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	279	272	265	258	251
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

<sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
<sup>(2)</sup> Includes Western Larch.  
<sup>(3)</sup> Includes Alaska Cedar.  
<sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.  
<sup>(5)</sup> Stumpage value per ton.  
<sup>(6)</sup> Stumpage value per cord.  
<sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.  
<sup>(8)</sup> Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table  
Stumpage Value Area 6**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$142	\$135	\$128	\$121	\$114
Lodgepole Pine	LP	1	125	118	111	104	97
Ponderosa Pine	PP	1	109	102	95	88	81
		2	64	57	50	43	36
Western Redcedar <sup>(3)</sup>	RC	1	666	659	652	645	638
True Firs and Spruce <sup>(4)</sup>	WH	1	123	116	109	102	95
Western White Pine	WP	1	177	170	163	156	149
Hardwoods	OH	1	86	79	72	65	58
Western Redcedar Poles	RCL	1	666	659	652	645	638
Small Logs <sup>(5)</sup>	SML	1	23	22	21	20	19
Chipwood <sup>(5)</sup>	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks <sup>(6)</sup>	RCF	1	76	69	62	55	48
LP & Other Posts <sup>(7)</sup>	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees <sup>(8)</sup>	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25

<sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
<sup>(2)</sup> Includes Western Larch.  
<sup>(3)</sup> Includes Alaska Cedar.  
<sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.  
<sup>(5)</sup> Stumpage value per ton.  
<sup>(6)</sup> Stumpage value per cord.  
<sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.  
<sup>(8)</sup> Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.  
<sup>(9)</sup> Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table  
Stumpage Value Area 7**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$142	\$135	\$128	\$121	\$114

**TABLE 7—Proposed Stumpage Value Table  
Stumpage Value Area 7**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Lodgepole Pine	LP	1	125	118	111	104	97
Ponderosa Pine	PP	1	109	102	95	88	81
		2	64	57	50	43	36
Western Redcedar <sup>(2)</sup>	RC	1	666	659	652	645	638
True Firs and Spruce <sup>(4)</sup>	WH	1	123	116	109	102	95
Western White Pine	WP	1	177	170	163	156	149
Hardwoods	OH	1	86	79	72	65	58
Western Redcedar Poles	RCL	1	666	659	652	645	638
Small Logs <sup>(5)</sup>	SML	1	23	22	21	20	19
Chipwood <sup>(5)</sup>	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks <sup>(6)</sup>	RCF	1	76	69	62	55	48
LP & Other Posts <sup>(7)</sup>	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees <sup>(8)</sup>	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Western Larch.
- <sup>(3)</sup> Includes Alaska Cedar.
- <sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- <sup>(5)</sup> Stumpage value per ton.
- <sup>(6)</sup> Stumpage value per cord.
- <sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(8)</sup> Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- <sup>(9)</sup> Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table  
Stumpage Value Area 10**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$291	\$284	\$277	\$270	\$263
		2	291	284	277	270	263
		3	291	284	277	270	263
		4	284	277	270	263	256

**TABLE 8—Proposed Stumpage Value Table  
Stumpage Value Area 10**  
July 1 through December 31, 2009

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Lodgepole Pine	LP	1	125	118	111	104	97
Ponderosa Pine	PP	1	109	102	95	88	81
		2	64	57	50	43	36
Western Redcedar <sup>(2)</sup>	RC	1	628	621	614	607	600
Western Hemlock <sup>(4)</sup>	WH	1	162	155	148	141	134
		2	162	155	148	141	134
		3	162	155	148	141	134
		4	162	155	148	141	134
Red Alder	RA	1	420	413	406	399	392
		2	374	367	360	353	346
Black Cottonwood	BC	1	55	48	41	34	27
Other Hardwood	OH	1	135	128	121	114	107
Douglas-Fir Poles & Piles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1454	1447	1440	1433	1426
Chipwood <sup>(5)</sup>	CHW	1	9	8	7	6	5
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	279	272	265	258	251
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Western Larch.
- <sup>(3)</sup> Includes Alaska Cedar.
- <sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- <sup>(5)</sup> Stumpage value per ton.
- <sup>(6)</sup> Stumpage value per cord.
- <sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(8)</sup> Stumpage value per lineal foot.
- <sup>(9)</sup> Stumpage value per lineal foot.

**TABLE 1—Proposed Stumpage Value Table  
Stumpage Value Area 1**  
January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$241	\$234	\$227	\$220	\$213

**TABLE 1—Proposed Stumpage Value Table  
Stumpage Value Area 1**  
January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
		2	241	234	227	220	213
		3	241	234	227	220	213
		4	241	234	227	220	213
Western Redcedar <sup>(2)</sup>	RC	1	539	532	525	518	511
Western Hemlock <sup>(3)</sup>	WH	1	188	181	174	167	160
		2	188	181	174	167	160
		3	188	181	174	167	160
		4	188	181	174	167	160
Red Alder	RA	1	284	277	270	263	256
		2	245	238	231	224	217
Black Cottonwood	BC	1	11	4	1	1	1
Other Hardwood	OH	1	130	123	116	109	102
Douglas-Fir Poles & Piles	DFL	1	517	510	503	496	489
Western Redcedar Poles	RCL	1	1337	1330	1323	1316	1309
Chipwood <sup>(4)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(5)</sup>	RCS	1	144	137	130	123	116
RC & Other Posts <sup>(6)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(7)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(7)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Alaska-Cedar.
- <sup>(3)</sup> Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
- <sup>(4)</sup> Stumpage value per ton.
- <sup>(5)</sup> Stumpage value per cord.
- <sup>(6)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(7)</sup> Stumpage value per lineal foot.

**TABLE 2—Proposed Stumpage Value Table  
Stumpage Value Area 2**  
January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$229	\$222	\$215	\$208	\$201
		2	229	222	215	208	201
		3	229	222	215	208	201

**TABLE 2—Proposed Stumpage Value Table  
Stumpage Value Area 2**  
January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
		4	229	222	215	208	201
Western Redcedar <sup>(2)</sup>	RC	1	539	532	525	518	511
Western Hemlock <sup>(3)</sup>	WH	1	170	163	156	149	142
		2	170	163	156	149	142
		3	170	163	156	149	142
		4	170	163	156	149	142
Red Alder	RA	1	284	277	270	263	256
		2	245	238	231	224	217
Black Cottonwood	BC	1	11	4	1	1	1
Other Hardwood	OH	1	130	123	116	109	102
Douglas-Fir Poles & Piles	DFL	1	517	510	503	496	489
Western Redcedar Poles	RCL	1	1337	1330	1323	1316	1309
Chipwood <sup>(4)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(5)</sup>	RCS	1	144	137	130	123	116
RC & Other Posts <sup>(6)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(7)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(7)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Alaska-Cedar.
- <sup>(3)</sup> Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
- <sup>(4)</sup> Stumpage value per ton.
- <sup>(5)</sup> Stumpage value per cord.
- <sup>(6)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(7)</sup> Stumpage value per lineal foot.

**TABLE 3—Proposed Stumpage Value Table  
Stumpage Value Area 3**  
January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$226	\$219	\$212	\$205	\$198
		2	226	219	212	205	198
		3	226	219	212	205	198
		4	226	219	212	205	198
Western Redcedar <sup>(3)</sup>	RC	1	539	532	525	518	511

**TABLE 3—Proposed Stumpage Value Table**  
**Stumpage Value Area 3**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Western Hemlock <sup>(4)</sup>	WH	1	158	151	144	137	130
		2	158	151	144	137	130
		3	158	151	144	137	130
		4	158	151	144	137	130
Red Alder	RA	1	284	277	270	263	256
		2	245	238	231	224	217
Black Cottonwood	BC	1	11	4	1	1	1
Other Hardwood	OH	1	130	123	116	109	102
Douglas-Fir Poles & Piles	DFL	1	517	510	503	496	489
Western Redcedar Poles	RCL	1	1337	1330	1323	1316	1309
Chipwood <sup>(5)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	144	137	130	123	116
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Western Larch.
- <sup>(3)</sup> Includes Alaska-Cedar.
- <sup>(4)</sup> Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.
- <sup>(5)</sup> Stumpage value per ton.
- <sup>(6)</sup> Stumpage value per cord.
- <sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(8)</sup> Stumpage value per lineal foot.

**TABLE 4—Proposed Stumpage Value Table**  
**Stumpage Value Area 4**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$271	\$264	\$257	\$250	\$243
		2	271	264	257	250	243
		3	271	264	257	250	243
		4	271	264	257	250	243
Lodgepole Pine	LP	1	90	83	76	69	62

**TABLE 4—Proposed Stumpage Value Table**  
**Stumpage Value Area 4**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Ponderosa Pine	PP	1	77	70	63	56	49
		2	54	47	40	33	26
Western Redcedar <sup>(3)</sup>	RC	1	539	532	525	518	511
Western Hemlock <sup>(4)</sup>	WH	1	195	188	181	174	167
		2	195	188	181	174	167
		3	195	188	181	174	167
		4	195	188	181	174	167
Red Alder	RA	1	284	277	270	263	256
		2	245	238	231	224	217
Black Cottonwood	BC	1	11	4	1	1	1
Other Hardwood	OH	1	130	123	116	109	102
Douglas-Fir Poles & Piles	DFL	1	517	510	503	496	489
Western Redcedar Poles	RCL	1	1337	1330	1323	1316	1309
Chipwood <sup>(5)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	144	137	130	123	116
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Western Larch.
- <sup>(3)</sup> Includes Alaska-Cedar.
- <sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- <sup>(5)</sup> Stumpage value per ton.
- <sup>(6)</sup> Stumpage value per cord.
- <sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(8)</sup> Stumpage value per lineal foot.

