

WSR 10-13-081
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed June 15, 2010, 12:27 p.m., effective July 16, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To update agency adoptions by reference, update internal references within the regulation, and to adopt new section 155 - STATE ENVIRONMENTAL POLICY ACT (SEPA), clarifying SEPA authority, policy and procedures.

Citation of Existing Rules Affected by this Order: Amending Sections 104 and 300 of the Regulation of the Northwest Clean Air Agency.

Statutory Authority for Adoption: Chapters 70.94 and 43.21C RCW.

Adopted under notice filed as WSR 10-08-088 on April 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 10, 2010.

Mark Buford
Assistant Director

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law as it now exists or may be hereafter amended, which is pertinent to the operation of the NWCAA, is hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the Washington State Clean Air Act (RCW 70.94), the Administrative Procedures Act (RCW 34.05) and RCW 43.21A and 43.21B and the following state rules: WAC 173-400, (except – 035, -070(8), -099, -100, -101, -102, -104, -110, -114, -116, -171), WAC 173-401, WAC 173-406, WAC 173-407, WAC 173-420, WAC 173-425, WAC 173-430, WAC 173-433, WAC 173-434, WAC 173-435, WAC 173-450, WAC 173-460, WAC 173-470, WAC 173-474, WAC 173-475, WAC 173-481, WAC 173-490, WAC 173-491, WAC 173-492, WAC 173-495, ~~((WAC 173-802))~~, and ~~((WAC 197-11))~~ portions of WAC 197-11 contained in Section 155.

104.2 All provisions of the following federal rules that are in effect as of April 5, 2010 ~~((October 29, 2007))~~ are

hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, B, C, Cb, Cc, Cd, Ce, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, ~~Ja~~, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa ~~((A))~~, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, ~~VVa~~, WW, XX, AAA, BBB, DDD, FFF, GGG, ~~GGGa~~, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, HHHH, IIII, ~~JJJJ~~, KKKK and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, B, C, D, E, F, H, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, J, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, ~~((XX,))~~ WW, ~~XX~~, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, JJJJJ, KKKKK, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, ~~((DDDDDD, EEEEE, FFFFF, GGGGG))~~; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 300 – NEW SOURCE REVIEW

300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall:

- a) be submitted on forms provided by the NWCAA;
- b) be accompanied by the appropriate fee specified in NWCAA 324.2;
- c) be accompanied by a completed State Environmental Policy Act (SEPA) checklist consistent with ~~((WAC 197-11))~~ NWCAA 155; and
- d) include a "top down" BACT analysis, as defined at the time of submittal, except where the Federal Clean Air Act requires LAER; and
- e) An applicant filing a Notice of Construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, shall send a copy of the application to the responsible federal land manager.

NEW SECTION

SECTION 155 - STATE ENVIRONMENTAL POLICY ACT

155.1 Authority

A. NWCAA adopts these policies and procedures under State Environmental Policy Act (SEPA), RCW 43.21C.120,

and the SEPA Rules, Washington Administrative Code (WAC) 197-11-904, with respect to its performance of or participation in environmental review.

B. The SEPA Rules set forth in Chapter 197-11 WAC must be used in conjunction with these policies and procedures.

155.2 Purpose and Adoption by Reference.

A. NWCAA adopts the following sections of Chapter 197-11 WAC by reference:

- WAC 197-11-040: Definitions
 - 050: Lead Agency
 - 055: Timing of the SEPA Process
 - 060: Content of Environmental Review
 - 070: Limitations on Actions During SEPA Process
 - 080: Incomplete or Unavailable Information
 - 090: Supporting Documents
 - 100: Information Required of Applicants
 - 250: SEPA/Model Toxics Control Act Integration
 - 253: SEPA Lead Agency for MTCA Actions
 - 256: Preliminary Evaluation
 - 259: Determination of Nonsignificance for MTCA Remedial Action
 - 262: Determination of Significance for MTCA Remedial Action
 - 265: Early Scoping for MTCA Remedial Actions
 - 268: MTCA Interim Actions
- WAC 197-11-300: Purpose of This Part
 - 305: Categorical Exemptions
 - 310: Threshold Determination Required
 - 315: Environmental Checklist
 - 330: Threshold Determination Process
 - 335: Additional Information
 - 340: Determination of Non-Significance (DNS)
 - 350: Mitigated DNS
 - 360: Determination of Significance (DS)/Initiation of Scoping
 - 390: Effect of Threshold Determination
- WAC 197-11-400: Purpose of EIS
 - 402: General Requirements
 - 405: EIS Types
 - 406: EIS Timing
 - 408: Scoping
 - 410: Expanded Scoping
 - 420: EIS Preparation

- 425: Style and Size
- 430: Format
- 435: Cover Letter or Memo
- 440: EIS Contents
- 442: Contents of EIS on Non-Project Proposals
- 443: EIS Contents When Prior Non-Project EIS
- 444: Elements of the Environment
- 448: Relationship of EIS to Other Considerations
- 450: Cost-Benefit Analysis
- 455: Issuance of DEIS
- 460: Issuance of FEIS
- WAC 197-11-500: Purpose of This Part
 - 502: Inviting Comment
 - 504: Availability and Cost of Environmental Documents
 - 508: SEPA Register
 - 510: Public Notice
 - 535: Public Hearings and Meetings
 - 545: Effect of No Comment
 - 550: Specificity of Comments
 - 560: FEIS Response to Comments
 - 570: Consulted Agency Costs to Assist Lead Agency
- WAC 197-11-600: When to Use Existing Environmental Documents
 - 610: Use of NEPA Documents
 - 620: Supplemental Environmental Impact Statement - Procedures
 - 625: Addenda – Procedures
 - 630: Adoption – Procedures
 - 635: Incorporation by Reference – Procedures
 - 640: Combining documents
- WAC 197-11-650: Purpose of This Part.
 - 655: Implementation.
 - 660: Substantive Authority and Mitigation.
 - 680: Appeals.
- WAC 197-11-700: Definitions
 - 702: Act
 - 704: Action
 - 706: Addendum
 - 708: Adoption
 - 710: Affected Tribe
 - 712: Affecting
 - 714: Agency

- 716: Applicant
 - 718: Built Environment
 - 720: Categorical Exemption
 - 722: Consolidated Appeal
 - 724: Consulted Agency
 - 726: Cost-Benefit Analysis
 - 728: County/City
 - 730: Decision-Maker
 - 732: Department
 - 734: Determination of Non-Significance (DNS)
 - 736: Determination of Significance (DS)
 - 738: EIS
 - 740: Environment
 - 742: Environmental Checklist
 - 744: Environmental Document
 - 746: Environmental Review
 - 750: Expanded Scoping
 - 752: Impacts
 - 754: Incorporation by Reference
 - 756: Lands Covered by Water
 - 758: Lead Agency
 - 760: License
 - 762: Local Agency
 - 764: Major Action
 - 766: Mitigated DNS
 - 768: Mitigation
 - 770: Natural Environment
 - 772: NEPA
 - 774: Non-Project
 - 776: Phased Review
 - 778: Preparation
 - 780: Private Project
 - 782: Probable
 - 784: Proposal
 - 786: Reasonable Alternative
 - 788: Responsible Official
 - 790: SEPA
 - 792: Scope
 - 793: Scoping
 - 794: Significant
 - 796: State Agency
 - 797: Threshold Determination
 - 799: Underlying Governmental Action
 - WAC 197-11-800: Categorical Exemptions
 - 880: Emergencies
 - 890: Petitioning DOE to Change Exemptions
- WAC 197-11-900: Purpose of This Part
 - 902: Agency SEPA Policies
 - 904: Agency SEPA Procedures
 - 916: Application to Ongoing Actions
 - 920: Agencies with Environmental Expertise
 - 922: Lead Agency Rules
 - 924: Determining the Lead Agency
 - 926: Lead Agency for Governmental Proposals
 - 928: Lead Agency for Public and Private Proposals
 - 930: Lead Agency for Private Projects With One Agency With Jurisdiction
 - 932: Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies Is a County/City
 - 934: Lead Agency for Private Projects Requiring Licenses From A Local Agency, Not a City/County, and One or More Than One State Agency
 - 936: Lead Agency for Private Projects Requiring Licenses From More Than One State Agency
 - 938: Lead Agencies for Specific Proposals
 - 940: Transfer of Lead Agency Status to a State Agency
 - 942: Agreements on Lead Agency Status
 - 944: Agreements on Division of Lead Agency Duties
 - 946: DOE Resolution of Lead Agency Disputes
 - 948: Assumption of Lead Agency Status
 - WAC 197-11-960: Environmental Checklist
 - 965: Adoption Notice
 - 970: Determination of Non-Significance
 - 980: Determination of Significance and Scoping Notice (DS)
 - 985: Notice of Assumption of Lead Agency Status
 - 990: Notice of Action
- B. In addition to the definitions contained in WAC 197-11-700 through WAC 197-11-799, when used in these policies and procedures the following terms shall have the following meanings, unless the context indicates otherwise:
- SEPA Rules. "SEPA Rules" means Chapter 197-11 WAC.

155.3 Responsible Official Designation and Responsibilities

A. For all proposals for which NWCAA is the lead agency, the responsible official shall be the Control Officer of NWCAA or the NWCAA employee designated by the Control Officer.

B. For all proposals for which NWCAA is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to "NWCAA," the "lead agency," or "responsible official" by these policies and procedures.

C. NWCAA shall retain all documents required by these policies and procedures and make them available in accordance with applicable law.

155.4 Lead Agency Determination and Responsibilities

A. When the NWCAA receives an application for or initiates a proposal that involves a nonexempt action, the NWCAA shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the NWCAA is aware that another agency is in the process of determining the lead agency. When the NWCAA is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

B. When NWCAA is not the lead agency for a proposal, it shall use and consider, as appropriate, the environmental documents of the lead agency in making decisions on the proposal. NWCAA shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

C. If NWCAA receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination and take such action as authorized by the SEPA Rules.

D. NWCAA may make agreements as to lead agency status or shared lead agency duties for a proposal as described in WAC 197-11-942 and 197-11-944.

E. When making a lead agency determination for a private project, NWCAA shall require sufficient information from the applicant to identify which other agencies (if any) have jurisdiction over the proposal.

155.5. Time Limits and Other Considerations Applicable to SEPA Rules

A. For nonexempt proposals, the DNS, FEIS, and/or such other environmental documentation as the responsible official deems appropriate shall accompany NWCAA's staff recommendation to any appropriate advisory body.

155.6 Use of Exemptions

A. When NWCAA receives an application for a permit or, in the case of governmental proposals, NWCAA initiates

the proposal, NWCAA shall determine whether the permit and/or the proposal is exempt. NWCAA's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of these policies and procedures apply to the proposal. NWCAA shall not require completion of an environmental checklist for an exempt permit or proposal.

B. In determining whether or not a proposal is exempt, NWCAA shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, NWCAA shall determine the lead agency, even if the license application that triggers NWCAA's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, NWCAA may authorize exempt actions prior to compliance with the procedural requirements of these policies and procedures, except that:

1. NWCAA shall not give authorization for:

a) Any nonexempt action;

b) Any action that would have an adverse environmental impact; or

c) Any action that would limit the choice of alternatives.

2. NWCAA may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

3. NWCAA may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

155.7 Environmental Checklist

A. A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in these policies and procedures; notwithstanding the preceding, a checklist is not needed if NWCAA and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the form provided in WAC 197-11-960, except that Section B.2.a. Air, of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known." As used throughout these policies and procedures, environmental checklist means the environmental checklist required by these policies and procedures.

B. NWCAA shall use the environmental checklist to determine the lead agency and, if NWCAA is the lead agency, for determining the responsible official and for making the threshold determination.

C. For private proposals, NWCAA will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, NWCAA shall complete the environmental checklist. NWCAA may require that it, and not the private applicant, will complete all

or part of the environmental checklist for a private proposal, if either of the following occurs:

1. NWCAA has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

155.8 Mitigated DNS

A. As provided in these policies and procedures and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

B. An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. "Early notice" means NWCAA's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. The request must:

1. Follow submission of a complete permit application and environmental checklist for a nonexempt proposal for which NWCAA is lead agency; and
2. Precede NWCAA's actual threshold determination for the proposal.

C. The responsible official should respond to the request for early notice within 30 working days. The response shall:

1. Be written;
2. State whether NWCAA currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading NWCAA to consider a DS; and
3. State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

D. As much as possible, NWCAA should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

E. When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, NWCAA shall base its threshold determination on the changed or clarified proposal and shall make the determination within 15 days of receiving the changed or clarified proposal:

1. If NWCAA indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, NWCAA shall issue and circulate a DNS under WAC 197-11-340(2).
2. If NWCAA indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, NWCAA shall make the threshold determination, issuing a DNS or DS as appropriate.
3. The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.
4. Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to NWCAA staff reports, studies, or other documents.

F. A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.

G. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by NWCAA.

H. If NWCAA's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, NWCAA should evaluate the threshold determination to ensure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

I. NWCAA's early notice under Section 155.8 C above shall not be construed as determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind NWCAA to consider the clarifications or changes in its threshold determination.

155.9 Preparation of EIS—Additional Considerations

A. Preparation of a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before NWCAA issues an EIS, the responsible official shall be satisfied that it complies with these policies and procedures and Chapter 197-11 WAC.

B. The DEIS and FEIS or draft and final SEIS may be prepared by NWCAA, by outside consultants selected by NWCAA, or by such other person as NWCAA may so direct consistent with the SEPA Rules. The NWCAA retains sole authority to select persons or firms to author, co-author, provide special services, or otherwise participate in preparing required environmental documents. If the NWCAA requires an EIS for a proposal and determines that someone other than the NWCAA will prepare the EIS, the responsible official shall notify the applicant after completion of the threshold determination. The responsible official shall also notify the applicant of the NWCAA's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. NWCAA may require an applicant to provide information NWCAA does not possess, including specific investigations or research. However, the applicant may not be required to supply information that is not required under these policies and procedures or that is being requested from another agency. (This does not apply to information NWCAA may request under other authority.) Additional information may be required as set forth in WAC 197-11-100.

155.10 Additional Elements To Be Covered In An EIS

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under these policies and procedures:

- A. Economy
- B. Social policy analysis
- C. Cost-benefit analysis

155.11 Public Notice

A. Whenever the NWCAA issues a DNS under WAC 197-11-340(b) or a DS under WAC 197-11-360(c), the NWCAA shall give public notice as follows:

1. If public notice is required for a nonexempt permit or decision document, the notice shall state whether a DS or DNS has been issued and when comments are due.

2. If no public notice is required for the permit or approval, the NWCAA shall give notice of the DNS or DS by:

a) Written or electronic (email) notice to public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered, and

b) Posting notice on the NWCAA website.

3. Whenever the NWCAA issues a DS under WAC 197-11-360(3), the NWCAA shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

B. Whenever the NWCAA issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

1. Indicating the availability of the DEIS in any public notice required for a nonexempt permit or decision document; and at least one of the following methods:

2. Posting the property, for site-specific proposals;

3. Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

4. Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered;

5. Notifying the news media;

6. Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;

7. Publishing notice in NWCAA newsletters and/or sending notice to NWCAA mailing lists (general lists or specific lists for proposals or subject areas); and/or

8. Posting notice on the NWCAA website.

C. Whenever possible, the NWCAA shall integrate the public notice required under these policies and procedures with existing notice procedures for the NWCAA's nonexempt permit(s) or approval(s) required for the proposal.