**TABLE 5—Proposed Stumpage Value Table**  
**Stumpage Value Area 5**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$244	\$237	\$230	\$223	\$216
		2	244	237	230	223	216
		3	244	237	230	223	216

**TABLE 5—Proposed Stumpage Value Table**  
**Stumpage Value Area 5**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
		4	244	237	230	223	216
Lodgepole Pine	LP	1	90	83	76	69	62
Ponderosa Pine	PP	1	77	70	63	56	49
		2	54	47	40	33	26
Western Redcedar <sup>(3)</sup>	RC	1	539	532	525	518	511
Western Hemlock <sup>(4)</sup>	WH	1	189	182	175	168	161
		2	189	182	175	168	161
		3	189	182	175	168	161
		4	189	182	175	168	161
Red Alder	RA	1	284	277	270	263	256
		2	245	238	231	224	217
Black Cottonwood	BC	1	11	4	1	1	1
Other Hardwood	OH	1	130	123	116	109	102
Douglas-Fir Poles & Piles	DFL	1	517	510	503	496	489
Western Redcedar Poles	RCL	1	1337	1330	1323	1316	1309
Chipwood <sup>(5)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	144	137	130	123	116
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

<sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
<sup>(2)</sup> Includes Western Larch.  
<sup>(3)</sup> Includes Alaska-Cedar.  
<sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.  
<sup>(5)</sup> Stumpage value per ton.  
<sup>(6)</sup> Stumpage value per cord.  
<sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.  
<sup>(8)</sup> Stumpage value per lineal foot.

**TABLE 6—Proposed Stumpage Value Table**  
**Stumpage Value Area 6**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$99	\$92	\$85	\$78	\$71
Lodgepole Pine	LP	1	90	83	76	69	62
Ponderosa Pine	PP	1	77	70	63	56	49
		2	54	47	40	33	26
Western Redcedar <sup>(3)</sup>	RC	1	412	405	398	391	384
True Firs and Spruce <sup>(4)</sup>	WH	1	87	80	73	66	59
Western White Pine	WP	1	104	97	90	83	76
Hardwoods	OH	1	23	16	9	2	1
Western Redcedar Poles	RCL	1	412	405	398	391	384
Small Logs <sup>(5)</sup>	SML	1	19	18	17	16	15
Chipwood <sup>(5)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	144	137	130	123	116
LP & Other Posts <sup>(7)</sup>	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees <sup>(8)</sup>	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25

<sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.  
<sup>(2)</sup> Includes Western Larch.  
<sup>(3)</sup> Includes Alaska-Cedar.  
<sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.  
<sup>(5)</sup> Stumpage value per ton.  
<sup>(6)</sup> Stumpage value per cord.  
<sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.  
<sup>(8)</sup> Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.  
<sup>(9)</sup> Stumpage value per lineal foot.

**TABLE 7—Proposed Stumpage Value Table**  
**Stumpage Value Area 7**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$99	\$92	\$85	\$78	\$71
Lodgepole Pine	LP	1	90	83	76	69	62



**TABLE 7—Proposed Stumpage Value Table**  
**Stumpage Value Area 7**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Ponderosa Pine	PP	1	77	70	63	56	49
		2	54	47	40	33	26
Western Redcedar <sup>(3)</sup>	RC	1	412	405	398	391	384
True Firs and Spruce <sup>(4)</sup>	WH	1	87	80	73	66	59
Western White Pine	WP	1	104	97	90	83	76
Hardwoods	OH	1	23	16	9	2	1
Western Redcedar Poles	RCL	1	412	405	398	391	384
Small Logs <sup>(5)</sup>	SML	1	19	18	17	16	15
Chipwood <sup>(5)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	144	137	130	123	116
LP & Other Posts <sup>(7)</sup>	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees <sup>(8)</sup>	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Western Larch.
- <sup>(3)</sup> Includes Alaska-Cedar.
- <sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- <sup>(5)</sup> Stumpage value per ton.
- <sup>(6)</sup> Stumpage value per cord.
- <sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(8)</sup> Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- <sup>(9)</sup> Stumpage value per lineal foot.

**TABLE 8—Proposed Stumpage Value Table**  
**Stumpage Value Area 10**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir <sup>(2)</sup>	DF	1	\$257	\$250	\$243	\$236	\$229
		2	257	250	243	236	229
		3	257	250	243	236	229
		4	257	250	243	236	229
Lodgepole Pine	LP	1	90	83	76	69	62

**TABLE 8—Proposed Stumpage Value Table**  
**Stumpage Value Area 10**  
 January 1 through June 30, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Ponderosa Pine	PP	1	77	70	63	56	49
		2	54	47	40	33	26
Western Redcedar <sup>(3)</sup>	RC	1	525	518	511	504	497
Western Hemlock <sup>(4)</sup>	WH	1	181	174	167	160	153
		2	181	174	167	160	153
		3	181	174	167	160	153
		4	181	174	167	160	153
Red Alder	RA	1	270	263	256	249	242
		2	231	224	217	210	203
Black Cottonwood	BC	1	1	1	1	1	1
Other Hardwood	OH	1	116	109	102	95	88
Douglas-Fir Poles & Piles	DFL	1	503	496	489	482	475
Western Redcedar Poles	RCL	1	1323	1316	1309	1302	1295
Chipwood <sup>(5)</sup>	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks <sup>(6)</sup>	RCS	1	144	137	130	123	116
RC & Other Posts <sup>(7)</sup>	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees <sup>(8)</sup>	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(8)</sup>	TFX	1	0.50	0.50	0.50	0.50	0.50

- <sup>(1)</sup> Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- <sup>(2)</sup> Includes Western Larch.
- <sup>(3)</sup> Includes Alaska-Cedar.
- <sup>(4)</sup> Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
- <sup>(5)</sup> Stumpage value per ton.
- <sup>(6)</sup> Stumpage value per cord.
- <sup>(7)</sup> Stumpage value per 8 lineal feet or portion thereof.
- <sup>(8)</sup> Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over

more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~((July))~~ January 1 through ((December 31, 2009)) June 30, 2010:

**TABLE 9—Harvest Adjustment Table**  
**Stumpage Value Areas 1, 2, 3, 4, 5, and 10**  
~~((July))~~ January 1 through ((December 31, 2009)) June 30, 2010

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table**  
**Stumpage Value Areas 6 and 7**  
~~((July))~~ January 1 through ((December 31, 2009)) June 30, 2010

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
<b>II. Logging conditions</b>		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00

**TABLE 11—Domestic Market Adjustment**

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage

values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

### WSR 09-23-116

#### PROPOSED RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Filed November 18, 2009, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-065.

Title of Rule and Other Identifying Information: WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish, 220-33-060 Columbia River—Commercial fisheries below Bonneville Dam, 220-36-03001 Grays Harbor—Seasons and lawful gear—Varieties other than salmon and sturgeon, 220-40-030 Willapa Bay—Seasons and lawful gear—Varieties other than salmon and sturgeon, 220-44-020 Coastal baitfish gear, and 220-69-240 Duties of commercial purchasers and receivers.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on January 8-9, 2010, at 8:45 a.m.

Date of Intended Adoption: On or after February 5, 2010.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by December 31, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by December 31, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department wants to amend these rules so they are consistent with federal rule 50 C.F.R. 660 Subpart I. The department also wants to establish baitfish catch limits, to limit the use of anchovy for purposes other than human consumption or fishing bait, and to require commercial purchasers to indicate on fish receiving tickets the quantity in pounds of anchovy purchased for purposes other than human consumption.

Reasons Supporting Proposal: State laws and rules can be more restrictive than their federal counterparts, but not less restrictive. These changes will improve the enforceability of these rules, enhance resource and ecosystem protection, and ensure that the highest economic value is obtained from the use of baitfish resources.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: The Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA 98504, (360) 753-2600; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not impose any additional burdens or costs on fishers or dealers participating in commercial baitfish fisheries.

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

November 18, 2009

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 07-266, filed 10/23/07, effective 11/23/07)

**WAC 220-20-010 General provisions—Lawful and unlawful acts—Salmon, other fish and shellfish.** (1) It shall be unlawful to take, fish for, possess or transport for any purpose fish, shellfish or parts thereof, in or from any of the waters or land over which the state of Washington has jurisdiction, or from the waters of the Pacific Ocean, except at the times, places and in the manners and for the species, quantities, sizes or sexes provided for in the regulations of the department.

(2) It shall be unlawful for any person to have in possession or under control or custody any food fish or shellfish

within the land or water boundaries of the state of Washington, except in those areas which are open to commercial fishing or wherein the possession, control or custody of salmon or other food fish or shellfish for commercial purposes is made lawful under a statute of the state of Washington or the rules and regulations of the commission or director, unless otherwise provided.

(3) A person may fish for, possess, process and otherwise deal in food fish and fish offal or scrap for any purpose, provided that it shall be unlawful to use any of the following listed species for purposes other than human consumption or fishing bait:

Pacific halibut	( <i>Hippoglossus stenolepis</i> )
Pacific herring (except as prescribed in WAC 220-49-020)	( <i>Clupea harengus pallasii</i> )
<u>Anchovy</u> (except as provided for in WAC 220-33-060, 220-36-03001, 220-44- 020, and 220-40-030)	<u><i>Engraulis mordax</i></u>
Salmon	
Chinook	( <i>Oncorhynchus tshawytscha</i> )
Coho	( <i>Oncorhynchus kisutch</i> )
Chum	( <i>Oncorhynchus keta</i> )
Pink	( <i>Oncorhynchus gorbuscha</i> )
Sockeye	( <i>Oncorhynchus nerka</i> )
Masu	( <i>Oncorhynchus masu</i> )
<del>(Pilehard)</del> <u>Sardine</u> (except as provided for in WAC 220-88C-040)	( <i>Sardinops sagax</i> )

(4) It shall be unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the harvest regulations for the area being fished. This regulation does not apply to vessels in transit.

(5) It shall be unlawful for the owner or operator of any commercial food fish or shellfish gear to leave such gear unattended in waters of the state or in offshore waters unless said gear is marked.

(a) Shellfish pot, bottom fish pot, set line and set net gear must be marked with a buoy to which shall be affixed, in a visible and legible manner, the department approved and registered buoy brand issued to the license, provided that:

(i) Buoys affixed to unattended gear must be visible on the surface of the water except during strong tidal flow or extreme weather conditions.