D. The NWCAA may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

155.12 Designation of Official to Perform Consulted Agency Responsibilities for NWCAA

A. The responsible official shall be responsible for the preparation of written comments for NWCAA in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

B. The responsible official shall be responsible for the NWCAA's compliance with WAC 197-11-550 whenever the NWCAA is a consulted agency. The responsible official is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from the NWCAA. If the nature of the proposal is such that it involves significant impacts on NWCAA's facilities or property, or will require a

significant amount of time to provide the information requested to the lead agency, NWCAA may request that the lead agency impose fees upon the applicant to cover the costs of NWCAA's SEPA compliance.

155.13 SEPA Substantive Authority

A. The policies and goals set forth in this ordinance are supplementary to those in NWCAA's existing authorities.

B. NWCAA may attach conditions to a permit or approval for a proposal so long as the NWCAA determines that:

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. NWCAA has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsections D through F of this section and cited in the permit or other decision document.

C. The NWCAA may deny a permit or approval for a proposal on the basis of SEPA so long as the NWCAA determines that:

1. The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS prepared pursuant to these policies and procedures; and

2. Reasonable mitigation measures are insufficient to mitigate the identified impact.

3. The denial is based on one or more policies identified in subsections D through F of this section and identified in writing in the decision document.

D. NWCAA designates and adopts by reference the following policies, plans, rules, and regulations as the potential bases for NWCAA's exercise of substantive authority under SEPA, pursuant to this section:

1. NWCAA shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b) Ensure for all people of Washington, safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d) Preserve important historic, cultural, and natural aspects of our national heritage;

e) Maintain, wherever possible, an environment that supports diversity and variety of individual choice;

f) Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. NWCAA recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

E. NWCAA adopts by reference the policies in the following laws and NWCAA resolutions, regulations, and plans:

1. Federal and state Clean Air Acts, and regulations adopted thereunder.

2. The Regulation of the Northwest Clean Air Agency

3. Resolutions adopted by NWCAA Board of Directors.

4. Maintenance plans.

5. Washington State Implementation Plan.

F. NWCAA establishes the following additional policies:

1. Air quality

a) Policy Background

(i) Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life.

(ii) NWCAA is responsible for monitoring air quality in the three-county area, setting standards, and regulating certain development activities with the objective of meeting all applicable air quality standards.

(iii) Federal, state, and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts.

b) Policies

(i) To minimize or prevent adverse air quality impacts.

(ii) To secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the area within our jurisdiction, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

(iii) To eliminate emissions of ozone-depleting chlorofluorocarbons, in the interests of national and global environmental protection; to consider energy efficiency and conservation to reduce greenhouse gases and in addition, to recognize other existing relevant regulatory requirements.

(iv) To reduce woodstove emissions by educating the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves pursuant to standards adopted by State and Federal Agencies; and to encourage replacing uncertified woodstoves with cleaner sources of heat.

(v) To reduce outdoor burning to the greatest extent practical.

(vi) To develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

(vii) To control volatile organic compound (VOC) emissions in order to meet National Ambient Air Quality Standard for ozone.

(viii) If the responsible official makes a written finding that the applicable federal, state, and/or regional regulations did not anticipate or are inadequate to address the particular impact(s) of a project, the responsible official may condition or deny the proposal to mitigate its adverse impacts.

2. Land Use

a) Policy Background

(i) Adverse land use impacts may result when a proposed project or land use policy includes uses that may be consistent with applicable zoning requirements but inconsistent with air quality objectives or regulations.

(ii) Adverse cumulative impacts may result when particular land uses permitted under the zoning code occur in an area to such an extent that they expose sensitive populations to air quality related health and environmental adverse impacts.

b) Policies

(i) To ensure that proposed uses in projects are reasonably compatible with surrounding uses and are consistent with applicable air quality regulations.

(ii) To reduce regional air pollution emissions associated with land uses by promoting clean alternative forms of domestic use fuels, including natural gas, in new single and multifamily housing developments within urban growth areas. In addition, to discourage wood as a source of heat for residential development in low-lying areas susceptible to pollution accumulations.

(iii) To encourage municipal curbside solid and compostable waste collection services at reasonable costs.

3. Transportation

a) Policy Background

(i) Excessive traffic can adversely affect regional air quality.

(ii) Substantial traffic volumes associated with major projects may adversely impact air quality in surrounding areas.

b) Policies

(i) To minimize or prevent adverse traffic impacts that would undermine the air quality of a neighborhood or surrounding areas.

(ii) To promote transportation demand and systems management actions designed to reduce vehicle emissions by reducing the use of single occupancy vehicles, reducing traffic congestion, and increasing public transportation services.

(iii) To encourage integrating land use and transportation planning.

(iv) To emphasize the importance of air quality conformity determinations required for proposed transportation plans, programs, and projects.

(v) To pursue and support alternative and clean fuels projects and programs.

(vi) To promote and support land use plans and projects designed to reduce vehicle emissions by reducing the use of single occupant vehicles, number of vehicle miles traveled, and traffic congestion; and supporting the use of public transportation.

(vii) In determining the necessary air quality impact mitigation, the responsible official will examine the mitigation proposed by the local jurisdiction.

4. Cumulative Effects

a) The analysis of cumulative effects shall include a reasonable assessment of:

(i) The capacity of natural systems, such as air, water, light, and land, to absorb the direct and reasonably anticipated indirect impacts of the proposal, and

(ii) The demand upon facilities, services, and natural systems of present, simultaneous, and known future development in the area of the project or action.

b) An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment:

(i) When considered together with prior, simultaneous, or induced future development; or

(ii) When, taking into account known future development under established zoning or other regulations, it is determined that a project will use more than its share of present and planned facilities, services, and natural systems.

155.14 Administrative Appeals

A. NWCAA hereby eliminates, pursuant to WAC 197-11-680(2), appeals to its legislative body of determinations relating to SEPA.; and

B. NWCAA hereby elects, pursuant to WAC 197-11-680(3), not to provide for administrative appeals of determinations relating to SEPA.

155.15 Notice/Statue of Limitations

A. NWCAA, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

B. The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the NWCAA, the city clerk or county auditor, applicant, or proponent pursuant to RCW 43.21C.080.

155.16 Fees

A. In addition to the fees set forth in Section 324 of the NWCAA Regulation, the following fees apply:

1. Threshold Determination - NWCAA may contract directly with a consultant for preparation of an environmental checklist or other information needed for NWCAA to make a threshold determination, and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs and expenses. In addition, NWCAA may charge a calculated fee from any applicant to cover the costs incurred by NWCAA in preparing an environmental checklist or other information needed for NWCAA to make a threshold determination.

2. Environmental Impact Statement

a) When NWCAA is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of NWCAA, NWCAA may charge and collect a reasonable fee from any applicant to cover costs incurred by NWCAA in preparing the EIS.

b) The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

c) The responsible official may determine that NWCAA will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than NWCAA and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs.

d) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under Section 155.16 A 1, and 2 of these policies and procedures that remain after incurred costs are paid.

e) NWCAA may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of these policies and procedures relating to the applicant's proposal.

f) NWCAA shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

g) NWCAA may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.17 RCW.

155.17 Severability

A. If any provision of these policies and procedures or their application to any person or circumstance is held invalid, the remainder of these policies and procedures, or the application of such invalid provision to other persons or circumstances, shall not be affected.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 10-13-130

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Special Commitment Center)

[Filed June 22, 2010, 2:55 p.m., effective July 23, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these proposed rule changes is to update, clarify and better reflect current practices and changes in chapter 71.09 RCW as they relate to matters associated with the civil commitment process of sexually violent predators.

This filing includes the adoption of six new sections, WAC 388-880-056 How SCC considers a resident for release to an LRA, 388-880-057 How SCC considers a resident's revocation of LRA status, 388-880-058 How SCC considers a recommendation for a resident's unconditional discharge, 388-880-059 Communicating and coordinating resident discharge and conditional release related matters, 388-880-150 Requests for public disclosure, and 388-880-151 Requests for resident medical information.

Citation of Existing Rules Affected by this Order: Amending WAC 388-880-005, 388-880-007, 388-880-010, 388-880-030, 388-880-031, 388-880-033, 388-880-034, 388-880-035, 388-880-036, 388-880-040, 388-880-042, 388-880-043, 388-880-044, 388-880-045, 388-880-050, 388-880-055,

388-880-060, 388-880-070, 388-880-080, 388-880-090, 388-880-100, 388-880-110, 388-880-120, 388-880-130, and 388-880-140.

Statutory Authority for Adoption: Chapter 71.09 RCW.
Other Authority: RCW 72.01.090.

Adopted under notice filed as WSR 10-07-117 on March 22, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- The reflection that there is a fourth type of evaluation that may occur related to a person's commitment or detention under chapter 71.09 RCW which is a "Post Commitment Evaluation," this change is supported in RCW 71.09.090.
- The elimination of some proposed language at the request of defense and prosecution which pertains to specific evaluator duties and responsibilities which was felt to be already adequately described in chapter 71.09 RCW.
- The inclusion of two specific external governmental entities, by title, to receive notification of special commitment center decisions pertaining to sexually violent predator discharges and conditional releases.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 25, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 25, Repealed 0.

Date Adopted: June 15, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-005 Special commitment of sexually violent predators—Legal basis. (1) Chapter 71.09 RCW authorizes the department to develop a sexual predator program (SPP) for a person the court determines to be a sexually violent predator.

(2) The department's SPP shall provide:

(a) Custody, supervision, and evaluation of a person court-detained to the SPP to determine if the person meets the definition of a sexually violent predator under chapter 71.09 RCW; and

(b) Treatment, care, evaluation and control of a person (~~court-committed~~) civilly-committed as a sexually violent predator.

(3) Evaluations and evaluation procedures may be established in coordination with the department, the department of corrections and the end of sentence review committee.

(4) Secure facilities operated by the department for the sexual predator program include the special commitment center (SCC) total confinement facility, (~~the~~) a secure community transition facility, and any community-based (~~facilities~~) facility established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

(5) The secretary or designee may execute such agreements as appropriate and necessary to implement this chapter.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-007 Purpose. These rules carry out the legislative intent of chapter 71.09 RCW, authorizing the department to provide evaluation, care, control, and treatment of persons court-detained or (~~court-committed~~) civilly-committed to the sexual predator program.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Appropriate facility" means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

"Authorized third party" means a person approved in writing by the resident on a DSHS Form 17-063 (Authorization to disclose records), who may request and have access to the resident clinical file under chapter 71.09 RCW or the resident's medical records under chapter 70.02 RCW.

"Care" means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

"Control" means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

"Department" means the department of social and health services.

"Escorted leave" means a leave of absence under the continuous supervision of an escort from a facility housing persons who are court-detained or (~~court-committed~~) civilly-committed under chapter 71.09 RCW (~~under the continuous supervision of an escort~~).

"Evaluation" means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder and/or mental abnormality which renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The four types of evaluations that occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

- The initial evaluation occurs before the person is detained at the SCC, usually occurring while the person is in prison, juvenile rehabilitation administration (JRA), a state

mental hospital, a county jail, or in the community following commission of a recent overt act.

• **Supplemental evaluations**, as required by RCW 71.09.040, are performed for civil commitment trial purposes.

• **Annual review evaluations** occur only after a person has been civilly committed under RCW 71.09.070

• **Post commitment evaluations**, as required by RCW 71.09.090, when the person qualifies for a conditional or unconditional release trial.

"Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

"Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

"Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120-.020(4).

"Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

"Immediate family" includes a resident's parents, step-parents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

"Indigent" (~~means a resident who has not been credited with twenty-five dollars or more total from any source for deposit to the resident's trust fund account during the thirty days preceding the request for an escorted leave and has less than a twenty-five dollar balance in his/her trust fund account on the day the escorted leave is requested, and together with his/her requesting immediate family member affirm in writing that they cannot afford to pay the costs of the escorted leave without undue hardship. A declaration of indigency shall be signed by the resident and the resident's requesting immediate family member on forms provided by the department~~) refers to the financial status of a resident who has maintained a total balance of forty dollars or less, combined, in his/her resident trust and resident store accounts for the past thirty days, after paying court ordered legal financial obligations, child support, or cost-of-care reimbursement, and who swears or affirms under penalty of perjury that he/she has no additional outside resources, including but not limited to pension income, business income, and a spouse's or registered domestic partner's employment or other income.

"Individual treatment plan (ITP)" means an outline the SCC staff persons develop detailing how control, care, and treatment services are provided to a (~~court committed~~) civilly-committed person or to a court-detained person.

"Legal mail" means a resident's written communications, to or from: courts/court staff regarding a legal action currently before a court, a licensed attorney, a public defense agency, a licensed private investigator retained by private counsel representing a resident or appointed by a court, an expert retained by an attorney representing a resident or appointed by a court, and a law enforcement agency.

"Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

"Less restrictive alternative facility" means a secure community transition facility as defined under RCW 71.09.020(1).

"Mental abnormality" means a congenital or acquired condition(~~(-including a personality disorder,))~~ affecting the person's emotional or volitional capacity(~~(-predisposing))~~ which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

"Native format" means the format in which a record subject to public disclosure was originally produced.

"Oversight" means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

"Personality disorder" (~~carries the same definition as found in the DSM-IV-TR and includes psychopathy as assessed using the Hare PCL-R or similar instrument~~) means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in adolescence or early adulthood, is stable over time and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

"Predatory" means acts a person directs toward:

- (1) Strangers;
- (2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or
- (3) Persons of casual acquaintance with whom no substantial personal relationship exists.

"Professionally qualified person" (~~means~~):

(1) **"Psychiatrist"** means a person licensed as a physician in this state, (~~or licensed or certified in another state;~~) in accordance with chapters 18.71 and 18.57 RCW. In addition, the person shall:

- (a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and
- (b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

(2) **"Psychologist"** means a person licensed as a (~~doctor of psychology~~) doctoral level psychologist in this state, (~~or licensed or certified in another state;~~) in accordance with chapter 18.83 RCW(~~;~~

(3) **"Clinical practitioner"** means a sex offender treatment provider certified by the department of health under ~~chapter 18.155 RCW~~).

"Relapse prevention plan (RPP)" details static and dynamic risk factors particular to the resident and contains a written plan of interventions for the purpose of reducing the risk of sexual offending.

"Resident" means a person court-detained or (~~court-committed~~) civily-committed pursuant to chapter 71.09 RCW.

"Resident trust account" means the custodial bank account, held by the state, which represents the resources of the individual resident which is held for the individual resident's use.

"Responsivity" refers to the delivery of treatment in a manner that is consistent with the abilities and learning style of the offender. Responsivity can be conceptualized within the following categories: Physical limitations and sensory impairments, cognitive and learning impairments, mental health symptoms and behavioral disorders, cultural and sub-cultural differences to the extent that these differences may interfere with treatment participation.

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

"Secure community transition facility (SCTF)" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.201 and any community-based facilities established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

"SCTF community transition team (CTT-SCTF)" means a team made up of three key individuals who will be closely involved with day to day decision making related to the transition activities of a resident residing in an SCTF operated by the department of social and health services. These three individuals include the DOC community corrections officer, the sex offender treatment provider employed by the department or who has been contracted by SCC, and the SCTF manager, the clinical director or designee may substitute for the SCTF manager. The CTT-SCTF must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, the department through its SCTF manager may consider budgetary constraints when approving or supporting discretionary activities such as community shopping or recreation, or personal activities such as visiting family and friends.

"Secure facility" means a residential facility for persons court-detained or (~~court-committed~~) civily-committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

"Senior clinical team" means a body of clinical professionals as described below which has been designated by the superintendent to meet regularly to:

- Make decisions about the implementation of the sex offender treatment program.
- Review for the purposes of approval or denial, treatment team recommendations for phase promotions or demotions.
- Make clinical recommendations about residents in community less restrictive alternative (LRA) settings.

- Provide general consultation regarding resident treatment and behavioral management issues.

- Conduct outreach to program areas of SCC including staffing and consultation of residents in sex offender treatment.

- As requested, provide guidance and advice to the clinical director, the superintendent and the treatment teams.

Members of the senior clinical team are expected to take into account all available relevant information, including contextual and situational factors, to make optimal, clinically supportable decisions.

The senior clinical team shall consist of a team of professionally qualified persons employed by the department which are designated by the superintendent. The team may include a SCC contracted community based psychologist with advanced forensic assessment and treatment expertise, and/or a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment.

The senior clinical team shall not include the following persons (unless needed at the request of the clinical director for consultation on a specific issue(s):

- The resident's attorney;
 - The prosecuting agency;
 - Any representative from DOC;
 - Potential sex offender treatment providers (SOTPs) or community providers of any type who may treat the resident;
- or
- Any other party who may serve to financially gain from the resident's release.

"Sexual predator program" means a department-administered and operated program including the special commitment center (SCC) established for:

- (1) A court-detained person's custody and evaluation; or
- (2) Control, care, and treatment of a (~~court-committed~~) civily-committed person defined as a sexually violent predator under chapter 71.09 RCW.

"Sexually violent offense" means an act defined under chapter 9A.28 RCW, RCW 9.94A.030 and 71.09.020.

"Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

"Superintendent" means the person (~~delegated~~) appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC.

"Total confinement facility" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-030 Sexual predator program (~~initial~~) supplemental and post commitment evaluations. (1) When a court orders a person transferred to an appropriate

facility for an evaluation as to whether the person is a sexually violent predator, pursuant to RCW 71.09.040(4), the department shall, ~~((prior to))~~ before the scheduled commitment hearing or trial, provide an evaluation to the court ~~((and))~~. The evaluation must make a recommendation as to whether the person ~~((has been convicted of or charged with a crime of sexual violence and))~~ suffers from a mental abnormality or personality disorder ~~((which))~~ that makes the person more likely than not to engage in predatory acts of sexual violence if not confined in a secure facility.

(2) ~~((The))~~ Supplemental and post commitment evaluations must be conducted in accordance with the criteria set forth in WAC 388-880-033, and must be in the form required by and filed in accordance with WAC 388-880-034 and 388-880-036.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-031 Sexual predator program annual evaluation. (1) Annually or as required by court order, the department shall conduct an evaluation and examine the mental condition of each person ~~((court committed))~~ civily-committed under chapter 71.09 RCW. The evaluation shall be conducted by a professionally qualified person designated by the secretary.

(2) Under RCW 71.09.070, the annual evaluation must include consideration of whether:

(a) The person currently meets the definition of a sexually violent predator; and

(b) Conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community.

(3) The report of the department shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined herein.

(4) The department shall file this periodic report with the court that ~~((detained or))~~ civily-committed the person under chapter 71.09 RCW.

(5) A copy of this report shall be served on the prosecuting agency involved in the initial hearing or commitment and upon the detained or committed person and his or her counsel.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-033 Evaluator—Qualifications. Professionally qualified persons employed by the department or under contract to provide evaluative services must:

(1) Have demonstrated expertise in conducting evaluations of sex offenders, including diagnosis and assessment of re-offense risk ~~((;))~~;

(2) Have demonstrated expertise in providing expert testimony related to sex offenders ~~((of))~~ or other forensic topics ~~((;))~~; and

(3) Provide documentation of such qualification to the department.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-034 Evaluator—~~((Pretrial))~~Supplemental and post commitment evaluation responsibilities. The evaluation done in accordance with WAC 388-880-030(1) in preparation for a trial or hearing must be based on the following:

(1) Examination of the resident, including a forensic interview and a medical examination, if necessary;

(2) Review of the following types of records, tests or reports relating to the person that the evaluator deems necessary, including but not limited to:

(a) All available criminal records, to include arrests and convictions, and records of institutional custody, including city, county, state and federal jails or institutions, with any records and notes of statements made by the person regarding criminal offenses, whether or not the person was charged with or convicted of the offense;

(b) All necessary and relevant court documents;

(c) Sex offender treatment records and, when permitted by law, substance abuse treatment program records, including group notes, autobiographical notes, progress notes, psycho-social reports and other material relating to the person's participation in treatment;

(d) Psychological and psychiatric testing, diagnosis and treatment, and other clinical examinations, including records of custody in a mental health treatment hospital or other facility;

(e) Medical and physiological testing, including plethysmography and polygraphy;

(f) Any end of sentence review report, with information for all prior commitments upon which the report or reports were made;

(g) All other relevant and necessary records, evaluations, reports and other documents from state or local agencies;

~~((Pertinent contacts with collateral informants;~~

~~((+))~~ Other relevant and appropriate tests that are industry standard practices;

~~((+))~~ (i) All evaluations, treatment plans, examinations, forensic measures, charts, files, reports and other information made for or prepared by the SCC which relate to the resident's care, control, observation, and treatment.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-035 Refusal to participate in a supplemental or post commitment pretrial evaluation. If the person refuses to participate in examinations, forensic interviews, psychological testing, physiological testing, or any other interviews necessary to conduct the ~~((initial))~~ supplemental or post commitment evaluation under WAC 388-880-030(1), the evaluator must notify the SCC forensic services manager. The SCC will notify the prosecuting agency for potential court enforcement.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-036 (~~Pretrial~~) Supplemental evaluation—Reporting. (1) The evaluation must be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and must be prepared by a professionally qualified person.

(2) The report of the evaluation must include:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the mental condition of the person;
- (c) A determination of whether the person suffers from a mental abnormality or personality disorder;
- (d) An opinion as to whether the person meets the definition of a sexually violent predator to a reasonable degree of psychological or medical certainty.

(3) The department shall file the evaluation with the court that detained or committed the person under chapter 71.09 RCW.

(4) A copy of the evaluation must be served on the prosecuting agency involved in the initial hearing or commitment, the court of record and upon the court-detained or (~~court-committed~~) civily-committed person and his or her counsel.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-040 (~~Individual~~) Individualized treatment. (1) When the court detains a person or commits a person to the SCC, SCC staff persons designated by the clinical director shall develop an individual treatment plan (ITP) for the person. The resident shall have an opportunity to participate in the treatment planning process.

(2) The ITP shall be based upon, but not limited to, the following information as may be available:

- (a) The person's offense history;
- (b) A psycho-social history;
- (c) The person's most recent evaluation; and
- (d) A statement of high risk factors for potential reoffense, as may be ascertained over time.

(3) The ITP shall include, but not be limited to:

(a) A description of the person's specific treatment needs in:

- (i) Sex offender specific treatment;
- (ii) Substance abuse treatment, as applicable;
- (iii) Supports to promote psychiatric stability, as applicable;
- (iv) Supports for medical conditions and disability, as applicable;
- (v) Social, family, and life skills.

(b) An outline of intermediate and long-range treatment goals, with cognitive and behavioral (~~measures~~) interventions for achieving the goals;

(c) (~~The treatment strategies for achieving the treatment goals~~;

~~(d))~~ A description of SCC staff persons' responsibilities; and

~~((e))~~ (d) A general plan and criteria, keyed to the resident's achievement of long-range treatment goals, for recommending to the court whether the person should be released to a less restrictive alternative.

(4) SCC staff persons shall review the person's ITP every six months.

(a) A new treatment plan will be issued every twelve months or more often as needed.

(b) Existing treatment plans will be reviewed at least once every six months by the treatment team, this review shall be documented in a progress note.

(c) The review or reissue of a resident's treatment plan may occur at anytime based on the resident's behavior or treatment status.

(5) A court-detained person's plan may include access to program services and opportunities available to persons who are (~~court-committed~~) civily-committed, with the exception that the court-detained person may be restricted in employment and other activities, depending on program resources and incentives reserved for persons who are (~~court-committed~~) civily-committed and/or actively involved in treatment.

(6) Nothing in this chapter shall exclude a court-detained person from engaging in the sex offender treatment program and, should the person elect to engage in treatment (~~prior to~~) before the person's commitment trial:

(a) The person shall be accorded privileges and access to program services in a like manner as are accorded to a (~~court-committed~~) civily-committed person in treatment; and

(b) Shall not, solely by reason of the person's voluntary participation in treatment, be judged nor assumed by staff, administrators or professional persons of the SCC or of the department to meet the definition of a sexually violent predator under chapter 71.09 RCW.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-042 Resident records—Purposes. (1) The SCC shall maintain two types of records for each person court-detained for evaluation or (~~court-committed~~) civily-committed for treatment as a sexually violent predator. Such records shall be known as the clinical record and the medical record. Such records shall include:

(a) (~~AH~~) Clinical records—a record of mental health related treatment and behavior related matters such as:

(i) Evaluations, records, reports, and other documents obtained from other agencies relating to the person prior to the person's detention and/or commitment to the SCC(;).

~~((b) AH)~~ (ii) Evaluations, clinical examinations, forensic measures, treatment plans charts, files, reports, responsive documents, grievances and other information made for or prepared by SCC personnel, contracted professionals, or others which relate to the person's care, control, and treatment during the person's detention or commitment to, the SCC.

(iii) Observation reports, memoranda to the resident, progress notes, behavior management reports, violation reports and other correspondence received at SCC or while on a secure community transition facility (SCTF) or other less restrictive alternative (LRA) placement.

(iv) Transitory and nontransitory documents will be retained pursuant to the DSHS approved retention schedule.

~~((2))~~ (b) **Medical records**—a record of medical care received by a resident before placement at SCC and while placed at SCC.

(i) All medical evaluations, records, reports, and other documents obtained from other agencies relating to the person's health status.

(ii) All medical evaluations, records, reports, and other documents created by SCC contracted and state personnel while the resident is placed at SCC.

(iii) Records made by contracted professional persons providing treatment or residential services may be maintained in their professional files, subject to contractual arrangement for SCC ~~((or))~~ and department access to those records.

(iv) The SCC health clinic at the total confinement center on McNeil Island serves as the primary care provider and referring entity for all community based health care and treatment and as such is authorized to receive copies of all medical records pertaining to resident health care paid for by the department.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-880-043 Resident ~~((clinical))~~ records—Location and custody. (1) ~~((Records pertaining to residents of the SCC shall be kept in a location accessible only to assigned treatment providers and authorized staff persons.~~

~~(2) During the period of a person's residence at the SCC secure facility or LRA facility)) Based on the resident's physical location of residence, his or her records shall be securely maintained in one of the following four types of locations:~~

~~(a) In a designated records storage area within the SCC total confinement facility (TCF);~~

~~(b) In a secure filing system at an SCC-operated secure community transition facility (SCTF);~~

~~(c) In a secure filing system at a contracted facility such as a group home or nursing home; or~~

~~(d) In a secure filing system of the office of a licensed, contracted provider such as a community based sex offender treatment provider or psychiatrist.~~

(2) The person's current medical and clinical treatment records shall be maintained in the facility wherein the resident is housed and made directly available to medical and emergency providers and authorized staff persons.

~~((b) The person's medical and psychiatric records shall be maintained in the facility wherein the resident is housed and directly available to medical and emergency treatment providers and authorized staff persons.))~~

(3) The designated records storage area within the SCC TCF serves as a centralized repository for resident records regardless of the resident's status or location.

(4) During the period of a person's residence in a ~~((less restrictive alternative facility))~~ SCTF operated by the department ~~((, the person's treatment records shall be maintained in a safe location accessible only by authorized staff))~~:

(a) A copy of all resident records created at the SCTF will be forwarded to the SCC TCF records center, the original record will remain at the SCTF.

(b) The person's original records pertaining to their treatment, behavior and care while they resided at the SCC TCF will remain in the designated records storage area within the SCC TCF and will not be transferred to the SCTF.

(5) Regardless of location, only assigned treatment providers and authorized staff persons shall have access to resident records.

~~((4))~~ (6) During a period of a ~~((resident's less restrictive alternative))~~ person's less restrictive alternative (LRA) placement in a private home or in a facility operated by a contracting agency:

(a) Original behavioral and treatment records and evaluations shall be maintained by the contracted professional ~~((person))~~ providing treatment and copies thereof shall be ~~((made available))~~ sent to the SCC or the department by contract requirement; and

(b) Copies of documents held by the SCC may be made available as necessary to the contracting agency, the contracted treatment provider, and the assigned community corrections officer.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-044 Resident records—Access. (1) ~~((Upon request and proper showing, the department shall provide to the following persons access to a court-detained or court-committed person for an evaluation and access to all records and reports related to the person's detention, commitment, control, care, and treatment:~~

~~(a) The person's attorney;~~

~~(b) The person's professionally qualified person, if any;~~

~~(c) The prosecuting attorney, or the attorney general, if requested by the prosecuting attorney;~~

~~(d) The professionally qualified person; and~~

~~(e) Any entity, person or agency having lawful access to such records.~~

(2) ~~Upon documented request by a resident, the SCC shall provide the resident supervised access to all records and reports, or to redacted copies thereof, related to the person's commitment, control, care, and treatment. The SCC may reasonably limit conditions, frequency and duration of the person's access to the person's records and reports))~~ **Resident records disclosure requirements and conditions.**

(a) Per RCW 71.09.080, SCC must keep resident records detailing all medical, expert, and professional care and treatment received by an SCC resident, and must keep copies of all reports of periodic examinations made pursuant to the resident's detainment and/or civil commitment.

(b) Per RCW 71.09.080(2), access to resident medical and clinical records by persons other than department employees or parties representing the department is limited to the following:

(i) Upon request only to:

(A) The resident;

(B) The resident's attorney;

(C) The resident's legal guardian, guardian ad litem or other personal representative properly authorized, in writing, by the resident;

(D) The prosecuting attorney/attorney general;

(E) The court;

(F) A protection and advocacy agency when authorized by law; or

(G) An expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(ii) Upon documented request by a resident, the SCC shall provide the resident supervised access to all clinical and medical records and reports, or to redacted copies thereof, related to the resident's commitment, control, care and treatment. SCC may reasonably limit conditions, frequency and duration of the resident's access to his or her records and reports.

(A) The resident must review the aforementioned documents in person, at the facility where he or she resides.

(B) The resident may purchase copies of these documents through the SCC public records disclosure process described in WAC 388-880-150.

(iii) All other parties requesting resident records must have the signed authorization of the resident or be the resident's personal representative, or obtain a court order. For these records, SCC will charge copying fees per WAC 388-880-150 and 388-880-151.

(2) Inventories of resident personal property.

(a) SCC is required by RCW 71.09.080(3) to make available for inspection, by a "responsible relative" of the resident, a copy of the resident's personal property inventory which has been signed by the staff members who conducted the inventory; unless the resident has specifically imposed a limitation on the release of this information in advance of the request.

(b) SCC will not disclose the contents of the inventory to other persons without authorization of the resident or order of the court.

(c) A copy of the resident's current inventory shall be provided to him or her at no cost whenever a new inventory has been completed.