(ii) When two or more shellfish pots are attached to a common ground line, the number of pots so attached must be clearly labeled on the required buoy.

(b) It is unlawful to operate any gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, a buoy, float, or some other form of marker, visible on the cork line of the net, on which shall be marked in a visible, legible and permanent manner the name and gill-net license number of the fisher.

(c) It shall be unlawful at any time to leave a gill net unattended in the commercial salmon fishery.

(6) It shall be unlawful to place any commercial food fish or shellfish gear in any waters closed to commercial fishing, provided that this provision shall not apply to reef nets or brush weirs or to gear being tested under supervision of the department. In addition, it shall be unlawful to take, fish for or possess food fish with any type of commercial fishing gear in the waters of Carr Inlet north of north latitude 47°20', from August 15 through November 30, except as provided in chapter 220-47 WAC.

(7) It shall be unlawful for the owner or operator of any fishing gear to refuse to submit such gear to inspection in any manner specified by authorized representatives of the department.

(8) It shall be unlawful for any person taking or possessing fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit such fish or shellfish for inspection by authorized representatives of the department.

(9) It shall be unlawful for any person licensed by the department to fail to make or return any report required by the department relative to the taking, selling, possessing, transporting, processing, freezing and storing of fish or shellfish, whether taken within the jurisdiction of the state of Washington or beyond, or on Indian reservations or usual and accustomed Indian fishing grounds.

(10) It shall be unlawful to take, fish for, possess, injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere in any manner with the proper operation of such fish protective devices.

(11) It shall be unlawful to club, gaff, snag, snare, dip net, harass, spear, stone, or otherwise molest, injure, kill, destroy, or shoot with a firearm, crossbow, bow and arrow, or compressed air gun, any fish or shellfish or parts thereof, or for any person to attempt to commit such acts, or to have any fish, shellfish or parts thereof so taken in possession, except as provided for in this subsection:

(a) A person may use a dip net or club in the landing of fish taken by personal-use angling, unless otherwise provided; and a person may use a gaff in the landing of tuna, halibut and dogfish, and a harpoon in the landing of halibut, in all catch record card areas.

(b)(i) A person may use a dip net, gaff, or club in the landing of food fish or shellfish taken for commercial purposes, except that it is unlawful to use a fish pew, pitchfork, or any other instrument that will penetrate the body of the fish or shellfish that are not going to be retained or are unlawful to possess.

(ii) It is unlawful under any circumstance to use a device that penetrates the body of a sturgeon whether legal to retain or not.

(c) A person may use a spear in underwater spear fishing, as provided for in WAC 220-56-160.

(d) A person may use a bow and arrow or spear to take carp, as provided for in WAC 220-56-280.

(e) A person may snag herring, smelt, anchovies, pilchard, sand lance, and squid when using forage fish jigger gear or squid jigs.

(f) A person may shoot halibut when landing them with a dip net, harpoon or gaff.

(12) It shall be unlawful to take or possess, for any purpose, any fish or shellfish smaller or larger than the lawful minimum or maximum size limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

(13) It shall be unlawful to allow salmon or sturgeon or fish unlawful to retain that are entangled in commercial nets to pass through a power block or onto a power reel or drum.

(14) Notwithstanding the exceptions listed in subsection (15) of this section, it shall be unlawful to possess, aboard any vessel engaged in commercial fishing or having commercially caught fish aboard, any food fish or shellfish in such condition that its species, length, weight or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for said species. ((In addition,))

(15) It is unlawful to possess food fish or shellfish mutilated in any manner such that the natural length or weight cannot be determined if a length or weight limit is prescribed for said species, except as follows:

(a) The food fish or shellfish have been legally taken for commercial purposes, are landed, and are properly accounted for on a completed fish receiving ticket.

(b) A person may possess, transport through the waters of the state, or land dressed sablefish as defined in WAC 220-16-330.

(c) A person may possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen Chinook salmon, dressed with the heads off, shall be 21 1/2 inches minimum; and frozen coho salmon, dressed with the heads off, shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

(d) A person may possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements. All halibut must be landed with the heads on.

(e) A person may possess, transport through the waters of the Pacific Ocean, or land dressed lingcod as defined by WAC 220-16-330 when taken during a lawful commercial fishery.

~~((15))~~ (16) It shall be unlawful to possess for any purpose any fish or shellfish in excess of catch or possession limits prescribed by department rule. Any such fish either snagged, hooked, netted or gilled must be immediately returned to the water with the least possible injury to the fish or shellfish.

~~((16) A person may possess, transport through the waters of the state, or land, dressed sablefish as defined by WAC 220-16-330.~~

~~(17) A person may possess, transport through the waters of the Pacific Ocean, or land, dressed salmon caught during a lawful commercial salmon troll fishery, provided that frozen~~

~~Chinook salmon, dressed, heads off, shall be 21 1/2 inches minimum, and frozen coho salmon dressed, heads off, shall be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.~~

~~(18) A person may possess, transport through the waters of the Pacific Ocean, or land, dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements.~~

~~(19))~~ (17) It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department.

~~((20))~~ (18) It shall be unlawful for any permit holder to fail to comply with all provisions of any special permit or letter of approval issued to him under the authority of the director, or to perform any act not specifically authorized in said document or in the regulations of the commission or director.

~~((21))~~ (19) It shall be unlawful to use, place or cause to be placed in the waters or on the beaches or tidelands of the state any substance or chemical used for control of predators or pests affecting fish or shellfish or other aquatic marine organisms, without first having obtained a special permit to do so from the director.

~~((22))~~ (20) It shall be unlawful to test commercial fishing gear, except as follows:

(a) Bellingham Bay - inside and northerly of a line from Governor's Point to the south tip of Eliza Island to Point Frances, in waters 10 fathoms and deeper.

(b) Boundary Bay - north of a line from Birch Point to Point Roberts, and south of the international boundary, in waters 10 fathoms and deeper during times not under control of the Pacific Salmon Commission.

(c) San Juan Channel - within a 1-mile radius of Point Caution during times not under control of the Pacific Salmon Commission.

(d) Port Angeles - inside and westerly of a line projected from the east tip of Ediz Hook through buoy C "1" to the mainland.

(e) Port Gardner - within a 2-mile radius of the entrance to Everett breakwater, in waters 10 fathoms and deeper.

(f) Central Puget Sound - between lines from Meadow Point to Point Monroe, and Skiff Point to West Point, in waters 50 fathoms and deeper.

(g) East Pass - between lines from Point Robinson true east to the mainland, and from Dash Point to Point Piner, in waters 50 fathoms and deeper.

(h) Port Townsend - westerly of a line from the Coast Guard station in Port Townsend to Walan Point to Kala Point, in waters 10 fathoms and deeper.

(i) All tows or sets are limited to 20 minutes, exclusive of setting and retrieving time.

(j) All testing is to be accomplished between 8:00 a.m. and 4:00 p.m.

(k) Cod ends of trawl nets must be left open, all hooks of set line gear must be unbaited, and no lures or baited hooks shall be used with jig or troll gear.

(l) Any and all incidentally caught fish and shellfish must be returned to the waters immediately, and no fish or

shellfish are to be retained aboard the vessel at any time during a gear test operation.

(m) It shall be unlawful for any person conducting such gear testing operations to fail to notify the fish and wildlife enforcement office in Olympia prior to testing.

~~((23))~~ (21) It is unlawful for any person or corporation either licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any such person or corporation to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags, including but not limited to, the snouts of those salmon that are marked by having clipped adipose fins.

~~((24))~~ (22) It is unlawful for any person to possess live bottom fish taken under a commercial fishery license.

~~((25))~~ (23) It is unlawful for any person to use chemical irritants to harvest fish, shellfish or unclassified marine invertebrates except as authorized by permit issued by the department.

~~((26))~~ (24) The lower Columbia River, Grays Harbor and Willapa Bay are closed to commercial sturgeon fishing, except as provided by emergency rule of the director. Sturgeon taken incidentally during an open commercial salmon fishing period may be retained for commercial purposes as described by department rule.

AMENDATORY SECTION (Amending Order 03-26, filed 2/18/03, effective 3/21/03)

**WAC 220-33-060 Herring and ~~((anchovies))~~ anchovy.** It is unlawful to fish for herring or ~~((anchovies))~~ anchovy in the lower Columbia River for commercial purposes or to possess herring or ~~((anchovies))~~ anchovy taken from those waters for commercial purposes, except as provided in this section:

#### Gear

(1) Purse seine and lampara gear may be used to fish for ~~((anchovies))~~ anchovy if the cork line of the gear does not exceed 1,400 feet in length and the mesh size of the gear is not less than one-half inch stretch measure.

(2) Lampara gear may be used to fish for herring if the cork line of the gear does not exceed 1,400 feet in length and the mesh size of the gear is not less than one-half inch stretch measure.

(3) It is unlawful to fish with purse seine or lampara gear in the waters of the Columbia River if any part of the purse seine or lampara is in waters that are less than 20 feet deep.

(4) A violation of subsections (1) through (3) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

#### Licensing

~~((4))~~ (5)(a) A baitfish purse seine fishery license is ~~((a license))~~ required to operate ~~((a))~~ gear as provided for in this section, and the license allows the operator to retain ~~((anchovies))~~ anchovy.

(b) A baitfish lampara fishery license is ~~((a license))~~ required to operate ~~((a))~~ gear as provided for in this section, and the license allows the operator to retain ~~((anchovies))~~ anchovy.

(c) A herring lampara ~~((fishery))~~ limited entry license is ~~((a license))~~ required to operate ~~((a))~~ gear as provided for in this section, and the license allows the operator to retain herring.

(6) A violation of any portion of subsection (5) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

#### Fishing periods

~~((5))~~ (7)(a) Purse seine and lampara gear may be used to fish for ~~((anchovies))~~ anchovy in Salmon Management and Catch Reporting Area (SMCRA) 1A, 7 days per week, from January 1 through December 31 of each calendar year.