(3) A policy on access to resident records shall be maintained and published to residents of the SCC.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-045 Resident records—Retention. (1) The SCC shall create schedules and requirements, consistent with department policy, for the retention, storage, and disposal of records, documents, evaluations, reports, and other material related to SCC residents, ~~((to include))~~ under the following conditions:

(a) While a person is currently court-detained or ~~((court-committed))~~ civily-committed to the SCC;

(b) Following a court ruling that a person does not meet the definition of a sexually violent predator within chapter 71.09 RCW and upon the person's release from the custody of the department;

(c) Following a resident's unconditional discharge from commitment;

(d) Following a resident's death.

(2) All original records specified herein and held by the SCC shall be retained in the SCC total confinement facility for a period of five years, ~~((and in the records center of the~~

~~Secretary of State))~~ after which the records will be transferred to a designated location for a period consistent with department administrative policy, after a resident's:

(a) Release following a court ruling that the person does not meet the definition of a sexually violent predator within chapter 71.09 RCW;

(b) Unconditional discharge from commitment; or

(c) Death.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-050 Rights of a person court-detained or ~~((court-committed))~~ civily-committed to the special commitment center. (1) During a person's period of detention or commitment, the department shall:

(a) Apprise the person of the person's right to an attorney and to retain ~~((a))~~ one professionally qualified person to perform an evaluation on the person's behalf;

(b) Provide access to the person and the person's records in accordance with RCW 71.09.080 and WAC 388-880-044.

(2) A person the court detains for evaluation or commits to the SCC shall:

(a) Receive adequate care and individualized treatment;

(b) Be permitted to wear the person's own clothing except as may be required to wear state issued clothing during an escorted leave from the secure facility, or when the wearing of state issued clothing is required within the facility for health or safety of self or others, or when the wearing of a particular type of clothing or a particular colored clothing or accoutrement is prohibited for the general safety and security within the facility where the person is housed; and to keep and use the person's own possessions, except when deprivation of possessions is necessary for the person's protection ~~((and)),~~ health or safety, the protection ~~((and)),~~ health or safety of others, or to limit the quantity of the person's personal possessions to within facility limitation, or for the protection of property within the SCC or SCTF;

(c) Be permitted to accumulate and spend a reasonable amount of money in the person's SCC resident trust account;

(d) Have access to reasonable personal storage space within SCC limitations, which shall be outlined in an internal policy that is accessible to the person;

(e) Be permitted to have approved visitors within reasonable limitations;

(f) Have reasonable access to a telephone to make and receive confidential calls within SCC limitations; and

(g) Have reasonable access to letter writing material and to:

(i) Receive and send correspondence through the mail within SCC limitations and according to established safeguards against the receipt of contraband material ~~((to include, in the resident's presence, opening and inspecting packages and fanning written material));~~ and

(ii) Send written communication regarding the fact of the person's detention or commitment.

(3) A person the court commits to the SCC shall have the following procedural rights to:

(a) Have reasonable access to an attorney and be informed of the name and address of the person's designated attorney;

(b) Petition the court for release from the SCC; and

(c) Receive annual written notice of the person's right to petition the committing court for release. The department's written notice and waiver shall:

(i) Include the option to voluntarily waive the right to petition the committing court for release; and

(ii) Annually be forwarded to the committing court by the department.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-055 (~~Recommendation for release to a less restrictive alternative (LRA))~~ **How SCC processes recommendations related to releases, discharges and revocations.** ((If the court or jury determines that the person is a sexually violent predator, upon an evaluation which supports a person's unconditional discharge or release to a less restrictive alternative, the secretary or secretary's designee shall authorize the person to petition the court in accordance with RCW 71.09.090)) The purpose of WAC 388-880-056 through 388-880-059 is:

(1) To explain how SCC internally considers residents for a release to an LRA;

(2) To explain how SCC internally considers a resident's revocation of LRA status;

(3) To explain how SCC internally considers a recommendation for a resident's unconditional discharge;

(4) To explain how SCC communicates and coordinates resident discharge and conditional release related matters.

NEW SECTION

WAC 388-880-056 **How SCC considers a resident for release to an LRA.** When the department, based on a forensic evaluation or progress in sex offender treatment, considers a SCC resident for a less restrictive alternative placement under RCW 71.09.090(1), or considers a resident currently residing in a secure community transition facility (SCTF) on a conditional release for further transition into a nonSCTF less restrictive alternative, the clinical director shall schedule the senior clinical team to review the matter and formulate a clinical recommendation to the superintendent.

The meeting will provide an adequate staffing of the case, to include the resident's:

(1) Participation and progress in sex offender treatment.

(2) Behavior.

(3) Latest annual forensic evaluation.

(4) Relapse prevention plan.

(5) Any other relevant information such as: medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessments results, etc.

(6) When the resident is being considered for a LRA placement in a nonstate sponsored setting such as a private home or apartment option, the team shall also consider the resident's finances such as savings, benefits, eligibility for

social services, housing options, employment or employability, absence or availability of community supports, family supports, etc.

NEW SECTION

WAC 388-880-057 **How SCC considers a resident's revocation of LRA status.** (1) When a resident on a conditional release in any less restrictive alternative setting is alleged to have committed a violation of his or her court-ordered conditions and is pending a hearing on revocation or modification, the superintendent may direct a senior clinical team to review the matter and make a clinical recommendation.

(a) In developing its clinical recommendation, the senior clinical team will review:

(i) The resident's transition activity;

(ii) The factors surrounding the situation(s)/behavior(s) causing the revocation review;

(iii) The ability of SCC and DOC to adequately assure for the public's safety and the resident's compliance with less restrictive alternative conditions if the resident remains in the community or is allowed community access;

(iv) The ability of SCC and department of corrections (DOC) to adequately manage the resident in the community given existing resources; and

(v) Any other relevant information (e.g., medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessment results, etc.).

(b) The senior clinical team will provide the superintendent with a clinical recommendation regarding the revocation and any modification to the conditions if so recommended.

(2) The superintendent or designee will notify the prosecuting attorney, the resident's community corrections officer (CCO), sex offender treatment provider (SOTP) and local law enforcement of SCC's position pertaining to the revocation or continuation of the resident's less restrictive alternative status.

(3) When a resident is residing in the SCC total confinement facility while he or she is pending a revocation decision on their LRA status:

(a) An SCC associate superintendent will be responsible to determine the resident's living unit placement, behavior level assignment, persons who may be on the resident's personal visiting list, recreation activities and privileges, and personal property privileges.

(b) The resident's community transition team, in consultation with the SCC clinical department, shall determine the resident's treatment activities.

NEW SECTION

WAC 388-880-058 **How SCC considers a recommendation for a resident's unconditional discharge.** (1) When the department, based on forensic evaluation that opines that a resident no longer meets the definition of a sexually violent predator, or based on progress in sex offender treatment and a successful transition process into the community, considers a resident for unconditional discharge, the clinical director

shall convene a meeting of the senior clinical team within thirty days and provide a clinical recommendation to the superintendent.

(a) In formulating the clinical recommendation, the senior clinical team shall review any and all relevant information about this person, such as: behavior, medication compliance, manifestation and management of dynamic risk factors, evidence or absence of paraphilia and personality disorder, responsivity, psychological testing, polygraph results, PPG assessment results, etc.

(b) The senior clinical team will provide the superintendent with a written statement identifying the clinical concerns of the team, if any.

(2) The superintendent or designee, after review of the forensic opinion and the clinical recommendation, will make a determination regarding the recommendation for the resident's unconditional discharge and will notify the relevant parties of the SCC position on the resident's unconditional discharge.

NEW SECTION

WAC 388-880-059 Communicating and coordinating resident discharge and conditional release related matters. (1) Communication with the department.

(a) The SCC clinical director, or designee serves as the principal party at SCC responsible to communicate discharge and release matters internally within SCC.

(b) When a resident's request for advancement to community transition status is approved by the superintendent, the superintendent shall inform the DSHS secretary.

(c) If the SCC superintendent endorses the resident's request to petition the court for conditional release to either a secure community transition facility or other type of less restrictive alternative, the superintendent (as the secretary's designee) shall formally authorize the resident, in writing, to petition the court for a less restrictive alternative hearing in accordance with RCW 71.09.090.

(d) Once the superintendent has made a decision to support a resident's request to petition the court, the superintendent shall notify the clinical director of that decision. At that point the clinical director or designee shall serve as the principal party at SCC to communicate discharge and release matters to the resident, to external stakeholders which among others shall include the state attorney general's criminal justice division's sexually violent predator unit and the King County prosecuting attorney's sexually violent predator unit, and to organize the necessary activities in support of that discharge or conditional release.

(2) Responsibility to communicate court related activities.

(a) The resident's attorney is responsible to coordinate the court hearing.

(b) When the court orders a resident to be conditionally released to a less restrictive alternative, the SCC clinical director or designee shall:

(i) Manage the release process, including community notification to the appropriate law enforcement agency at least thirty days prior to the resident's release to the court-approved LRA.

(ii) Keep internal SCC stakeholders apprised of the status of the case.

(iii) Coordinate the transition with the:

(A) DOC end of sentence review committee program manager;

(B) Assigned DOC community corrections officer, if applicable;

(C) Court-approved sex offender treatment provider, if applicable;

(D) Appropriate SCTF manager, if applicable; and

(E) Other court-approved providers or persons for the resident's court-approved living setting.

(iv) The coordination will address civil commitment issues, community safety and the court-ordered conditions of release.

(3) When the secretary objects to a pending release.

When the DSHS secretary objects to a pending release under RCW 71.09.090, before the scheduled less restrictive alternative court hearing or following the hearing such as in the case of newly discovered information, that objection shall be presented to the court in writing and shall be signed by the secretary or designee.

(4) When a less restrictive alternative placement is approved by the court.

When a resident of SCC is approved to transfer to a less restrictive alternative placement or a resident of a secure community transition facility is approved to transfer to an alternative less restrictive alternative placement, that placement will occur no sooner than thirty days following the day the court approves that placement. This thirty day period will allow SCC to fulfill its law enforcement notification obligations under RCW 9A.44.130 and the affected county sheriff to fulfill their public notification obligations under RCW 4.24.550.

(5) When a resident is unconditionally released by the court.

When a resident of the SCC total confinement facility or a secure community transition facility is determined by the court to no longer meet the criteria of a sexually violent predator under chapter 71.09 RCW, and the court orders that the resident shall be unconditionally released, SCC shall release the person within twenty-four hours of the court's decision.

(6) When a resident or attorney proposes an alternative less restrictive alternative placement.

(a) When a resident or attorney proposes an alternative less restrictive alternative placement other than what SCC recommends or supports, the resident or the attorney shall bear the responsibility to locate and identify that alternative.

(b) The department shall not reimburse attorneys or other parties for assisting residents in finding an alternative less restrictive alternative placement unless otherwise ordered by the commitment court for good cause.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-060 Sexual predator program reimbursement. (1) The department shall obtain reimbursement under RCW 43.20B.330, 43.20B.335, 43.20B.340, 43.20B.-345, 43.20B.350, 43.20B.355, 43.20B.360, and 43.20B.370

for the cost of care of a person court-committed to a SPP to the extent of the person's ability to pay.

(2) The department shall calculate ability to pay and assess liability under ~~((chapter 275-16))~~ WAC 388-855-0045 in order to permit the department to initiate cost of care collections.

(3) SCC shall fulfill its obligations under chapter 43.20 RCW by submitting relevant resident information on each resident who has been civilly committed under chapter 71.09 RCW to the DSHS office of financial recovery to determine the resident's ability to contribute to his or her cost of care.

(4) DSHS shall not reimburse attorneys for assisting residents in administrative hearings related to cost of care recovery actions by the department.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

WAC 388-880-070 Resident escorted leave—Purpose. The purpose of WAC ~~((275-155-070))~~ 388-880-070 through ~~((275-155-140))~~ 388-880-140 is:

- (1) To set forth the conditions under which residents will be granted leaves of absence;
- (2) To provide for safeguards to prevent escape, the obtaining of contraband, and the commission of new crimes, while on leaves of absence; and
- (3) To outline the process for the reimbursement of the state by the resident and the resident's family for the costs of the leave of absence.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

WAC 388-880-080 Reasons why escorted leave is allowed. An escorted leave of absence may be granted by the superintendent, or designee, subject to the approval of the secretary, to residents to:

- (1) Go to the bedside of a member of the resident's immediate family as defined in WAC ~~((275-155-040))~~ 388-855-0015, who is seriously ill;
- (2) Attend the funeral of a member of the resident's immediate family as defined in WAC ~~((275-155-040))~~ 388-855-0015; and
- (3) Receive necessary medical or dental care which is not available in the institution.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

WAC 388-880-090 Conditions of a resident's escorted leave. (1) An escorted leave shall be authorized only for trips within the boundaries of the state of Washington.

(2) The duration of an escorted leave to the bedside of a seriously ill member of the resident's immediate family or attendance at a funeral shall not exceed forty-eight hours

unless otherwise approved by the superintendent, or designee.

(3) Other than when housed in a city or county jail or state institution the resident shall be in the visual or auditory contact of an approved escort at all times.

(4) The resident shall be housed in a city or county jail or state institution at all times when not in transit or actually engaged in the activity for which the escorted leave was granted.

(5) Unless indigent, the resident and immediate family member shall, in writing, make arrangements to reimburse the state for the cost of the leave prior to the date of the leave.

(6) The superintendent, or designee, shall notify county and city law enforcement agencies with jurisdiction in the area of the resident's destination before allowing any escorted leave of absence.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

WAC 388-880-100 Application requests and approval for resident escorted leave. The superintendent, or designee, shall establish a policy and procedures governing the method of handling the requests by individual residents. The superintendent, or designee, shall evaluate each leave request and, in writing, approve or deny the request within forty-eight hours of receiving the request based on:

- (1) The nature and length of the escorted leave;
- (2) The community risk associated with granting the request based on the resident's history of security or escape risk;
- (3) The resident's overall history of stability, cooperative or disruptive behavior, and violence or other acting out behavior;
- (4) The resident's degree of trustworthiness as demonstrated by his/her performance in unit assignments, security level, and general cooperativeness with facility staff;
- (5) The resident's family's level of involvement and commitment to the escorted leave planning process;
- (6) The rehabilitative or treatment benefits which could be gained by the resident; and
- (7) Any other information as may be deemed relevant.

The resident's, and family's, ability to reimburse the state for the cost of the escorted leave shall not be a determining factor in approving or denying a request.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 02-02-054, filed 12/27/01, effective 1/27/02)

WAC 388-880-110 ((Escort procedures)) Procedures for resident escorted leave. (1) Only persons approved by the superintendent, or designee, will be authorized to serve as escorts. All escorts from the total confinement facility must be employees of either the department of social and health services or the department of corrections and must have attained permanent employee status. At least one of the escorts must be experienced in the escort procedures.

(2) The superintendent, or designee, shall determine the use and type of restraints necessary for each escorted leave on an individual basis.

(3) Escorted leaves supervised by department of corrections staff shall require the approval of the SCC superintendent, or designee, and be done in accordance with applicable department of corrections policy and procedures. The department of corrections shall be reimbursed, according to rates and procedures established between the department of social and health services and the department of corrections. Correctional officers may wear civilian clothing when escorting a resident for a bedside visit or a funeral.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

WAC 388-880-120 Expenses associated with escorted leave. (1) Staff assigned escort duties shall be authorized per diem reimbursement for meals, lodging, and transportation at the rate established by the state travel policy.

(2) Staff assigned escort duties, in a travel status, shall receive appropriate compensation at regular salary or overtime for all hours spent in actual escort of the resident, but not including hours spent sleeping or not engaged in direct supervision of the resident. The salary shall be paid at the appropriate straight time and overtime rates as provided in the (~~merit system~~) civil service rules.

~~((3) Cost of housing the resident in a city or county jail shall be charged to the resident in accordance with WAC 275-155-130.))~~

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

WAC 388-880-130 Escorted leave expenses—Paid by resident. (1) The expenses of the escorted leave as enumerated in WAC (~~(275-155-120)~~) 388-880-070 through 120 shall be reimbursed by the resident or his/her immediate family member unless the superintendent, or designee, has authorized payment at state expense in accordance with WAC (~~(275-155-140)~~) 388-880-140.

(2) Payments by the resident, or the resident's immediate family member, shall be made to the facility's business office and applied to the appropriate fund as defined by law, applicable provisions of the Washington Administrative Code, or department policy.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-054 [99-21-001], filed 10/6/99, effective 10/6/99)

WAC 388-880-140 Escorted leave expenses—Paid by department. The expenses of the escorted leave shall be absorbed by the state if:

(1) The resident and his/her immediate family are indigent as defined in WAC (~~(275-155-010)~~) 388-855-0045; or

(2) The expenses were incurred to secure necessary medical or dental care.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

NEW SECTION

WAC 388-880-150 Requests for public disclosure. (1) Public disclosure requests for SCC records.

SCC records may be requested under the public records act providing that the request complies with requirements and limitations of chapter 42.56 RCW and the fulfillment of that request will not violate any of the disclosure exemptions and limitations found in state or federal law.

(a) A public records disclosure request should include:

(i) Requester's name;

(ii) Requester's address;

(iii) A clear statement on the first page of the request indicating that the request is asking for public records; and

(iv) Identification and specification of the records(s) wanted.

(b) The address and fax number for requesting SCC records under public disclosure is:

DSHS - Special Commitment Center
Attn: Public Disclosure Coordinator
PO Box 88450
Steilacoom, Washington 98388-0646

Or the request can be faxed to (253) 617-6318.

(2) **Public viewing of SCC records.**

Requesters may review requested SCC records instead of, or before purchasing, by:

(a) Requesting a viewing appointment through SCC public disclosure staff after receiving notice that the records are assembled.

(b) Attending the scheduled viewing appointment at the SCC administrative offices located at 1715 Lafayette Street in Steilacoom, Washington.

(c) Viewing hours are between 9:00 a.m. and 4:00 p.m., Monday through Friday, except on legal holidays.

(d) The requester may purchase copies of public records before or at the time of public viewing.

(e) The requester may designate another person to review the requested records at a viewing appointment as arranged through SCC public disclosure staff.

(f) If the requester or such other person as he designates does not appear to view an installment of records, the SCC no longer needs to complete processing of the request and the request is considered abandoned and complete.

(3) **Cost for making public disclosure copies of SCC records.**

Under the public disclosure act, SCC charges a fee for making copies associated with a public disclosure request.

(a) **Paper copy cost.** The cost charged by SCC for copies of records under public records disclosure is fifteen cents per single-sided page or thirty cents for double-sided pages in the native format, plus the actual cost of the mailing container and postage.

(b) **Electronic copy cost.** PDF or TIFF type copies of SCC records may be provided when appropriate at the cost of fifty dollars per hour or thirteen cents per page, in the native format, plus cost of media, mailing container and postage. When charged an hourly rate, it shall be prorated based on the

actual time used to scan the documents and transfer them to electronic media. Due to privacy and security concerns when exemptions apply to any part of the information provided, copies of electronic records must normally be provided in PDF or similar format.

(c) **Other records.** SCC charges fifty dollars per hour, prorated based on the actual time used, to make copies of videotapes and compact disks such as CDR and DVD formatted items, plus the cost of media, mailing container and postage.

(d) No party will be reimbursed for public record request costs made under chapter 388-885 WAC.

NEW SECTION

WAC 388-880-151 Requests for resident medical information. (1) Requests for SCC resident medical information.

SCC medical records may be requested under chapter 70.02 RCW "health care records access and disclosure" by authorized third parties and will be charged at the rate provided below.

Note - requests for copies of medical records submitted by SCC residents on themselves, as covered under RCW 71.09.080, will be provided at the public disclosure rates provided in WAC 388-880-150.

(a) A health care records disclosure request from an authorized third party shall include:

(i) Requester's name;

(ii) Requester's address;

(iii) A copy of the written and signed authorization from the resident on a DSHS Form 17-063 (Authorization to Disclose Records);

(iv) A clear statement on the first page of the request indicating that the requester is asking for a specific resident's medical information; and

(v) Identification and specification of the medical records(s) wanted.

(b) Requests for resident medical records under chapter 70.02 RCW shall be made to the following address or fax number:

DSHS - Special Commitment Center
Attn: Public Disclosure Coordinator
PO Box 88450
Steilacoom, Washington 98388-0646

Or the request can be faxed to (253) 617-6318.

(2) **Cost for making copies of resident medical information.**

Under RCW 70.02.010(15) SCC charges a fee for making copies associated with a medical information request.

(a) Cost - regardless of format:

(i) No more than one dollar and two cents per page for the first thirty pages.

(ii) No more than seventy-eight cents per page for all additional pages.

(iii) A twenty-three dollar clerical fee may be charged for searching and handling records.

(iv) Cost of mailing container and postage.

WSR 10-13-167

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed June 23, 2010, 8:57 a.m., effective July 24, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is eliminating coverage for electrical neural stimulation devices and supplies (including battery chargers and all other supplies for client-owned devices) for in-home use.

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1150, 388-543-1300, 388-543-1600, 388-543-2800, 388-545-300, and 388-545-500.

Statutory Authority for Adoption: Section 1109, chapter 564, Laws of 2009 (ESHB 1244), WAC 388-501-0055, RCW 74.08.090.

Adopted under notice filed as WSR 10-08-086 on April 6, 2010.

A final cost-benefit analysis is available by contacting Erin Mayo, DSHS-HRSA, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1729, fax (360) 586-9727, e-mail Erin.Mayo@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: June 23, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

WAC 388-543-1150 Limits and limitation extensions.

The department covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). The department evaluates such requests for LE

under the provisions of WAC 388-501-0169. Procedures for LE are found in department billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

- (1) Antiseptics and germicides:
 - (a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;
 - (b) Alcohol wipes (box of two hundred) - one box per month;
 - (c) Betadine or pHisoHex solution - one pint per month;
 - (d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month; or
 - (e) Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.
- (2) Blood monitoring/testing supplies:
 - (a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period;
 - (b) Spring-powered device for lancet - one in a six-month period.
 - (c) Test strips and lancets for an insulin dependent diabetic - one hundred of each, per month; and
 - (d) Test strips and lancets for a noninsulin dependent diabetic - one hundred of each, per three-month period.
- (3) Braces, belts and supportive devices:
 - (a) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;
 - (b) Ankle, elbow, or wrist brace - two per twelve-month period;
 - (c) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;
 - (d) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.
- (4) Decubitus care products:
 - (a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;
 - (b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;
 - (c) Heel or elbow protectors - four per twelve-month period.
- (5) Ostomy supplies:
 - (a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.
 - (b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.
 - (c) Adhesive remover or solvent - three ounces per month.
 - (d) Adhesive remover wipes, fifty per box - one box per month.
 - (e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.
 - (f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.
 - (g) Continent plug for continent stoma - thirty per month.

- (h) Continent device for continent stoma - one per month.
- (i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.
- (j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.
- (k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.
- (l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.
- (m) Irrigation bag - two every six months.
- (n) Irrigation cone and catheter, including brush - two every six months.
- (o) Irrigation supply, sleeve - one per month.
- (p) Ostomy belt (adjustable) for appliance - two every six months.
- (q) Ostomy convex insert - ten per month.
- (r) Ostomy ring - ten per month.
- (s) Stoma cap - thirty per month.
- (t) Ostomy faceplate - ten per month. The department does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):
 - (i) Drainable pouches with plastic face plate attached; or
 - (ii) Drainable pouches with rubber face plate.
- (6) ~~((Supplies associated with client-owned transectaneous electrical nerve stimulators (TENS):~~
 - ~~(a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)~~
 - ~~(b) For a two-lead TENS unit - one kit per month.~~
 - ~~(c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).~~
 - ~~(d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).~~
 - ~~(7)) Urological supplies - diapers and related supplies:~~
 - (a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:
 - (i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;
 - (ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;
 - (iii) The padding must provide uniform protection;
 - (iv) The product must be hypoallergenic;
 - (v) The product must meet the flammability requirements of both federal law and industry standards; and
 - (vi) All products are covered for client personal use only.

(b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:

- (i) Be hourglass shaped with formed leg contours;
- (ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;
- (iii) Have leg gathers that consist of at least three strands of elasticized materials;
- (iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;
- (v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;
- (vi) Have a topsheet that resists moisture returning to the skin;
- (vii) Have an inner lining that is made of soft, absorbent material; and
- (viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

- (i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;
- (ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;
- (iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;
- (iv) Have leg gathers that consist of at least three strands of elasticized materials;
- (v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;
- (vi) Have an inner lining made of soft, absorbent material; and
- (vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

- (i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;
- (ii) Be manufactured with a waterproof backing material;
- (iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;
- (iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;
- (v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and
- (vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

- (i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;
- (ii) Have a waterproof backing designed to protect clothing and linens;
- (iii) Have an inner liner that resists moisture returning to the skin;
- (iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;
- (v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and
- (vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. The department approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see department billing instructions for how to specify this when billing). The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

- (i) Disposable diapers;
 - (ii) Disposable pull-up pants and briefs;
 - (iii) Disposable liners, shields, guards, pads, and undergarments;
 - (iv) Rented reusable diapers (e.g., from a diaper service); and
 - (v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.
- (g) Purchased disposable diapers (any size) are limited to:
- (i) Two hundred per month for a child three to eighteen years of age; and
 - (ii) Two hundred per month for an adult nineteen years of age and older.
- (h) Reusable cloth diapers (any size) are limited to:
- (i) Purchased - thirty-six per year; and
 - (ii) Rented - two hundred per month.
- (i) Disposable briefs and pull-up pants (any size) are limited to:
- (i) Two hundred per month for a child age three to eighteen years of age; and
 - (ii) One hundred fifty per month for an adult nineteen years of age and older.
- (j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:
- (i) Purchased - four per year.
 - (ii) Rented - one hundred fifty per month.
- (k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred per month.
- (l) Underpads for beds are limited to:
- (i) Disposable (any size) - one hundred eighty per month.

- (ii) Purchased, reusable (large) - forty-two per year.
- (iii) Rented, reusable (large) - ninety per month.
- ~~((8))~~ (7) Urological supplies - urinary retention:
 - (a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:
 - (i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adapter; and/or
 - (ii) With an insertion tray with drainage bag, and with or without catheter.
 - (b) Bedside drainage bottle, with or without tubing - two per six month period.
 - (c) Extension drainage tubing (any type, any length), with connector/adapter, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.
 - (d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.
 - (e) Indwelling catheters (any type) - three per month.
 - (f) Insertion trays:
 - (i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.
 - (ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.
 - (g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.
 - (h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.
 - (i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.
 - (j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).
 - (k) Leg straps (latex foam and fabric). Allowed as replacement only.
 - (l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.
 - (m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.
 - (n) Urinary suspensory without leg bag, with or without tube - two per month.
 - (o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.
 - (p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.
- ~~((9))~~ (8) Miscellaneous supplies:
 - (a) Bilirubin light therapy supplies - five days' supply. The department reimburses only when these are provided with a prior authorized bilirubin light.
 - (b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.
 - (c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.
 - (d) Eye patch (adhesive wound cover) - one box of twenty.
 - (e) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.
 - (f) Nonsterile gloves - one hundred per box, two box per month.
 - (g) Sterile gloves - thirty pair, per month.
 - ~~((10))~~ (9) Miscellaneous DME:
 - (a) Bilirubin light or light pad - five days rental per twelve-month period.
 - (b) Blood glucose monitor (specialized or home) - one in a three-year period.
 - (c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.
 - (d) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.
 - (e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.
 - (f) Pneumatic compressor - one in a five-year period.
 - (g) Positioning car seat - one in a five-year period.
 - ~~((11))~~ (10) Prosthetics and orthotics:
 - (a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.
 - (b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.
 - (c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.
 - (d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.
 - (e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.
 - (f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.
 - ~~((12))~~ (11) Positioning devices:
 - (a) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.
 - (b) Prone stander (child, youth, infant or adult size) - one in a five-year period.
 - (c) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.
 - ~~((13))~~ (12) Beds, mattresses, and related equipment:
 - (a) Pressure pad, alternating with pump - one in a five-year period.
 - (b) Dry pressure mattress - one in a five-year period.

- (c) Gel or gel-like pressure pad for mattress - one in a five-year period.
- (d) Gel pressure mattress - one in a five-year period.
- (e) Water pressure pad for mattress - one in a five-year period.
- (f) Dry pressure pad for mattress - one in a five-year period.
- (g) Mattress, inner spring - one in a five-year period.
- (h) Mattress, foam rubber - one in a five-year period.
- (i) Hospital bed, semi-electric - one in a ten-year period.
- (j) Bedside rails - one in a ten-year period.
- ~~((14))~~ (13) Other patient room equipment:
 - (a) Patient lift, hydraulic, with seat or sling - one in a five-year period.
 - (b) Traction equipment - one in a five year period.
 - (c) Trapeze bars - one in a five-year period.
 - (d) Fracture frames - one in a five-year period.
 - (e) Transfer board or devices - one in a five-year period.
- ~~((15))~~ (14) Noninvasive bone growth(~~(nerve)~~) stimulators(=
 - ~~(a) Transcutaneous electrical nerve stimulation device (TENS) - one in a five-year period.~~
 - ~~(b))~~ (such as osteogenesis stimulators) - one in a five-year period.
- ~~((16))~~ (15) Communication devices - artificial larynx, any type - one in a five-year period.
- ~~((17))~~ (16) Ambulatory aids:
 - (a) Canes - one in a five-year period.
 - (b) Crutches - one in a five-year period.
 - (c) Walkers - one in a five-year period.

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

WAC 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered.

(1) The department pays only for DME and related supplies, medical supplies and related services that are medically necessary, listed as covered in this chapter, and meet the definition of DME and medical supplies as defined in WAC 388-543-1000 and prescribed per WAC 388-543-1100 and 388-543-1200.

(2) The department pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS) that meet the definition of prosthetic and orthotic as defined in WAC 388-543-1000 and are prescribed per WAC 388-543-1100 and 388-543-1200.

(3) The department considers all requests for covered DME, related supplies and services, medical supplies, prosthetics, orthotics, and related services under the provisions of WAC 388-501-0165.

(4) The department evaluates a request for any DME item listed as noncovered in this chapter under the provisions of WAC 388-501-0160. When early and periodic screening, diagnosis and treatment (EPSDT) applies, the department evaluates a noncovered service, equipment, or supply according to the process in WAC 388-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC 388-543-0100 for EPSDT rules).