(b) Lampara gear may be used to fish for herring in SMCRA 1A, 7 days per week, from January 1 through December 31 of each calendar year.

(8) A violation of subsection (7) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### General

~~((6))~~ (9) Species of fish other than herring ~~((or anchovies))~~, anchovy, ~~((except))~~ shad ~~((and pilehard))~~, or sardine, taken in the operation of ~~((the))~~ purse seine and lampara gear, shall be returned immediately to the water. ~~((Pilehard))~~ Sardine taken incidental to ~~((the))~~ herring ~~((and))~~ or anchovy fisheries as provided for in this section may not exceed ~~((twenty-five))~~ twenty percent of the weight of any landing. Herring taken incidental to an anchovy fishery as provided for in this section may not exceed five percent of the weight of any landing.

(10) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess, or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, or in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(11) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(12) A violation of subsections (9) through (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

AMENDATORY SECTION (Amending Order 03-26, filed 2/18/03, effective 3/21/03)

**WAC 220-36-03001 Grays Harbor—Seasons and lawful gear—~~((Varieties other than salmon and sturgeon))~~ Forage fish.** (1) It is unlawful to fish for or possess anchovy, candlenote, herring, sardine, or smelt for commercial purposes in Marine Fish-Shellfish Management and Catch Reporting Area 60B ~~((to fish for food fish, other than sturgeon and salmon, with purse seine or lampara gear~~

exceeding 900 feet in length or having meshes of less than one-half inch stretch measure, or with drag seine gear exceeding 700 feet in length or having meshes less than 4-1/2 inches stretch measure, except as provided in WAC 220-36-03001(6). It is unlawful to fish for or possess salmon or sturgeon taken with purse seine, lampara, or drag seine gear.

(2) It is lawful to fish for and possess bottomfish in Marine Fish-Shellfish Management and Catch Reporting Area 60B at any time with set line and hand line jig gear.

(3) It is lawful to retain for commercial purposes bottomfish taken incidental to any lawful commercial salmon fishery in Grays Harbor Salmon Management and Catch Reporting Areas 2A, 2B, 2C, and 2D, and it is lawful to retain bottomfish taken incidental to any lawful sturgeon fishery in Marine Fish-Shellfish Management and Catch Reporting Area 60B.

(4) It is lawful to take, fish for and possess smelt taken for commercial purposes in all waters of Grays Harbor except it is unlawful to take smelt for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday.

(5) It is lawful to fish for and possess herring, anchovies, candlefish, or pilehards taken for commercial purposes with dip bag net gear at any time in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B.

(6)(a) June 1 through October 31—It is lawful to fish for and possess anchovies, candlefish, or pilehards with purse seine or lampara in the waters of Grays Harbor, provided it is unlawful to use gear exceeding 1,400 feet in length or containing meshes of less than 1/2-inch stretch measure. It is lawful to fish for herring with lampara gear in the waters of Grays Harbor, provided it is unlawful to use gear exceeding 1,400 feet in length or containing mesh less than 1/2-inch stretch measure. All species of fish other than herring, pilehard, candlefish, and anchovy taken in operation of such purse seine or lampara gear must be immediately returned to the water.

(b) February 1 through April 15—Closed to all commercial herring, anchovy, candlefish, or pilehard fishing except dip bag net.

(7) It is lawful to take, fish for and possess herring, candlefish, pilehards, or anchovies taken for commercial purposes with a herring weir from April 1 through September 30 in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B, provided that the lead shall not exceed 300 feet in length or extend into any navigation channel or customary gill net drifting lane. It shall be unlawful for any person to install or operate a herring weir without obtaining written permission from the director of fisheries.

(8) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60B if any part of the purse seine or lampara is in waters that are less than 20 feet deep.) except as provided for in this section.

### **General**

(2) It is unlawful to fish for or possess salmon or sturgeon taken with purse seine or lampara gear.

(3) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Manage-

ment and Catch Reporting Area 60B if any part of the purse seine or lampara is in waters that are less than 20 feet deep.

(4) It is unlawful to fail to immediately return to the water, unharmed, all species of fish other than herring, anchovy, candlefish, and sardine taken in operation of purse seine, lampara, dip bag net, or hand net gears.

(5) A violation of subsections (1) through (4) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty; and RCW 77.15-550, Violation of commercial fishing area or time—Penalty.

### **Anchovy and candlefish**

#### **Licensing**

(6) A baitfish purse seine fishery license is required to operate purse seine gear for anchovy or candlefish as provided for in this section.

(7) A baitfish lampara fishery license is required to operate lampara gear for anchovy or candlefish as provided for in this section.

(8) A smelt dip bag license is required to operate dip bag net gear for anchovy or candlefish as provided for in this section.

(9) A violation of subsections (6) through (8) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

#### **Fishing period**

(10) It is unlawful to fish for or to possess anchovy, candlefish, sardine, or smelt with the use of purse seine or lampara gear at any time except January 1 through January 31, and April 16 through December 31, of any calendar year.

(11) Dip bag net gear may be used for anchovy or candlefish at all times.

(12) A violation of subsection (10) or (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Landing limitations**

(13) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(14) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess, or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, or in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(15) A violation of subsection (13) or (14) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Gear**

(16) It is unlawful to fish for anchovy or candlefish with purse seine or lampara gear with a mesh size of less than one-half inch stretch measure.

(17) It is unlawful to fish with purse seine or lampara gear for anchovy or candlefish if the cork line exceeds 900 feet in length, except: From June 1 through October 31, it is permissible to use gear in which the cork line does not exceed 1,400 feet in length.

(18) It is unlawful to fish for anchovy or candlefish with dip bag net gear that exceeds 18 square feet.

(19) A violation of subsections (16) through (18) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

**Incidental catch**

(20) It is unlawful to retain sardine taken incidental to a lawful anchovy or candlefish fishery if the sardine exceeds twenty percent of the weight of the total landing.

(21) It is unlawful to retain smelt or herring taken incidental to a lawful anchovy or candlefish fishery if individual or combined weight of smelt and/or herring exceeds five percent of the weight of the total landing.

(22) A violation of subsections (20) through (21) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Herring**

**Licensing**

(23) A herring lampara limited entry license is required to operate lampara gear for herring as provided for in this section.

(24) A herring dip bag net limited entry license is required to operate dip bag net gear for herring as provided for in this section.

(25) A violation of subsection (23) or (24) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

**Fishing period**

(26) It is unlawful to fish for or possess herring with lampara gear at any time except January 1 through January 31, and April 16 through December 31, of any calendar year.

(27) Dip bag net gear may be used for herring at all times.

(28) A violation of subsection (26) or (27) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Incidental catch**

(29) It is unlawful to retain anchovy, candlefish, smelt, or sardine incidental to a lawful herring fishery if the individual or combined weight of anchovy, candlefish, smelt, or sardine exceeds five percent of the total landing. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Gear**

(30) It is unlawful to fish for or to possess herring taken for commercial purposes with lampara gear with a cork line that exceeds 1,400 feet in length and a mesh size of less than one-half inch stretch measure.

(31) It is unlawful to fish for herring with dip bag net gear that exceeds 18 square feet.

(32) A violation of subsection (30) or (31) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

**Sardine**

**Licensing**

(33) A smelt dip bag net fishery license is required to operate the dip bag net gear for sardine as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

**Fishing period**

(34) Dip bag net gear may be used for sardine at all times. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Gear**

(35) It is unlawful to fish for sardine with dip bag net gear that exceeds 18 square feet. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

**Smelt**

**Licensing**

(36) A smelt dip bag net fishery license is required to operate the hand dip net gear for smelt as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

**Fishing period**

(37) It is unlawful to take smelt with hand dip net gear for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursdays to 8:00 p.m. Saturdays. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Gear**

(38) It is unlawful to take, fish for, and possess smelt taken with hand dip nets exceeding 72 inches maximum frame width. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending Order 03-26, filed 2/18/03, effective 3/21/03)

**WAC 220-40-030 Willapa Bay—(~~Seasons and lawful gear—Varieties other than salmon and sturgeon~~) Forage fish.** ((1) It is unlawful in Marine Fish Shellfish Management and Catch Reporting Area 60C to fish for food fish, other than sturgeon and salmon, with purse seine or lampara gear exceeding 900 feet in length or having meshes of less than one-half inch stretch measure, or with drag seine gear exceeding 700 feet in length or having meshes of less than 4-1/2 inches stretch measure, except as provided in WAC 220-40-030(3). It is unlawful to fish for or possess salmon or sturgeon taken with purse seine, lampara, or drag seine gear.

(2) It is lawful to fish for and possess bottomfish taken for commercial purposes in Marine Fish Shellfish Management and Catch Reporting Area 60C, at anytime with set line and hand line jig gear.

(3)(a) June 1 through October 31—It is lawful to fish for and possess anchovy, candlefish, or pilchards taken for commercial purposes with purse seine or lampara in the waters of Willapa Bay, provided it is unlawful to use gear exceeding 1,400 feet in length or containing meshes less than one-half inch stretch measure. It is lawful to fish for and possess herring taken for commercial purposes with lampara gear from the waters of Willapa Bay, except it is unlawful to use lampara gear exceeding 1,400 feet in length or containing mesh less than 1/2-inch stretch measure. All species of fish other



than herring, anchovy, candlefish and pilehard taken in operation with such purse seine or lampara gear must be immediately, with care, returned to the water.

(b) February 1 through March 15 – Closed to all commercial herring, anchovy, candlefish or pilehard fishing except dip bag net.

(c) It is lawful to fish for, take and possess herring, anchovy, candlefish, or pilehards with dip bag net gear at any time in the waters of Willapa Bay.

(4) It is lawful to retain for commercial purposes bottom fish taken incidental to any lawful commercial salmon fishery in Willapa Bay Salmon Management and Catch Reporting Areas 2G, 2H, 2J, 2K, and 2M, and it shall be lawful to retain bottom fish taken incidental to any lawful sturgeon fishery in Marine Fish-Shellfish Management and Catch Reporting Area 60C.