(5) The department specifically excludes services and equipment in this chapter from fee-for-service (FFS) scope of coverage when the services and equipment do not meet the definition for a covered item, or the services are not typically medically necessary. This exclusion does not apply if the services and equipment are:

- (a) Included as part of a managed care plan service package;
- (b) Included in a waived program;
- (c) Part of one of the medicare programs for qualified medicare beneficiaries; or
- (d) Requested for a child who is eligible for services under the EPSDT program. The department reviews these requests according to the provisions of chapter 388-534 WAC.
- (6) Excluded services and equipment include, but are not limited to:
 - (a) Services, procedures, treatment, devices, drugs, or the application of associated services that the Food and Drug Administration (FDA) and/or the Centers for Medicare and Medicaid Services (CMS) consider investigative or experimental on the date the services are provided;
 - (b) Any service specifically excluded by statute;
 - (c) A client's utility bills, even if the operation or maintenance of medical equipment purchased or rented by the department for the client contributes to an increased utility bill (refer to the aging and disability services administration's (ADSA) COPES program for potential coverage);
 - (d) Hairpieces or wigs;
 - (e) Material or services covered under manufacturers' warranties;
 - (f) Shoe lifts less than one inch, arch supports for flat feet, and nonorthopedic shoes;
 - (g) Outpatient office visit supplies, such as tongue depressors and surgical gloves;
 - (h) Prosthetic devices dispensed solely for cosmetic reasons;
 - (i) Home improvements and structural modifications, including but not limited to the following:
 - (i) Automatic door openers for the house or garage;
 - (ii) Saunas;
 - (iii) Security systems, burglar alarms, call buttons, lights, light dimmers, motion detectors, and similar devices;
 - (iv) Swimming pools;
 - (v) Whirlpool systems, such as jacuzzies, hot tubs, or spas; or
 - (vi) Electrical rewiring for any reason;
 - (vii) Elevator systems and elevators; and
 - (viii) Lifts or ramps for the home; or
 - (ix) Installation of bathtubs or shower stalls.
 - (j) Nonmedical equipment, supplies, and related services, including but not limited to, the following:
 - (i) Back-packs, pouches, bags, baskets, or other carrying containers;
 - (ii) Bed boards/conversion kits, and blanket lifters (e.g., for feet);
 - (iii) Car seats for children under five, except for positioning car seats that are prior authorized. Refer to WAC 388-543-1700(13) for car seats;

(iv) Cleaning brushes and supplies, except for ostomy-related cleaners/supplies;

(v) Diathermy machines used to produce heat by high frequency current, ultrasonic waves, or microwave radiation;

(vi) Electronic communication equipment, installation services, or service rates, including but not limited to, the following:

(A) Devices intended for amplifying voices (e.g., microphones);

(B) Interactive communications computer programs used between patients and healthcare providers (e.g., hospitals, physicians), for self care home monitoring, or emergency response systems and services (refer to ADSA COPES or outpatient hospital programs for emergency response systems and services);

(C) Two-way radios; and

(D) Rental of related equipment or services;

(vii) Environmental control devices, such as air conditioners, air cleaners/purifiers, dehumidifiers, portable room heaters or fans (including ceiling fans), heating or cooling pads, and light boxes;

(viii) Ergonomic equipment;

(ix) Exercise classes or equipment such as exercise mats, bicycles, tricycles, stair steppers, weights, trampolines;

(x) Generators;

(xi) Computer software other than speech generating, printers, and computer accessories (such as anti-glare shields, backup memory cards);

(xii) Computer utility bills, telephone bills, internet service, or technical support for computers or electronic notebooks;

(xiii) Any communication device that is useful to someone without severe speech impairment (e.g., cellular telephone, walkie-talkie, pager, or electronic notebook);

(xiv) Racing strollers/wheelchairs and purely recreational equipment;

(xv) Room fresheners/deodorizers;

(xvi) Bidet or hygiene systems, sharp containers, paraffin bath units, and shampoo rings;

(xvii) Timers or electronic devices to turn things on or off, which are not an integral part of the equipment;

(xviii) Vacuum cleaners, carpet cleaners/deodorizers, and/or pesticides/insecticides; or

(xix) Wheeled reclining chairs, lounge and/or lift chairs (e.g., geri-chair, posture guard, or lazy boy).

(k) Blood monitoring:

(i) Sphygmomanometer/blood pressure apparatus with cuff and stethoscope;

(ii) Blood pressure cuff only; and

(iii) Automatic blood pressure monitor.

(l) Bathroom equipment:

(i) Bath stools;

(ii) Bathtub wall rail (grab bars);

(iii) Bed pans;

(iv) Control unit for electronic bowel irrigation/evacuation system;

(v) Disposable pack for use with electronic bowel system;

(vi) Potty chairs;

(vii) Raised toilet seat;

(viii) Safety equipment (e.g. belt, harness or vest);

(ix) Shower/commode chairs;

(x) Sitz type bath or equipment;

(xi) Standard and heavy duty bath chairs;

(xii) Toilet rail;

(xiii) Transfer bench tub or toilet;

(xiv) Urinal male/female.

(m) Disinfectant spray - one twelve-ounce bottle or can per six-month period.

(n) Personal and **comfort items** including but not limited to the following:

(i) Bathroom items, such as antiperspirant, astringent, bath gel, conditioner, deodorant, moisturizer, mouthwash, powder, shampoo, shaving cream, shower cap, shower curtains, soap (including antibacterial soap), toothpaste, towels, and weight scales;

(ii) Bedding items, such as bed pads, blankets, mattress covers/bags, pillows, pillow cases/covers, sheets, and bumper pads;

(iii) Bedside items, such as bed trays, carafes, and over-the-bed tables;

(iv) Clothing and accessories, such as coats, gloves (including wheelchair gloves), hats, scarves, slippers, socks, custom vascular supports (CVS), surgical stockings, gradient compression stockings, and graduated compression stockings for pregnancy support (panty hose style);

(v) Clothing protectors, surgical masks, and other protective cloth furniture coverings;

(vi) Cosmetics, including corrective formulations, hair depilatories, and products for skin bleaching, commercial sun screens, and tanning;

(vii) Diverter valves and handheld showers for bathtub;

(viii) Eating/feeding utensils;

(ix) Emesis basins, enema bags, and diaper wipes;

(x) Health club memberships;

(xi) Hot or cold temperature food and drink containers/holders;

(xii) Hot water bottles and cold/hot packs or pads not otherwise covered by specialized therapy programs;

(xiii) Impotence devices;

(xiv) Insect repellants;

(xv) Massage equipment;

(xvi) Medication dispensers, such as med-collators and count-a-dose, except as obtained under the compliance packaging program. See chapter 388-530 WAC;

(xvii) Medicine cabinet and first-aid items, such as adhesive bandages (e.g., Band-Aids, Curads), cotton balls, cotton-tipped swabs, medicine cups, thermometers, and tongue depressors;

(xviii) Page turners;

(xix) Radio and television;

(xx) Telephones, telephone arms, cellular phones, electronic beepers, and other telephone messaging services; and

(xxi) Toothettes and toothbrushes, waterpics, and peridental devices whether manual, battery-operated, or electric.

(o) Certain wheelchair features and options are not considered by the department to be medically necessary or essential for wheelchair use. This includes, but is not limited to, the following:

(i) Attendant controls (remote control devices);

- (ii) Canopies, including those for strollers and other equipment;
 - (iii) Clothing guards to protect clothing from dirt, mud, or water thrown up by the wheels (similar to mud flaps for cars);
 - (iv) Identification devices (such as labels, license plates, name plates);
 - (v) Lighting systems;
 - (vi) Speed conversion kits; and
 - (vii) Tie-down restraints, except where medically necessary for client-owned vehicles.
- (p) Electrical neural stimulation devices and supplies for in-home use, including battery chargers.

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

AMENDATORY SECTION (Amending WSR 09-22-047, filed 10/28/09, effective 11/28/09)

WAC 388-543-1600 Items and services which require prior authorization. (1) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require **prior authorization (PA)** or **expedited prior authorization (EPA)** on utilization criteria. (See WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA.) The department considers all of the following when establishing utilization criteria:

- (a) High cost;
 - (b) Potential for utilization abuse;
 - (c) Narrow therapeutic indication; and
 - (d) Safety.
- (2) The department requires providers to obtain prior authorization for certain items and services, except for dual-eligible medicare/medicaid clients when medicare is the primary payer. This includes, but is not limited to, the following:
- (a) Augmentative communication devices (ACDs);
 - (b) Certain by report (BR) DME and supplies as specified in the department's published issuances, including billing instructions and numbered memoranda;
 - (c) Blood glucose monitors requiring special features;
 - (d) Certain equipment rentals and certain prosthetic limbs, as specified in the department's published issuances, including billing instructions and numbered memoranda;
 - (e) Decubitus care products and supplies;
 - (f) Decubitus care mattresses, including flotation or gel mattress, if the provider fails to meet the criteria in WAC 388-543-1900;
 - (g) Equipment parts and labor charges for repairs or modifications and related services;
 - (h) Hospital beds, if the provider fails to meet the requirements in WAC 388-543-1900;
 - (i) Low air loss flotation system, if the provider fails to meet the requirements in WAC 388-543-1900;
 - (j) Orthopedic shoes and selected orthotics;
 - (k) Osteogenic stimulator, noninvasive, if the provider fails to meet the requirements in WAC 388-543-1900;

- (l) Positioning car seats for children under five years of age;
- (m) ~~((Transcutaneous electrical nerve stimulators, if the provider fails to meet the requirements in WAC 388-543-1900;~~
- ~~((n)))~~ Wheelchairs, wheelchair accessories, wheelchair modifications, air, foam, and gel cushions, and repairs;
- ~~((o)))~~ (n) Other DME not specifically listed in the department's published issuances, including billing instructions and numbered memoranda, and submitted as a miscellaneous procedure code; and
- ~~((p)))~~ (o) Limitation extensions.

AMENDATORY SECTION (Amending WSR 07-17-062, filed 8/13/07, effective 9/13/07)

WAC 388-543-2800 Reusable and disposable medical supplies. (1) The department requires that a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC) prescribe reusable and disposable medical supplies. Except for dual eligible medicare/medicaid clients, the prescription must:

- (a) Be dated and signed by the prescriber;
- (b) Be less than six months in duration from the date the prescriber signs the prescription; and
- (c) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(2) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA). The department considers all of the following when establishing utilization criteria:

- (a) High cost;
 - (b) The potential for utilization abuse;
 - (c) A narrow therapeutic indication; and
 - (d) Safety.
- (3) The department requires a provider to obtain a limitation extension in order to exceed the stated limits for non-durable medical equipment and medical supplies. See WAC 388-501-0165.

(4) The department categorizes medical supplies and non-DME (MSE) as follows (see WAC 388-543-1150, 388-543-1600, and department's billing instructions for further information about specific limitations and requirements for PA and EPA):

- (a) Antiseptics and germicides;
- (b) Bandages, dressings, and tapes;
- (c) Blood monitoring/testing supplies;
- (d) Braces, belts, and supportive devices;
- (e) Decubitus care products;
- (f) Ostomy supplies;
- (g) Pregnancy-related testing kits and nursing equipment supplies;
- (h) ~~((Supplies associated with transcutaneous electrical nerve stimulators (TENS);~~
- ~~((i)))~~ Syringes and needles;

- ((f)) (i) Urological supplies (e.g., diapers, urinary retention catheters, pant liners, and doublers); and
 ((4)) (j) Miscellaneous supplies.

AMENDATORY SECTION (Amending WSR 01-02-075, filed 12/29/00, effective 1/29/01)

WAC 388-545-300 Occupational therapy. (1) The following providers are eligible to enroll with ~~((medical assistance administration (MAA)))~~ the department to provide occupational therapy services:

- (a) A licensed occupational therapist;
- (b) A licensed occupational therapy assistant supervised by a licensed occupational therapist; and
- (c) An occupational therapy aide, in schools, trained and supervised by a licensed occupational therapist.

(2) Clients in the following ~~((MAA))~~ department programs are eligible to receive occupational therapy services described in this chapter:

- (a) Categorically needy;
- (b) Children's health;
- (c) General assistance unemployable (within Washington state or border areas only);
- (d) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);
- (e) Medically indigent program for emergency hospital-based services only; or
- (f) Medically needy program only when the client is either:
 - (i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis and treatment program (healthy kids program) as described in chapter 388-534 WAC; or
 - (ii) Receiving home health care services as described in chapter 388-551 WAC, subchapter II.

(3) Occupational therapy services received by ~~((MAA))~~ department eligible clients must be provided:

- (a) As part of an outpatient treatment program for adults and children;
- (b) By a home health agency as described under chapter 388-551 WAC, subchapter II;
- (c) As part of the physical medicine and rehabilitation (PM&R) program as described in WAC 388-550-2551;
- (d) By a neurodevelopmental center;
- (e) By a school district or educational service district as part of an individual education program or individualized family service plan as described in WAC 388-537-0100; or
- (f) When prescribed by a provider for clients age twenty-one or older. The therapy must:
 - (i) Prevent the need for hospitalization or nursing home care;
 - (ii) Assist a client in becoming employable;
 - (iii) Assist a client who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or
 - (iv) Be a part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(4) ~~((MAA))~~ The department pays only for covered occupational therapy services listed in this section when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary, when prescribed by a provider; and

(c) Begun within thirty days of the date prescribed.

(5) ~~((MAA))~~ The department covers the following occupational therapy services per client, per calendar year:

(a) Unlimited occupational therapy program visits for clients twenty years of age or younger;

(b) One occupational therapy evaluation. The evaluation is in addition to the twelve program visits allowed per year;

(c) Two durable medical equipment needs assessments. The assessments are in addition to the twelve program visits allowed per year;

(d) Twelve occupational therapy program visits;

(e) Twenty-four additional outpatient occupational therapy program visits when the diagnosis is any of the following:

(i) A medically necessary condition for developmentally delayed clients;

(ii) Surgeries involving extremities, including:

(A) Fractures; or

(B) Open wounds with tendon involvement;

(iii) Intracranial injuries;

(iv) Burns;

(v) Traumatic injuries;

(f) Twenty-four additional occupational therapy program visits following a completed and approved inpatient PM&R program. In this case, the client no longer needs nursing services but continues to require specialized outpatient therapy for any of the following:

(i) Traumatic brain injury (TBI);

(ii) Spinal cord injury (paraplegia and quadriplegia);

(iii) Recent or recurrent stroke;

(iv) Restoration of the levels of function due to secondary illness or loss from multiple sclerosis (MS);

(v) Amyotrophic lateral sclerosis (ALS);

(vi) Cerebral palsy (CP);

(vii) Extensive severe burns;

(viii) Skin flaps for sacral decubitus for quads only;

(ix) Bilateral limb loss; or

(x) Acute, infective polyneuritis (Guillain-Barre' syndrome).

(g) Additional medically necessary occupational therapy services, regardless of the diagnosis, must be approved by ~~((MAA))~~ the department.

(6) ~~((MAA will pay for one visit to instruct in the application of transectaneous neurostimulator (TENS), per client, per lifetime.~~

(7) ~~MAA))~~ The department does not cover occupational therapy services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

AMENDATORY SECTION (Amending WSR 01-02-075, filed 12/29/00, effective 1/29/01)

WAC 388-545-500 Physical therapy. (1) The following providers are eligible to provide physical therapy services:

- (a) A licensed physical therapist or physiatrist; or
- (b) A physical therapist assistant supervised by a licensed physical therapist.

(2) Clients in the following ((MAA)) department programs are eligible to receive physical therapy services described in this chapter:

- (a) Categorically needy (CN);
- (b) Children's health;
- (c) General assistance-unemployable (GA-U) (within Washington state or border areas only);
- (d) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);
- (e) Medically indigent program (MIP) for emergency hospital-based services only; or
- (f) Medically needy program (MNP) only when the client is either:

- (i) Twenty years of age or younger and referred under the early and periodic screening, diagnosis and treatment program (EPSDT/healthy kids program) as described in WAC 388-86-027; or
- (ii) Receiving home health care services as described in chapter 388-551 WAC.