(5) It is lawful to take, fish for and possess smelt taken with hand dip nets in any of the waters of Willapa Bay except it is unlawful to take smelt for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday.

(6) It is lawful to take bottom fish with drag seine in Marine Fish-Shellfish Management and Catch Reporting Area 60C from March 1 through June 30.

(7) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60C if any part of the purse seine or lampara is in waters that are less than 20 feet deep.))

(1) It is unlawful to fish for or possess anchovy, candlefish, herring, sardine, or smelt taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Area 60C except as provided for in this section.

### **General**

(2) It is unlawful to fish for or possess salmon or sturgeon taken with purse seine or lampara gear.

(3) It is unlawful to fish with purse seine or lampara gear at all times in the waters of Marine Fish-Shellfish Management and Catch Reporting Area 60C if any part of the purse seine or lampara is in waters that are less than 20 feet deep.

(4) It is unlawful to fail to immediately return to the water, unharmed, all species of fish other than herring, anchovy, candlefish, and sardine taken in the operation of purse seine, lampara, dip bag net, or hand net gears.

(5) A violation of subsections (1) through (4) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty; and RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

### **Anchovy and candlefish**

#### **Licensing**

(6) A baitfish purse seine fishery license is required to operate purse seine gear for anchovy and candlefish as provided for in this section.

(7) A baitfish lampara fishery license is required to operate lampara gear for anchovy and candlefish as provided for in this section.

(8) A smelt dip bag license is required to operate dip bag net gear for anchovy and candlefish as provided for in this section.

(9) A violation of subsections (6) through (8) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

#### **Fishing period**

(10) It is unlawful to fish for or possess anchovy, candlefish, sardine, or smelt with the use of purse seine or lampara gear during any time, except January 1 through January 31, and March 16 through December 31, of any calendar year.

(11) Dip bag net gear may be used for anchovy and candlefish at all times.

(12) A violation of subsection (10) or (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Landing limitations**

(13) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(14) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, or in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(15) A violation of subsection (13) or (14) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Gear**

(16) It is unlawful to fish for anchovy or candlefish with purse seine or lampara gear with mesh size less than one-half inch stretch measure.

(17) It is unlawful to fish with purse seine or lampara gear if the cork line exceeds 900 feet in length, except: From June 1 through October 31, it is permissible to use gear in which the cork line does not exceed 1,400 feet in length.

(18) It is unlawful to fish for or possess anchovy or candlefish with dip bag net gear that exceeds 18 square feet.

(19) A violation of subsections (16) through (18) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

#### **Incidental catch**

(20) It is unlawful to retain sardines taken incidental to a lawful anchovy or candlefish fishery that exceeds twenty percent of the weight of the total landing.

(21) It is unlawful to retain smelt or herring incidental to a lawful anchovy or candlefish fishery if the individual or combined weight of smelt and/or herring exceeds five percent of the total landing.

(22) A violation of subsection (20) or (21) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Herring**

##### **Licensing**

(23) A herring/lampara limited entry license is required to operate lampara gear for herring as provided for in this section.

(24) A herring dip bag net limited entry license is required to operate dip bag net gear for herring as provided for in this section.

(25) A violation of subsection (23) or (24) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

**Fishing period**

(26) It is unlawful to fish for or possess herring with lampara gear during any time except January 1 through January 31, and March 16 through December 31, of any calendar year.

(27) Dip bag net gear may be used for herring at all times.

(28) A violation of subsection (26) or (27) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Incidental catch**

(29) It is unlawful to retain anchovy, candlefish, smelt, or sardine incidental to a lawful herring fishery if the individual or combined weight of anchovy, candlefish, smelt, or sardine exceeds five percent of the total landing. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Gear**

(30) It is unlawful to fish for and possess herring taken for commercial purposes with lampara gear with a cork line that exceeds 1,400 feet in length and a mesh size less than one-half inch stretch measure.

(31) It is unlawful to fish with dip bag net gear that exceeds 18 square feet.

(32) A violation of subsection (30) or (31) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

**Sardine**

**Licensing**

(33) A smelt dip bag net fishery license is required to operate dip bag net gear for sardine as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

**Fishing period**

(34) Dip bag net gear may be used for sardine at all times.

**Gear**

(35) It is unlawful to fish with dip bag net gear that exceeds 18 square feet. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

**Smelt**

**Licensing**

(36) A smelt dip bag net fishery license is required to operate dip bag net gear for smelt as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

**Fishing period**

(37) It is unlawful to take smelt for commercial purposes during weekly closed periods extending from 8:00 a.m. Thursday to 8:00 p.m. Saturday. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

**Gear**

(38) It is unlawful to take, fish for, and possess smelt taken with hand dip nets exceeding 72 inches maximum

frame width. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

AMENDATORY SECTION (Amending Order 07-279, filed 11/7/07, effective 12/8/07)

**WAC 220-44-020 ((Coastal baitfish gear.)) Ocean forage fish.** (1) It is unlawful to fish for or possess smelt, ((~~anchovies~~)) anchovy, candlefish, herring, or ((~~pilehard~~)) sardine taken for commercial purposes from ((~~Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, 60A-1, or 60A-2~~)) offshore waters, except as provided for in this section.

~~((1)(a) It is unlawful to fish for or possess smelt taken for commercial purposes except by hand net gear not exceeding 72 inches maximum frame width. It is unlawful to take smelt for commercial purposes during weekly closed periods from 8:00 a.m. Friday to 8:00 a.m. Sunday.~~

~~(b) Licensing: A smelt dip bag net fishery license is the license required to operate the gear provided for in this section.~~

~~((e) Incidental catch:)) **General**~~

~~(2) It is unlawful to fail to immediately return to the water, unharmed, all species of fish other than herring, anchovy, candlefish, shad, and sardine taken in operation of purse seine, lampara, dip bag net, or hand net gears.~~

~~(3) A violation of subsection (1) or (2) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.~~

**Smelt**

**Licensing**

~~(4) A smelt dip bag net fishery license is required to operate hand net gear as provided for in this section. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.~~

**Fishing period**

~~(5) It is unlawful to take smelt for commercial purposes during weekly closed periods from 8:00 a.m. Friday to 8:00 a.m. Sunday. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.~~

**Gear**

~~(6) It is unlawful to fish for or possess smelt taken for commercial purposes except by hand net gear not exceeding 72 inches maximum frame width. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.~~

**Incidental catch**

~~(7) It is ((~~lawful~~)) permissible to retain only ((~~anchovies~~)) anchovy and candlefish taken incidental to a lawful smelt fishery.~~

~~((2)(a)) **Anchovy and Candlefish**~~

**Licensing**

~~(8) A baitfish lampara fishery license is required to operate the lampara gear for anchovy and candlefish as provided for in this section.~~

~~(9) A baitfish purse seine fishery license is required to operate the purse seine gear for anchovy and candlefish as provided for in this section.~~

(10) A smelt dip bag net fishery license is required to operate the hand dip net gear for anchovy and candlefish as provided for in this section.

(11) A violation of subsections (8) through (10) of this section is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

#### **Landing limitations**

(12) It is unlawful to deliver anchovy, in excess of fifteen percent of the total landing weight, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products.

(13) It is unlawful for any person licensed to fish under a baitfish purse seine or baitfish lampara license to retain, possess or deliver, to a place or port, regardless of catch area, anchovy in excess of 5 metric tons (11,023 pounds) in one day, or in excess of 10 metric tons (22,046 pounds) during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(14) A violation of subsection (12) or (13) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Gear**

(15) It is unlawful to take, fish for, or possess anchovy or candlefish ((or anchovies)) taken ((for commercial purposes)) with ((any gear except)) purse seine or lampara ((not exceeding 1,400 feet in length nor having)) gear with mesh size less than ((1/2)) one-half inch((, or dip bag net not exceeding 72 inches maximum frame width.

(b) Licensing:

(i) A baitfish lampara fishery license is the license required to operate the lampara gear provided for in this section.

(ii) A baitfish purse seine fishery license is the license required to operate the purse seine gear provided for in this section.

(iii) A smelt dip bag net fishery license is the license required to operate the hand dip net gear provided for in this section.

(e) Incidental catch: It is lawful to retain only shad and pilehard taken incidental to a lawful anchovy or candlefish fishery. Pilehard may not exceed twenty-five percent of the weight of the landing. Any sturgeon must be released unharmed.

(3)(a) It is unlawful to fish for or possess herring or pilehard taken for commercial purposes except as authorized by permit issued by the director, except pilehard taken incidental to candlefish and anchovy.

(b) Licensing:

(i) An emerging commercial fishery license is the license required for a permittee to fish for or retain pilehard.

(ii) Herring dip bag net, herring drag seine, herring gill net, herring lampara, or herring purse seine are the licenses required for a permittee to fish for or to retain herring.

(4)(a) Violation of licensing requirements under this section is punishable pursuant to RCW 77.15.500.

(b) Violation of gear requirements under this section is punishable pursuant to RCW 77.15.520.

(c) Violation of catch requirements under this section is punishable pursuant to RCW 77.15.550)) stretch measure.

(16) It is unlawful to fish for or possess candlefish or anchovy with purse seine or lampara gear if the cork line exceeds 1,400 feet in length.

(17) It is unlawful to take, fish for, or possess anchovy or candlefish with dip bag net gear that exceeds 18 square feet.

(18) A violation of subsections (15) through (17) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

#### **Incidental catch**

(19) It is unlawful to retain sardine taken incidental to a lawful anchovy or candlefish fishery that exceeds twenty percent of the weight of the total landing.

(20) It is unlawful to retain herring taken incidental to a lawful anchovy or candlefish fishery that exceeds five percent of the weight of the total landing.

(21) It is permissible to retain shad incidental to a lawful anchovy or candlefish fishery.

(22) A violation of subsection (19) or (20) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

#### **Herring**

##### **Licensing and permit**

(23) It is unlawful to fish for or to possess herring taken for commercial purposes except as authorized by permit issued by the director. A violation of this subsection is punishable under section 14, chapter 333, Laws of 2009 (SHB 1778).