(3) Physical therapy services that ((MAA)) department eligible clients receive must be provided as part of an outpatient treatment program:

- (a) In an office, home, or outpatient hospital setting;
- (b) By a home health agency as described in chapter 388-551 WAC;
- (c) As part of the acute physical medicine and rehabilitation (acute PM&R) program as described in the acute PM&R subchapter under chapter 388-550 WAC;
- (d) By a neurodevelopmental center;
- (e) By a school district or educational service district as part of an individual education or individualized family service plan as described in WAC 388-537-0100; or
- (f) For disabled children, age two and younger, in natural environments including the home and community settings in which children without disabilities participate, to the maximum extent appropriate to the needs of the child.

(4) ((MAA)) The department pays only for covered physical therapy services listed in this section when they are:

- (a) Within the scope of an eligible client's medical care program;
- (b) Medically necessary and ordered by a physician, physician's assistant (PA), or an advanced registered nurse practitioner (ARNP);
- (c) Begun within thirty days of the date ordered;
- (d) For conditions which are the result of injuries and/or medically recognized diseases and defects; and
- (e) Within accepted physical therapy standards.

(5) Providers must document in a client's medical file that physical therapy services provided to clients age twenty-one and older are medically necessary. Such documentation may include justification that physical therapy services:

- (a) Prevent the need for hospitalization or nursing home care;

- (b) Assist a client in becoming employable;

- (c) Assist a client who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or

- (d) Are part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(6) ((MAA)) The department determines physical therapy program units as follows:

- (a) Each fifteen minutes of timed procedure code equals one unit; and

- (b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.

(7) ((MAA)) The department does not limit coverage for physical therapy services listed in subsections (8) through (10) of this section if the client is twenty years of age or younger.

(8) ((MAA)) The department covers, without requiring prior authorization, the following ordered physical therapy services per client, per diagnosis, per calendar year, for clients twenty-one years of age and older:

- (a) One physical therapy evaluation. The evaluation is in addition to the forty-eight program units allowed per year;

- (b) Forty-eight physical therapy program units;

- (c) Ninety-six additional outpatient physical therapy program units when the diagnosis is any of the following:

- (i) A medically necessary condition for developmentally delayed clients;

- (ii) Surgeries involving extremities, including:

- (A) Fractures; or

- (B) Open wounds with tendon involvement.

- (iii) Intracranial injuries;

- (iv) Burns;

- (v) Traumatic injuries;

- (vi) Meningomyelocele;

- (vii) Down's syndrome;

- (viii) Cerebral palsy; or

- (ix) Symptoms involving nervous and musculoskeletal systems and lack of coordination;

- (d) Two durable medical equipment (DME) needs assessments. The assessments are in addition to the forty-eight physical therapy program units allowed per year. Two program units are allowed per DME needs assessment; and

- (e) One wheelchair needs assessment in addition to the two durable medical needs assessments. The assessment is in addition to the forty-eight physical therapy program units allowed per year. Four program units are allowed per wheelchair needs assessment.

- (f) The following services are allowed, per day, in addition to the forty-eight physical therapy program units allowed per year:

- (i) Two program units for orthotics fitting and training of upper and/or lower extremities.

- (ii) Two program units for checkout for orthotic/prosthetic use.

- (iii) One muscle testing procedure. Muscle testing procedures cannot be billed in combination with each other.

(g) Ninety-six additional physical therapy program units are allowed following a completed and approved inpatient acute PM&R program. In this case, the client no longer needs nursing services but continues to require specialized outpatient physical therapy for any of the following:

- (i) Traumatic brain injury (TBI);
- (ii) Spinal cord injury (paraplegia and quadriplegia);
- (iii) Recent or recurrent stroke;
- (iv) Restoration of the levels of functions due to secondary illness or loss from multiple sclerosis (MS);
- (v) Amyotrophic lateral sclerosis (ALS);
- (vi) Cerebral palsy (CP);
- (vii) Extensive severe burns;
- (viii) Skin flaps for sacral decubitus for quadriplegics only;
- (ix) Bilateral limb loss;
- (x) Open wound of lower limb; or
- (xi) Acute, infective polyneuritis (Guillain-Barre' syndrome).

(9) For clients age twenty-one and older, ~~((MAA))~~ the department covers physical therapy services which exceed the limitations established in subsection (8) of this section if the provider requests prior authorization and ~~((MAA))~~ the department approves the request.

~~((10)) ((MAA will pay for one visit to instruct in the application of transectaneous neurostimulator (TENS) per client, per lifetime.~~

~~((11))~~ Duplicate services for occupational therapy and physical therapy are not allowed for the same client when both providers are performing the same or similar procedure(s).

~~((12))~~ (11) The department does not cover physical therapy services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

~~((13))~~ (12) The department does not cover physical therapy services performed by a physical therapist in an outpatient hospital setting when the physical therapist is not employed by the hospital. Reimbursement for services must be billed by the hospital.

WSR 10-14-010

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed June 24, 2010, 11:09 a.m., effective July 25, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Proposed changes to WAC 315-04-095(4), retailer credit criteria will enable the lottery director to consider credit worthiness for lottery retailer license applicants by a more specific definition of significant incident. The director will be able to determine which credit history significant incidents prohibit lottery retailer licensing, rather than the current language requirement that all significant incidents create a bar.

Citation of Existing Rules Affected by this Order: Amending WAC 315-04-095(4).

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 10-09-020 on April 13, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 22, 2010.

Jana L. Jones

Director of Legal Services

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-095 Retailer credit criteria. (1) The director shall deny a lottery retailer license to any applicant whose credit is found to be poor.

(2) The director may grant a lottery retailer license to an applicant whose credit is rated as marginal or minimum as defined in this section. Provided, the director shall require:

(a) Applicants whose credit is rated as marginal as defined in this section to obtain a surety bond or savings certificate under terms and conditions established by the director prior to issuance of the license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or certificate shall be in the amount of three thousand five hundred dollars unless the director determines a higher amount is required.

(b) Applicants whose credit is rated as minimum as defined in this section may be required to obtain a surety bond or post cash in lieu of a bond under terms and conditions established by the director or submit three letters of credit to the lottery prior to issuance of ~~((the))~~ a lottery retailer license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or cash shall be in the amount of three thousand five hundred dollars unless the director determines a higher amount is required, based on sales volume and financial solvency of the retailer.

(3) In the event the retailer's credit is rated as poor or marginal subsequent to the issuance of the license the director may:

(a) Revoke or suspend a retailer's license; and/or

(b) Require such a retailer to secure a surety bond from a company licensed to do business in the state of Washington or post a savings certificate under terms and conditions established by the director. The surety bond or saving certificate shall be in the amount of three thousand five hundred dollars unless the director determines, based on sales volume and financial solvency of the retailer, a higher amount is required.

(4) Credit rating is defined as the ability to meet financial obligations when they become due. It includes current reporting accounts payable and public financial record information including, but not limited to, court records, other public records and reports from credit bureaus or other credit reporting agencies up to three years prior to the lottery's credit check request. A significant incident (~~shall be defined as public financial record information which~~) may include (~~any~~) a lien, judgment, bankruptcy, involuntary collection action or any similar incident which reflects on the individual's willingness and ability to pay creditors. A numerical rating of "one" represents excellent credit. A numerical rating of "nine" represents involuntary collection.

(a) A "poor" credit rating indicates public record showing three or more significant incidents within the past three years.

(b) A "marginal" credit rating indicates public record information showing one or more significant incidents within the past three years.

(c) A "minimum" credit rating indicates the information is insufficient for evaluation.

(d) An "acceptable" credit rating indicates that there have been no significant incidents in the public record within the past three years. Provided, at least three accounts must be evaluated in order to receive an "acceptable" rating.

(5) Credit rating checks shall be conducted as follows:

(a) Corporation business credit ratings shall be checked. Personal credit ratings of the corporate officers and owners of ten percent or more equity in the corporation may also be checked.

(b) Sole proprietors and partnership business credit ratings shall be checked. Personal credit ratings of:

(i) The sole proprietor and his or her spouse; or

(ii) All partners and their spouses shall also be checked.

(c) Findings shall be applied in accordance with subsections (1), (2) and (3) of this section.

WSR 10-14-027

PERMANENT RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed June 28, 2010, 8:32 a.m., effective July 29, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To define and provide criteria for small cities to receive matching funds from the transportation improvement board. Chapter 47.26 RCW finds that it is in the state's interest to support the economic vitality of all cities and towns, recognizing that those cities and towns with a population of less than five thousand are unable to fully maintain and preserve their street and sidewalk system.

Citation of Existing Rules Affected by this Order: Amending chapters 479-10 and 479-12 WAC.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 10-09-034 on April 14, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 11, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 11, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 11, Amended 5, Repealed 0.

Date Adopted: June 25, 2010.

Stevan Gorcester
Executive Director

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-011 Programs funded from the small city pavement preservation and sidewalk account. The small city pavement preservation and sidewalk account funds (~~both the~~):

(1) Small city preservation program and ~~(the)~~ if funds are available, for use on a project-by-project basis for the small cities to match federal funding provided for local government federal aid of transportation, on a first come/first served basis; and

(2) City hardship assistance program.

NEW SECTION

WAC 479-10-170 Small city match funding eligibility and application. Cities may request matching funds for projects that meet TIB eligibility requirements for small city preservation program funding as described in WAC 479-10-120 and 479-10-121. A TIB funding application form must be submitted to apply for match funding.

NEW SECTION

WAC 479-10-171 Restriction on use of small city match funding. Match funds are only for transportation projects funded through federal transportation grants. All other local sources must be sought before applying for match funds from TIB.

NEW SECTION

WAC 479-10-172 Small city match funding priority. If funds remain after small city preservation program projects are funded, match funds may be committed to eligible projects. The priority for funding is in the order in which the applications are received until the available funds are fully allocated.

NEW SECTION

WAC 479-10-173 If small city match funding is fully allocated. If an eligible application is received after all of the

funding is allocated, the local agency may seek board approval for funding at the next scheduled board meeting from the notice of denial from TIB staff. The notice of denial may be in the form of an e-mail or letter.

NEW SECTION

WAC 479-10-174 Small city match funding increases. Increases in match funding for chosen projects may be made within the executive director's authority in accordance with WAC 479-01-060.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-12-011 Programs funded from the urban arterial trust account. The urban arterial trust account funds the following programs:

- (1) The urban arterial program;
- (2) The small city arterial program(~~(; and)~~):
 - (a) Grants; and
 - (b) Match funding.
- (3) The sidewalk programs:
 - (a) Urban sidewalk program; and
 - (b) Small city sidewalk program.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-12-131 Award criteria for the urban arterial program. The board establishes the following criteria for use in evaluating urban arterial program grant applications:

- (1) Safety improvements - addresses accident reduction, eliminates roadway hazards, and corrects roadway deficiencies.
- (2) Mobility improvements - improves level of service, improves access to generators, and connects urban street networks.
- (3) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.
- (4) ~~((Mode accessibility - provides additional high occupancy vehicle lanes, bus volume, or nonmotorized facilities-))~~ Sustainability - improves mode accessibility, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.
- (5) Local support - demonstrates initiative to achieve full funding and project completion.

NEW SECTION

WAC 479-12-215 Small city match funding allocation. Within the small city arterial program, ten percent of the annual allocation may be portioned as an amount available for small cities to match federal funding provided for local government federal aid of transportation, on a first come/first served basis.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-12-231 Award criteria for the small city arterial program. The board establishes the following criteria for use in evaluating small city arterial program grant applications:

- (1) Safety improvement - projects that address accident reduction, hazard elimination, and roadway deficiencies.
- (2) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.
- (3) Local support - projects that improve network development and address community needs.
- (4) Sustainability - improves network development of street system, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.

NEW SECTION

WAC 479-12-270 Small city match funding eligibility and application. Cities with a population under five thousand may request matching funds for projects that meet TIB eligibility requirements for the small city arterial program described under WAC 479-12-221. A TIB funding application form must be submitted to apply for match funding.

NEW SECTION

WAC 479-12-271 Restriction on use of small city match funding. Match funds are only for transportation projects funded through federal transportation grants. All other local funding sources must be sought before applying for match funds from TIB.

NEW SECTION

WAC 479-12-272 Small city match funding priority. The priority for funding match applications is the order in which the applications are received until the funds are fully allocated.

NEW SECTION

WAC 479-12-273 If small city match funding is fully allocated. If an eligible application is received after all of the apportioned funding is committed, TIB may use small city preservation program funds as described in WAC 479-10-011 and 479-10-174. If all SCAP and SCPP funds are committed, the local agency may present their project to the board at the next scheduled board meeting after receiving the notice of denial from TIB staff. The notice of denial may be in the form of an e-mail or letter.

NEW SECTION

WAC 479-12-274 Small city match funding increases. Increases in match funding for chosen projects may be made within the executive director's authority in accordance with WAC 479-01-060.

AMENDATORY SECTION (Amending WSR 07-18-050, filed 8/30/07, effective 9/30/07)

WAC 479-12-431 Award criteria for the sidewalk program. The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city sidewalk projects:

- (1) Safety improvement - projects that address hazard mitigation and accident reduction.
- (2) Pedestrian access - projects that improve or provide access to facilities including:
 - (a) Schools;
 - (b) Public buildings;
 - (c) Central business districts;
 - (d) Medical facilities;
 - (e) Activity centers;
 - (f) High density housing (including senior housing);
 - (g) Transit facilities;
 - (h) Completes or extends existing sidewalks.
- (3) Local support - addresses local needs and is supported by the local community.
- (4) Sustainability - improves sidewalk width, provides hardscaping and appropriate plantings, addresses low impact development or natural drainage practices, and encourages previous surface use.

WSR 10-14-032
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 28, 2010, 11:36 a.m., effective July 29, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program (WTAP). The telecommunications relay services (TRS) and WTAP tax rates are determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

The department is amending WAC 458-20-270 to recognize the tax rates effective July 1, 2010. The TRS rate increases to nineteen cents per switched access line for the upcoming fiscal year. The WTAP rate increases to fourteen cents per switched access line for the upcoming fiscal year. These rates were previously announced by the department in a special notice dated March 25, 2010, and can be found at http://dor.wa.gov/Docs/Pubs/SpecialNotices/2010/sn_10_TelephoneRates.pdf.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-270 Telephone program excise tax rates.

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

Other Authority: RCW 43.20A.725 and 80.36.430.

Adopted under notice filed as WSR 10-09-048 on April 15, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 28, 2010.

Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-14-037, filed 6/24/09, effective 7/25/09)

WAC 458-20-270 Telephone program excise tax rates. RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

The monthly telephone program excise tax rates per switched access line are as follows:

Period	TRS Rate	WTAP Rate
((7/1/2005—6/30/2006	10 cents	14 cents))
7/1/2006 - 6/30/2007	9 cents	14 cents
7/1/2007 - 6/30/2008	12 cents	14 cents
7/1/2008 - 6/30/2009	12 cents	13 cents
7/1/2009 - 6/30/2010	11 cents	13 cents
<u>7/1/2010 - 6/30/2011</u>	<u>19 cents</u>	<u>14 cents</u>

WSR 10-14-034
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 28, 2010, 1:02 p.m., effective October 1, 2010]

Effective Date of Rule: October 1, 2010.