(24) Herring dip bag net, herring drag seine, herring gill net, herring lampara, or herring purse seine are the limited entry licenses required for a permittee to fish for or to retain herring. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

AMENDATORY SECTION (Amending Order 07-278, filed 11/7/07, effective 12/8/07)

**WAC 220-69-240 Duties of commercial purchasers and receivers.** (1) It is unlawful for any person originally receiving fresh or iced fish or shellfish or frozen fish or shellfish that have not been previously delivered in another state, territory, or country, except purchases or receipts made by individuals or consumers at retail, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Each delivery must be recorded on a separate fish receiving ticket. Failure to be licensed under this subsection is punishable under RCW 77.15.620.

(2) It is unlawful for any person originally receiving fresh or iced fish or shellfish previously delivered in another state, territory, or country, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

(3) It is unlawful for any original receiver of crab or spot shrimp to fail to record all crab or spot shrimp aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weigh backs must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

(4) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its plant locations as declared on the license application, shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business, firm, and/or licensed wholesale fish dealer who the buyers are operating under shall be responsible for the accuracy and legibility of all such documents initiated in its name.

(5) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed must be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving ticket. Violation of this subsection is punishable under RCW 77.15.630.

(6) Forage fish: It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets initiated and completed on the day the forage fish are delivered. Herring are also required to be reported on herring harvest logs. The harvested amount of forage fish must be entered upon the fish ticket when the forage fish are off-loaded from the catcher vessel. An estimate of herring, candlefish, anchovy, or ~~((pilehards))~~ sardine caught but not sold due to mortality must be included on the fish ticket as "loss estimate." In the coastal ~~((pilehard))~~ sardine fishery, the amount of ~~((pilehards))~~ sardine, by weight, purchased for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products for purposes other than human consumption or fishing bait, must be included on the fish ticket as "reduction." In any forage fish fishery, the amount of anchovy, by weight, purchased for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products for purposes other than human consumption or fishing bait, must be included on the fish ticket as "reduction."

Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(7) Geoduck: It is unlawful for any person receiving geoducks, regardless of whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoducks from the harvesting vessel onto the shore. This fish receiving ticket shall accompany the harvested geoducks from the department of natural resources harvest tract to the point of delivery. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(8) Pacific whiting: It is unlawful for the original receiver of Pacific whiting to fail to enter an estimated weight of Pacific whiting on the fish receiving ticket immediately upon completion of the delivery. The exact weights of whiting, by grade, and all incidental species in the delivery must be entered on the fish receiving ticket within twenty-four hours of the landing. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(9) Puget Sound shrimp - Pot gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, plus the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(a) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, to fail to record either 23A-C, 23A-E, 23A-W, or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(b) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, to fail to record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(c) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, to fail to record either 26B-1 or 26B-2 on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record either 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(10) Puget Sound shrimp - Trawl gear: It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning. For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by

phone at 360-466-4345, extension 245, or by fax at 360-466-0515. For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(11) Puget Sound crab: It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by nontreaty fishers, from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day. Reports must be made to the Point Whitney Shellfish Laboratory by fax at 360-586-8408 or by phone at 1-866-859-8439, option 5, and must specify the dealer name; dealer phone number; date of delivery of crab to the original receiver; and the total number of pounds of crab caught by nontreaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. The fish receiving ticket reporting requirement of WAC 220-69-240 remains in effect. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(12) Salmon and sturgeon:

(a) During any Puget Sound fishery opening that is designated as "quick reporting required," per WAC 220-47-001:

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Puget Sound reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be submitted via fax at 360-902-2949; via e-mail at [psfishtickets@dfw.wa.gov](mailto:psfishtickets@dfw.wa.gov); or via phone at 1-866-791-1279. In fisheries under Fraser Panel Control within Fraser Panel Area Waters (area defined under Art. XV, Annex II, Pacific Salmon Treaty 1985), other reporting requirements not listed in this subsection may be necessary under Subpart F of the International Fisheries Regulations, 50 CFR Ch. III § 300.93.

(b) During any coastal troll fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to

report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, coastal troll reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-902-2949; via e-mail at [trollfishtickets@dfw.wa.gov](mailto:trollfishtickets@dfw.wa.gov); or via phone at 1-866-791-1279.

(c) During any Grays Harbor or Willapa Bay fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Grays Harbor and Willapa Bay reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-664-0689; e-mail at [harborfishtickets@dfw.wa.gov](mailto:harborfishtickets@dfw.wa.gov); or phone at 1-866-791-1280.

(d) During any Columbia River fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered, for retail sale.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Columbia River reports must be submitted within 5, 8, 12, or 24 hours of closure of the designated fishery. The time frame for submitting reports will be established by the department at the time of adoption of the quick reporting fishery. Adoption and communication of the quick reporting regulations for a given fishery will occur in conjunction with the adoption of said

fishery through the Columbia River Compact. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-906-6776 or 360-906-6777; via e-mail at [crfishtickets@dfw.wa.gov](mailto:crfishtickets@dfw.wa.gov); or via phone at 1-866-791-1281.

(e) Faxing a copy of each fish receiving ticket used, within the previously indicated time frames specified per area, satisfies the reporting requirement.

(f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(13)(a) Sea urchins and sea cucumbers: It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day. For red sea urchins, the report must specify the number of pounds received from each sea urchin district. For green sea urchins and sea cucumbers, the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area. For sea cucumbers, the report must specify whether the landings were "whole-live" or "split-drained." The report must be made by fax at 360-902-2943, or by toll-free telephone at 866-207-8223.

(b) It is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken, and it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket the name of the port of landing where the sea urchins were landed ashore.

(c) It is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained."

(d) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(14) Coastal spot shrimp: It is unlawful for any original receiver of spot shrimp taken from Marine Fish Management and Catch Reporting Area 60A-1 to fail to record separately on the fish receiving ticket spot shrimp taken north or south of 47°04.00' north latitude. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

Date of Intended Adoption: On or after February 5, 2010.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail [Lori.Preuss@dfw.wa.gov](mailto:Lori.Preuss@dfw.wa.gov), fax (360) 902-2155, by December 31, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by December 31, 2009, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to require Washington licensed pink shrimp trawl fishers to carry, when requested, federal- or state-employed observers during commercial shrimp fishing trips.

Reasons Supporting Proposal: The coastal shrimp trawl fishery takes but does not retain groundfish, which exempts it under federal rules from having to carry a federal observer when requested. Without observer coverage, information about bycatch cannot be collected. In data-poor situations, management must be more conservative to address the uncertainty than might otherwise be necessary had adequate information been available. This rule change proposal will include Washington licensed shrimp trawlers under the National Marine Fisheries Service West Coast Groundfish Observer Program.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

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

Name of Proponent: The Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Lorna Wargo, 1111 Washington Street S.E., Olympia, WA 98504, (360) 753-2600; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

#### Small Business Economic Impact Statement

#### **1. Description of the Reporting, Record-Keeping, and Other Compliance Requirements of the Proposed Rule:**

The proposed rule will require Washington licensed commercial shrimp trawlers to participate in the National Marine Fisheries West Coast Groundfish Observer Program (program). When requested by the program, vessels will be required [to] carry an observer for a specified number of fishing trips.

Vessels selected for observer coverage must report or provide advance notice of their intended departure date/time. This is accomplished through a telephone call. During any observed trip, a logbook will need to be maintained. Logbooks are provided at no cost to fishers.

Vessels in the program must comply with federal regulations for the program. These regulations include provisions for vessel safety, observer access to facilities, observer access to information, food and accommodations, access to communication equipment, and

#### **WSR 09-23-117**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Filed November 18, 2009, 10:10 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-066.

Title of Rule and Other Identifying Information: WAC 220-52-050 Ocean pink shrimp trawl fishery—Coastal waters.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on January 8-9, 2010, at 8:45 a.m.

**2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements:** None.

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** Shrimp trawl vessels will incur additional costs for food to provide observers meals as required by federal regulations. Vessels must meet United States Coast Guard safety requirements to have observers onboard; some vessels may incur costs to correct deficiencies in meeting these standards.

**4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?** No.

**5. Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:**

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

(a) The typical shrimp trawl vessel operates with a crew of three, including the skipper. The expected cost of compliance is estimated at \$25 per day as the vessel will be expected to provide food for the observers. The typical vessel averages sixteen days of fishing per month during a seven month fishing season. However, observers will be deployed on about fifty percent of the trips. This equates to a daily cost per crew of about \$4.

Typical Number Days Per Season	112
Cost per Day	\$25
Cost per Season (X 56 days for 50% coverage)	\$1,400
Number of Crew	3
Daily Cost per Crew for Season	\$4

**Now Compare the Largest Businesses' Cost of Compliance with the Cost of Compliance for Small Businesses. Will this Rule Have a Disproportionate Impact on Small Businesses?** No. Essentially all the business [businesses] affected would be considered small businesses.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing so:** The department will provide fishers with logbooks. Additional steps to reduce costs are not intended as these could compromise either the safety or comfort of the observers or hinder their ability to perform their duties.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** The department will meet informally with industry participants, provide written materials through mailings and provide an opportunity for formal comment through the Washington fish and wildlife commission public meetings.

**8. A List of Industries That Will Be Required to Comply with the Rule:** Washington coastal shrimp trawl license holders.

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule:** Not applicable.

A copy of the statement may be obtained by contacting [no further information provided by agency].

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

November 18, 2009

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 03-30, filed 2/18/03, effective 3/21/03)

**WAC 220-52-050 Ocean pink shrimp trawl fishery—Coastal waters.** It is unlawful to fish for, possess or deliver ocean pink shrimp taken for commercial purposes from the waters of the Exclusive Economic Zone, except as provided for in this section:

Area

(1) ~~((Ocean pink shrimp fishery: (a)))~~ It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state. A violation of this subsection is punishable under RCW 77.15.550. Violation of commercial fishing area or time—Penalty.

Season

(2) It is unlawful to fish for, take, or possess on board a fishing vessel, pink shrimp, except during the following time: The open season for trawl gear is April 1 through October 31 of each year. A violation of this subsection is punishable under RCW 77.15.550. Violation of commercial fishing area or time—Penalty.

~~((b) The following gear is prohibited:)~~

Gear

(3) It is unlawful to fish with or possess pink shrimp taken with shrimp trawl gear having a net mesh size greater than two inches in the intermediate or codend, except for net mesh used in ((fish excluder devices-)) by-catch reduction devices defined under subsection (4) of this section. However, it is lawful to have net mesh larger than two inches in the wings or body of the trawl.

~~((e))~~ (4) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved by-catch reduction device is used in each net. Approved by-catch reduction~~((s))~~ devices ~~((are))~~ include:

~~((+))~~ (a) A Soft Panel By-catch Reduction Device, which uses a mesh panel to guide fish out of an escape hole. An approved soft-panel must meet the following criteria:

~~((A))~~ (i) The panel must completely cover some portion of the net in cross-section, meaning it must extend completely across the full opening of the net in one continuous piece. The panel must be securely fastened to the net around the entire perimeter, such that a 110 mm diameter sphere cannot pass beyond the panel into the terminal end of the codend;

~~((B))~~ (ii) The panel meshes must be constructed of netting material with individual meshes no larger than 5.5 inches, measured between opposing knots, and must be constructed of a single panel of continuous netting, without zip-pers or other devices designed to allow disabling of the panel such that large fish can pass back into the codend;

~~((C))~~ (iii) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

~~((D))~~ (iv) The escape hole must be forward of the mesh panel and must begin within four meshes of the furthest aft point of attachment of the mesh panel to the net~~(s)~~.

~~((i))~~ (b) A Nordmore Grate By-catch Reduction Device, which uses a rigid panel of narrowly spaced vertical bars to guide fish out of an escape hole in front of the panel, generally in the top of the net. An approved Nordmore grate must meet the following criteria:

~~((A))~~ (i) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net, such that there is no space between the panel and the net that will allow a 110 mm sphere to pass beyond the panel, into the terminal area of the codend;

~~((B))~~ (ii) None of the openings between the vertical bars in the rigid panel may exceed two inches in width;

~~((C))~~ (iii) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

~~((D))~~ (iv) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

~~((d) All by-catch reduction devices and codends used for trawl fishing for pink shrimp must be readily accessible and made available for inspection at the request of an authorized agent of the state. No trawl gear may be removed))~~ (5) It is unlawful to remove trawl gear from the vessel prior to offloading of shrimp.

~~((e))~~ (6) It is unlawful to modify by-catch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except for the purpose of testing the by-catch reduction device to measure shrimp loss. Authorized testing of by-catch reduction devices must meet the following criteria:

~~((i))~~ (a) Testing is allowed by special permit only, consistent with the terms and conditions of the permit; and

~~((ii))~~ (b) For vessels fishing two nets simultaneously (double-rigged boats), only one net may contain a disabled by-catch reduction device, and the other net must be fishing a fully functional by-catch reduction device as described in ~~((e) of this)~~ subsection (4) of this section.

~~((f) Minimum number of shrimp per pound:))~~ (7) A violation of subsections (4) through (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(8) It is unlawful to land or deliver pink shrimp to an original receiver that exceeds the following count per pound restriction: The count per pound must average no more than 160 shrimp per pound for a minimum of two samples, increasing at a rate of one sample per one thousand pounds landed or in possession, up to a maximum requirement of twenty samples. Such samples shall consist~~(s)~~ of at least one pound ~~((f))~~ each of whole, unbroken shrimp taken at random from throughout the individual load landed or in possession. This landing restriction shall apply only to loads of 3,000 pounds of shrimp or more. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

### Incidental catch

~~((g) Incidental catch finfish:))~~ (9) It is unlawful to take salmon incidental to any shrimp trawl fishery.

(10) It is unlawful to retain any bottomfish species taken incidental to any shrimp trawl fishery, except as provided for in WAC 220-44-050.

~~((h) Incidental catch shellfish:~~

~~(i) It is unlawful to retain any species of shellfish except that it is lawful to retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery, or octopus or squid.~~

~~(ii) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state.~~

~~((i))~~ (11) It is unlawful to retain any species of shellfish, except that it is permissible to:

(a) Retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery; and

(b) Retain octopus or squid.

(12) A violation of subsections (9) through (11) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

### License

(13) An ocean pink shrimp delivery license is ~~((the license))~~ required to operate the gear provided for in this section, and it allows the operator to retain shrimp taken in the waters of the Exclusive Economic Zone.

~~((2) Fisheries for shrimp species other than ocean pink shrimp or ocean spot shrimp: Species other than ocean pink shrimp and ocean spot shrimp may only be taken incidentally to the ocean pink shrimp and ocean spot shrimp fisheries.))~~ A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

### Permit

(14) It is unlawful to fish for, retain, land, or deliver shrimp taken with trawl gear without a valid shrimp trawl fishery permit.

(15) It is unlawful to take, retain, land, or deliver any shrimp or groundfish taken with trawl gear without complying with all provisions of a shrimp trawl fishery permit.

(16) A violation of subsection (14) or (15) of this section is punishable under RCW 77.15.750.

WSR 09-23-120

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed November 18, 2009, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-15-175.

Title of Rule and Other Identifying Information: Guidelines for implementation of three federal bond programs: Qualified energy conservation bonds, recovery zone economic development bonds, and recovery zone facility bonds.



This includes the revision of chapter 365-135 WAC and the addition of new sections.

Hearing Location(s): Department of Commerce, Davis-Williams Building, 1st Floor Conference Room, 906 Columbia Street S.W., Olympia, WA 98504-2525, on January 6, 2010, at 1:30 p.m. - 2:30 p.m.

Date of Intended Adoption: January 10, 2010.

Submit Written Comments to: Elizabeth Green-Taylor, P.O. Box 42525, Olympia, WA 98504-2525, e-mail Liz.green-taylor@commerce.wa.gov, fax (360) 664-3123, by January 7, 2010.

Assistance for Persons with Disabilities: Contact Elizabeth Green-Taylor by January 7, 2010, TTY (800) 634-4473 or fax (360) 664-3123.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To establish definitions, procedures and standards for state and local government planning and compliance with Federal American Recovery and Reinvestment Act bonding programs. To define the process for allocation of bond capacity, applications, extensions and carry forward procedures, fee schedules, and bonding criteria.

Changes to existing rules are intended to harmonize the existing rules with the new bonding programs, and to remove outdated references.

Reasons Supporting Proposal: To provide a specific process for the department of commerce and localities issuing bonds under any of three federal bond programs: Qualified energy conservation bonds, recovery zone economic development bonds, and recovery zone facility bonds.

Statutory Authority for Adoption: RCW 39.86.160 and 39.86.180.

Statute Being Implemented: Chapter 39.86 RCW and Executive Order 09-06.

Rule is necessary because of federal law, American Recovery and Reinvestment Act of 2009.

Name of Proponent: Department of commerce, bond cap program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Elizabeth Green-Taylor, Olympia, (360) 725-5021.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department has reviewed the provisions of RCW 34.05.328. These proposed rules do not qualify for a cost-benefit analysis. Adopting rules will help to ensure the use of all bond allocations. The rules establish an authoritative, valid means of making reallocations of authority from one local government to another.

November 18, 2009

Marie Sullivan

Agency Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

**WAC 365-135-010 Purpose.** The federal Tax Reform Act of 1986 imposes an annual ceiling on each state limiting

the dollar volume of certain private activity bonds that can be issued. In addition, Congress from time-to-time enacts volume ceilings on other types of bonds. To allocate ~~((this))~~ the bond volume ceilings among eligible issuers in Washington state, chapter 297, Laws of 1987 as amended has been enacted. In accordance with the statute, the department of ~~((community, trade, and economic development))~~ commerce will allocate the state's ~~((private activity))~~ bond ceilings and establish by rule a fee schedule. The department will carry out such functions through the bond cap allocation program (BCAP).

AMENDATORY SECTION (Amending WSR 00-02-061, filed 1/3/00, effective 2/3/00)

**WAC 365-135-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly provides otherwise.

Allocation fee: The total fee paid by the issuer to the department for receiving allocation from the BCAP. It is assessed by the department based on multiplying the requested allocation amount by ~~((the following figures:~~

<del>December 31, 1999, through June 30, 2000</del>	<del>.00026</del>
<del>July 1, 2000, through June 30, 2001</del>	<del>.000269</del>
<del>July 1, 2001, and thereafter))</del>	<del>.000277((;))</del>

or five hundred dollars, whichever is greater. The allocation fee, which includes the nonrefundable five hundred dollar filing fee, is due from the issuer upon filing an application.

Department: The Washington state department of ~~((community, trade, and economic development))~~ commerce.

Extension fee: The fee the department may assess when an issuer requests and is granted an extension for issuing the allocation or carryforward of the allocation. The amount of the fee will not exceed two hundred fifty dollars and is non-refundable.

Filing fee: The nonrefundable five hundred dollar portion of the allocation fee.

Reallocation: The assignment of an unused portion of the state ceiling from one bond use category or issuer to another or the provision of a certificate of approval to any issuer for an allocation amount which previously had been returned to the department.

Statute: Chapter 39.86 RCW.

Originally awarded locality: A city or county that has been allocated qualified energy conservation bond, recovery zone economic development bond or recovery zone facility bond authority by a formula contained in federal law.

Original allocation: The amount of qualified energy conservation bond, recovery zone economic development bond or recovery zone facility bond issuing authority awarded to an originally awarded locality by a formula in federal law.

AMENDATORY SECTION (Amending Order 87-18, filed 9/16/87)

**WAC 365-135-030 Initial allocations.** Initial allocations shall be made in accordance with provisions of the statute and federal code. ~~((In addition, until September 1 of each~~

calendar year, at least twenty-five percent of the initial allocation for the small issue bond use category shall be reserved for the community economic revitalization board's umbrella bond program, except that this amount may be reduced if the board indicates that a reduced amount is appropriate.)

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

**WAC 365-135-035 Reallocations.** (1) Housing programs and projects will be given priority for the first fifty percent of the annual tax exempt private activity bond cap available after September 1 each year because of the need for affordable housing, the program's ability to serve lower-income households, its contribution to and support of economic development and long-term benefits that may be achieved.

(2) Bond cap will consider other categories of applications including industrial development bonds, exempt facilities, public utility districts, and student loans for allocation from the remaining bond cap available after September 1.

(a) The program will consider and then evaluate and balance the public benefits listed in statute and in rule in making allocation decisions. Allocations will be based upon the likelihood of a project achieving the highest overall public purposes and the degree to which a project:

(i) Provides an economic boost to an economically distressed community (based on the three-year unemployment figures from employment security);

(ii) Creates or retains jobs that pay higher than the median wage for the county in which it is located, in sustainable industries, particularly for lower-income persons;

(iii) Retains or expands the local tax base;

(iv) Encourages and facilitates the provision of student loans for institutions of higher education;

(v) Reduces environmental pollution;

(vi) Facilitates investments in new manufacturing technologies enabling Washington industries to stay competitive;

(vii) Diverts solid waste from disposal and manufactures it into value-added products;

(viii) Encourages the environmentally sound handling of solid waste using best management's practices; or

(ix) Produces competitively priced energy for use in the state.

(b) The criteria in this section and other applicable criteria otherwise established in statute and rule shall not be considered as ranked in any particular order but shall be weighed and balanced for each application and among applications in making allocation decisions.

(3) For the purposes of qualified energy conservation bonds, the federal code and U.S. Department of Treasury guidance contained in IRS Notice 2009-29 allow formula allocations to be reallocated to the state and passed on by the state to other issuers. The following procedures will apply to qualified energy conservation bond reallocations:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a *Notice of Intent* form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively reallocate to the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use the allocation and has decided to reallocate to the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to reallocate the original allocation to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider the reallocation determination.

(g) The department will respond to a request to reconsider a reallocation determination within ten business days with a decision by the assistant director of the local government division or designee to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a qualified energy conservation bond issuance, or a decision to go forward with reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(4) For the purposes of recovery zone economic development bond and recovery zone facility bond allocations, an originally awarded locality may designate other issuing localities within the jurisdiction of the originally awarded locality to use all or a portion of its original allocation by any procedure mutually acceptable to both parties, on condition that the originally awarded locality provides documentation of the designation to the department within thirty days of making the designation and ensures that all other department requests for documentation are met.

If an originally awarded locality is not able to or chooses not to use its original allocation or to offer it to another issuer within the jurisdiction of the originally awarded locality, the authority may be waived. Waived recovery zone economic development bond or recovery zone facility bond authority may be reallocated by the department to other issuing localities. In addition, if an originally awarded locality does not respond to the department's requests for information regarding its intent to use its original allocation or progress in mov-

ing toward issuance by the federal deadline, the department may deem the allocation to have been waived.

In such cases, federal code provisions and U.S. Department of Treasury guidance in IRS Notice 2009-50 allow original allocations to be waived then reallocated by the state to other issuing localities. The following procedures will apply to any reallocations of waived recovery zone economic development bond or recovery zone facility bond authority:

(a) An originally awarded locality that intends to use its original allocation or intends to designate another issuer within the jurisdiction of the originally awarded locality to use the original allocation must file a Notice of Intent form with the department by January 1, 2010.

(b) An originally awarded locality that has chosen to decline its original allocation may affirmatively waive the allocation for reallocation by the state by submitting an appropriately marked *Notice of Intent* form.

(i) The form must be signed by the official(s) of the jurisdiction authorized to execute the form pursuant to a resolution declining the allocation adopted by the jurisdiction's governing body; and

(ii) The form and the resolution declining the allocation must be delivered to the department by January 1, 2010.

(c) An originally awarded locality that has used the *Notice of Intent* form to express its intent to use its original allocation may amend the *Notice of Intent* at a later time if it is determined that the locality is unable to use its original allocation and has decided to waive the allocation for reallocation by the state.

(d) An originally awarded locality intending to use its original allocation must provide the department with project information and supporting documents by February 1, 2010. Supporting documents include *Bond Counsel* and *Underwriter Statement of Intent* forms and a certified copy of an inducement resolution by the governing board. A locality may request an extension if filed by February 1, 2010.

(e) If an originally awarded locality has not provided the department with the documents required by subsections (1), (2) or (4) of this section or has not issued bonds or requested an extension by June 1, 2010, the department may issue a *Notice of Intent to Reallocate*, informing the locality of the intent to deem the original allocation to have been waived and to reallocate it to another locality.

(f) An originally awarded locality will have fifteen days from receipt of a *Notice of Intent to Reallocate* to respond to the department with the required documentation or to ask the department to reconsider its waiver and reallocation determination.

(g) The department will respond to the request to reconsider its waiver and reallocation determination within ten business days with a decision by the assistant director of the local government division to grant an extended time in which the issuing jurisdiction must demonstrate progress toward a recovery zone economic development bond or recovery zone facility bond issuance, or a decision to go forward with waiver and reallocation of the authority. The length of the time extension shall be determined at the discretion of the assistant director.

(h) All recovery zone bonds must be issued by the deadlines established in the code.

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

**WAC 365-135-040 Procedure for obtaining an allocation, reallocation, extension, or carryforward.** No issuer may receive an allocation, or reallocation, of the state ceiling without a certificate of approval from the department.

Issuers may apply for a certificate of approval by submitting a completed allocation request form to the department and paying an allocation fee. An allocation request form will be available from the department.

The department will respond to any such completed request in accordance with the statute. If an issuer does not issue (~~(private activity)~~) bonds or mortgage credit certificates in the amount and by the date for which it has received a certificate of approval, the unused amount shall revert to the department for reallocation, unless an extension or carryforward is granted.

An issuer may apply for an extension or carryforward of its allocation by submitting its request to the department and supplying any additional information required by the department. The department will promptly notify the issuer if any fees are due and respond to the request for extension or carryforward in a timely manner.

The housing category will be given priority for carryforward allocations of the annual tax exempt private activity bond ceiling.

AMENDATORY SECTION (Amending WSR 97-02-093, filed 1/2/97, effective 2/2/97)

**WAC 365-135-050 Fees.** (1) A fee schedule is hereby established, which will consist of:

(a) An allocation or reallocation fee, due at the time a request is filed with the department of (~~(community, trade, and economic development)~~) commerce; and

(b) In certain cases, an extension or carryforward fee.

If an issuer's allocation or reallocation request is denied, the allocation fee, less the five hundred dollar filing fee, will be refunded.

Annually, the department will determine if an adjustment of the fees is warranted by reviewing the account of BCAP revenues and expenses for the preceding fiscal year and by considering BCAP budget projections for the following fiscal year.

(2) Payment of the fees will occur as indicated by the schedule below.

(a) Filing. Upon filing an allocation request, the issuer must submit the total allocation fee, of which the five hundred dollar filing fee is nonrefundable.

(b) Extensions and carryforwards. The department may assess an extension fee, not to exceed two hundred fifty dollars, upon any request for extension or carryforward. The extension fee must be paid prior to the extension being granted. However, if the BCAP administrator determines that an issuer's allocation fee included a sufficient amount to pay for the additional administrative expenses associated with granting or denying such a request, the additional fee shall be waived.

(c) Refunds. If a requesting issuer pays any fee greater than the amount assessed by the department, that amount shall be refunded by the department.

If the allocation request is denied or a partial allocation is approved, the issuer will receive either a full or partial refund of the allocation fee, less the five hundred dollar filing fee. Once the allocation amount is approved, the allocation fee is not refundable, even if the issuer does not issue all or any of the approved allocation.

#### NEW SECTION

**WAC 365-135-080 Criteria for state allocation and reallocation of qualified energy conservation bonds.** The following criteria will be used by the department to prioritize allocation and reallocation requests. Not all criteria need to be demonstrated in a single project:

- (1) The extent to which the project demonstrates the potential to directly conserve energy.
- (2) The extent to which the project supports the development or implementation of innovative energy conservation technology.
- (3) The extent to which the project uses renewable resources to produce energy.
- (4) The number of citizens benefiting from the project.
- (5) The number of jobs created or retained by the project and the amount of qualified energy conservation bond authority per job created or retained.
- (6) The readiness of the project to proceed.
- (7) The likelihood that the issuer will use the allocation within the timelines.
- (8) The amount of other public and private funding leveraged by the qualified energy conservation bond allocation.
- (9) The amount of local community support for the project.

#### NEW SECTION

**WAC 365-135-090 Criteria for reallocation of recovery zone economic development bonds.** In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

- (1) The relative level of economic distress in the local community.
- (2) The number of citizens benefiting from the project.
- (3) The estimated positive economic impact of the project on the state or the local community.
- (4) The number of jobs created or retained by the project and the amount of recovery zone economic development bond authority per job created or retained.
- (5) The readiness of the project to proceed.
- (6) The likelihood that the issuer will use the allocation within the timelines.
- (7) The amount of other public and private funding leveraged by the recovery zone economic development bond allocation.
- (8) The amount of local community support for the project.

#### NEW SECTION

**WAC 365-135-100 Criteria for state allocation and reallocation for recovery zone facility bonds.** In accordance with the intent of the code and state priorities, the following criteria will be used to prioritize reallocation requests by the department:

- (1) The relative level of economic distress in the local community.
- (2) The number of citizens benefiting from the project.
- (3) The estimated positive economic impact of the project on the state or the local community.
- (4) The number of jobs created or retained by the project and the amount of recovery zone facility bond authority per job created or retained.
- (5) The readiness of the project to proceed.
- (6) The likelihood that the issuer will use the allocation within the timelines.
- (7) The amount of other public and private funding leveraged by the recovery zone facility bond allocation.
- (8) The amount of local community support for the project.