Purpose: When chapter 82-60 WAC was updated for the property and liability local government self-insurance (LGS) programs, the standards for health and welfare (H/W) programs were removed, to be placed in its own chapter. These two programs have become different, requiring stan-

dards that specifically address regulatory requirements for each type of program independently. As a result, temporary guidelines were put into place while engaging in rule making as prescribed in chapter 34.05 RCW.

LGSI programs have operated under temporary guidelines. This has led to confusion among the programs in determining what standards apply. Also, the rules were not specific enough as to each type of program. Given changes in the insurance, economic and legal environment, oral waivers from rules and guidelines requirements were provided to some programs, creating further confusion due to lack of written documentation.

The state risk manager is required to adopt rules which create standards for solvency, management, operations and certain contracts. The office of financial management, working with the health and welfare advisory board, has created chapter 82-65 WAC, which (1) creates a separate set of rules for H/W programs, (2) replaces temporary guidelines with updated rules specific to both individual and joint health and welfare programs, and (3) removes the provision for waivers from rules and guidelines and allows the state risk manager to consistently regulate all programs.

Statutory Authority for Adoption: RCW 48.62.061.

Adopted under notice filed as WSR 10-04-036 on January 27, 2010.

Changes Other than Editing from Proposed to Adopted Version: In responding to comments received; the following changes were made:

WAC 82-65-030(2) and 82-65-210(1), the phrase "and reassessment" has been deleted.

WAC 82-65-120(6), the word "joint" was removed from the last sentence.

WAC 82-65-140(1), is made applicable to both joint and individual programs, in subsection (2), "joint self-insurance" is inserted before "program" and "Increases in retention level" is removed.

WAC 82-65-290 and 82-65-300 are not going to be adopted as they are not necessary.

In addition, the following five rules have been removed from this adoption notice and are subject to a supplemental notice for additional comments due to the changes being proposed for each of these rules. These changes may be a substantial variance from the rule as originally published. The rules are WAC 82-65-020, 82-65-040, 82-65-100, 82-65-110, and 82-65-130.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 23, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 23, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 0, Repealed 4 [0].

Date Adopted: June 27, 2010.

Roselyn Marcus
Director of Legal Affairs
Rules Coordinator

Chapter 82-65 WAC

LOCAL GOVERNMENT SELF-INSURANCE HEALTH AND WELFARE PROGRAM REQUIRE- MENTS

NEW SECTION

WAC 82-65-010 Preamble and authority. These rules governing local government self-insurance transactions are adopted by the state risk manager to implement chapter 48.62 RCW relating to the management and operations of both individual and joint local government health and welfare benefit self-insurance programs.

NEW SECTION

WAC 82-65-030 Standards for management and operation—Adoption of program. (1) The governing body of every local government entity establishing an individual self-insurance program shall adopt the self-insurance program by resolution or ordinance.

(2) The governing body of every local government entity participating in a joint self-insurance program shall adopt the interlocal agreement of the joint self-insurance program by resolution or ordinance. The resolution or ordinance shall include, but not be limited to, an acknowledgment that the entity shall be subject to assessments as required by the joint self-insurance program. Copies of each resolution or ordinance shall be retained by the joint self-insurance program and available for inspection by the state risk manager. The interlocal agreement, along with a list of members participating in the program, shall be published on the public web site of each joint self-insurance program. The interlocal agreement and subsequent amendments shall be filed in accordance with requirements of chapter 39.34 RCW.

NEW SECTION

WAC 82-65-050 Nondiscrimination in contributions. Contribution rate schedules for individual and joint health and welfare self-insurance programs shall be consistent and nondiscriminatory among beneficiaries of the self-insurance program. This provision is not intended to prohibit choice of coverage for beneficiaries, classes of beneficiaries, or bargaining groups from several offered by the self-insurance program, or to prohibit different contribution schedules between classes of beneficiaries or bargaining groups.

NEW SECTION

WAC 82-65-060 Standards for operations—Standards for management—Disclosures. (1) All individual

health and welfare self-insurance programs shall furnish each employee or retiree covered by the program with a written description of the benefits allowable under the program, together with:

- (a) Applicable restrictions, limitations, and exclusions;
- (b) The procedure for filing a claim for benefits;
- (c) The procedure for requesting an adjudication of disputes or appeals arising from beneficiaries regarding the payment or denial of any claim for benefits; and
- (d) A schedule of any direct monetary contributions toward the program financing required by the employee.

Such benefits or procedures shall not be amended without written notice to the covered employees at least thirty days in advance of the effective date of the change unless exigent circumstances can be demonstrated.

(2) All joint self-insurance programs shall ensure every member of the program receives written plan documents which describe:

- (a) All coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;
- (b) The method by which members pay assessments;
- (c) The procedure for filing a claim; and
- (d) The procedure for a member to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, membership, and other issues.

Such statements shall not be amended without written notice to the members at least thirty days in advance of the effective date of the change unless exigent circumstances can be demonstrated.

NEW SECTION

WAC 82-65-070 Standards for operations—Standards for management—Wellness programs. Health and welfare self-insurance programs may offer coverage for preventative care, wellness programs, and/or other cost containment measures.

NEW SECTION

WAC 82-65-080 Standards for operations—Standards for solvency—Termination provisions. (1) Termination of a program. All individual and joint health and welfare self-insurance programs shall maintain a written plan that provides for the partial or complete termination of the program and for liquidation of its assets upon termination of the program. The termination procedure shall include, but not be limited to, a provision for the settling of all its liabilities for unpaid claims and claim adjustment expenses.

(2) Termination of members. All joint self-insurance programs shall maintain a written plan that provides for the termination of membership of a member.

NEW SECTION

WAC 82-65-090 Standards for management—Standards for operations—Financial plans. (1) All self-insurance programs shall maintain a written plan for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles. For individual programs, a separate fund to account for revenues and expenses associated with the program is recommended, but not required;

(b) An investment policy which conforms to RCW 48.62.111 governing the investments of the program; and

(c) Individual self-insurance programs shall ensure the preparation and submission of accurate and timely annual financial reports to the state risk manager within one hundred fifty days of fiscal year end.

Joint self-insurance programs shall ensure the submission of unaudited financial statements as prescribed by the state auditor's office within one hundred fifty days of fiscal year end. Joint self-insurance programs shall ensure the submission of audited financial statements to the state risk manager within one year of the program's fiscal year end.

(2) No financial plan of an individual self-insurance program shall permit interfund loans from assets held against liabilities for unpaid claims and claim adjustment expenses except for those amounts which are clearly inactive or in excess of program reserve and contingency reserve requirements.

(3) No financial plan of a joint self-insurance program shall permit loans to any member.

NEW SECTION

WAC 82-65-120 Standards for claims management—Claims administration. (1)(a) All self-insurance programs shall have a written claims administration program which includes, as a minimum, claims filing procedures, internal financial control mechanisms, and claim and claim adjustment expense reports.

(b) All individual and joint health and welfare self-insurance programs shall have a written claim appeal procedure that contains, as a minimum, a time limit for filing an appeal, a time limit for response, and a provision for the second level of review.

(2) All self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.

(4) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its members.

(5) All self-insurance programs offering medical coverage shall obtain a claims audit of claim reserving, adjusting and payment procedures every three years at a minimum. A claims audit shall be conducted by a qualified claims auditor not affiliated with the program, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than

six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

(6) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the self-insurance program.

NEW SECTION

WAC 82-65-140 Standards for operations—Program changes—Notification to the state risk manager. (1) All individual and joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

- (a) Any change in the terms of the interlocal agreement of a joint self-insurance program;
- (b) Elimination or reduction of stop-loss insurance;
- (c) Acceptance of any loans or lines of credit;
- (d) Provision of services to nonmembers;
- (e) Addition of members of other entity types than those included in original application approved by state risk manager.

(2) The following joint self-insurance program changes require written notification to the state risk manager prior to implementing the following changes:

- (a) Initial contract with a third-party administrator, or change in third-party administrator;
- (b) Any change to bylaws of a joint self-insurance program.

NEW SECTION

WAC 82-65-150 Standards for management and operations—Conflict of interest. (1) Every individual and joint self-insurance program shall require the third-party administrator, the actuary, and the broker of record to contract separately with the self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the self-insurance program.

(2) All self-insurance programs shall meet the following standards regarding restrictions on the financial interests of the program administrators:

- (a) No member of the board of directors; trustee; administrator, including a third-party administrator; or any other person having responsibility for the management or administration of a self-insurance program or the investment or other handling of the program's money shall:
 - (i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar com-

penetration regularly fixed and allowed for because of services regularly rendered to the program.

- (ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, trustee, third-party administrator, or as an employee.

- (iii) Have any direct or indirect pecuniary interest in any loan or investment of the program.

- (b) No consultant or legal counsel to the self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the self-insurance program and any insurer, health care service contractor, health care supply provider or consultant.

- (c) Brokers of record for the self-insurance program may receive compensation for insurance transactions performed within the scope of their licenses. The terms of compensation shall be provided for by contract between the broker of record and the self-insurance program, and the amount or percentage of the compensation must be disclosed in writing. Contracts between brokers of record and the self-insurance program shall include a provision that contingent commissions or other form of compensation not specified in the contract shall not be paid to the broker of record as a result of any self-insurance program insurance transactions. The self-insurance program shall establish a contract provision which requires the broker provide to the program a written annual report on a form provided by the state risk manager which discloses the actual financial compensation received. The report shall include verification that no undisclosed commission was received as a result of any such insurance transaction made on behalf of the program.

- (d) No third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

NEW SECTION

WAC 82-65-160 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager, with concurrence from the health and welfare advisory board, shall fix state risk manager fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.62 RCW. Such fees shall be levied against each individual and joint health and welfare benefit self-insurance program regulated by chapter 48.62 RCW. Services covered by the state risk manager fees will include program reviews, monitoring and continuing oversight.

(2) The state risk manager fees shall be paid by each self-insurance program to the state of Washington, office of financial management within sixty days of the date of invoice. Any self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(3) A self-insurance program that has voluntarily or involuntarily terminated shall continue to pay an administrative fee until such time as all liabilities for unpaid claims and claim adjustment expenses and all administrative responsibilities of the self-insurance program have been satisfied.

(4) The state risk manager shall assess each prospective joint health and welfare self-insurance program and each pro-

spective individual health and welfare benefit self-insurance program, an initial investigation fee at a rate determined annually by the state risk manager, with the concurrence of the advisory boards.

NEW SECTION

WAC 82-65-170 Standards for operations—Appeals of fees. (1) A self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

(2) The state risk manager shall review any fee appealed by a self-insurance program, together with the reasons for the appeal. Within fourteen days of receipt of notification from the self-insurance program, the state risk manager shall respond in writing to the self-insurance program, either reaffirming the fee or modifying it, and stating the reasons for the decision.

NEW SECTION

WAC 82-65-180 Standards for operations—Appeals of cease and desist orders. Within ten days after an individual or joint self-insurance program covering health and welfare benefits has been served with a cease and desist order under RCW 48.62.091(3), the entity may request an administrative hearing. The hearing provided may be held in such a place as is designated by the state risk manager and shall be conducted in accordance with chapters 34.05 RCW and 10-08 WAC.

NEW SECTION

WAC 82-65-190 Standards for operations—Meetings. Every self-insurance program is subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW.

NEW SECTION

WAC 82-65-200 Standards for operation and management—Rules for joint self-insurance programs. The following rules apply exclusively to joint self-insurance programs. Individual programs shall be exempt from these requirements.

NEW SECTION

WAC 82-65-210 Standards for operation—Membership. Membership in a joint self-insurance program requires the execution of an interlocal agreement. Members of a joint self-insurance program shall receive benefits for claims covered by the program only as a result of their signature on the interlocal agreement. Only members may participate in risk-sharing. Only members may participate in the self-insured retention layer, and only members may participate in the joint

purchase of insurance. Further, each member shall agree to the following:

(1) Each member shall pay assessments when required by the governing body of the program.

(2) Each member shall obtain approval to join the program from the governing body of the respective member. The approval shall be by resolution or ordinance of the governing body as appropriate for the entity type.

(3) Each member shall become a signatory to the interlocal agreement and subsequent amendments to the interlocal agreement of the joint self-insurance program.

NEW SECTION

WAC 82-65-220 Standards for operation—Providing services to nonmembers. (1) Nonmember local governments may purchase claims administration, risk management, claims processing and/or other ongoing significant support services through an interlocal agreement as authorized by chapter 39.34 RCW. Nonmembers shall not participate in any coverages of the joint self-insurance program including the self-insured retention layer and the excess insurance or reinsurance layer. This section is not intended to preclude nonmembers purchasing services from becoming members of the joint self-insurance program, provided the nonmember meets the requirements of WAC 82-65-210 and is eligible for membership as authorized by RCW 48.62.021 (1). This section is not intended to limit programs from providing occasional risk management or other support services to nonmembers, but is intended to provide standards for members providing ongoing significant services to nonmembers.

(2) A program intending to provide ongoing significant services to nonmembers shall submit a written plan to the state risk manager for approval prior to providing services. The plan shall include, at a minimum, the services to be provided, the time frame for providing such services, the expected revenues and expenditures resulting from providing said services, and a written legal determination of all potential federal and state tax liabilities created by providing services to nonmembers. The arrangement to provide such services shall be approved in writing by the state risk manager within sixty days of the joint self-insurance program's final plan submission.

(3) Every joint self-insurance program providing ongoing significant services to nonmembers as of the effective date of these regulations must submit a written plan meeting the requirements stated herein.

NEW SECTION

WAC 82-65-230 Standards for operation—Communication with members—Annual membership report. Every joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, financial information which includes the comparative balance sheet and statement of revenues, expenses and net assets. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership

report on the official web site of the program for a minimum of three years from the date of publication.

NEW SECTION

WAC 82-65-240 Standards for operation—Notice of regular meetings of the governing body. Every joint self-insurance program shall provide every member with a notice of the time and place of each regular meeting of the governing body at least ten days prior to the meeting. The notice shall be delivered in electronic or paper form, and the time and location of each meeting shall be included in such notice. The state risk manager shall be provided a copy of all meeting notifications to members in the same form, manner and time as provided to members. In addition to electronic or regular mail, programs shall publish notification of regular meetings on the electronic web site of the program accessible to the public. Notice of regular meetings shall comply with the meeting notification requirements of chapter 42.30 RCW or be published at least ten days in advance of regular meetings, whichever notification time is greater.

NEW SECTION

WAC 82-65-250 Standards for operation—Special meetings—Notice to members. All joint self-insurance programs shall comply with the requirements of RCW 42.30.080 in providing notification of special meetings. In addition, programs shall provide notice by electronic mail to the state risk manager and every member of the joint self-insurance program twenty-four hours in advance of every special meeting.

NEW SECTION

WAC 82-65-260 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance program will provide the state risk manager and every member with a preliminary agenda in advance of each meeting of the governing body. The agenda shall be delivered by electronic mail and shall be posted on the web site of the program accessible to the public. Meeting minutes, after approval, shall be provided to the state risk manager and every member of the program by electronic mail and shall be posted on the web site of the program accessible to the public.

NEW SECTION

WAC 82-65-270 Standards for operation—Notification of changes to bylaws or interlocal agreement. Every joint self-insurance program shall provide notification of the intent to change the bylaws or interlocal agreement to each member of the joint self-insurance program and the state risk manager by regular or electronic mail at least thirty days in advance of the meeting during which a vote on the proposed change will occur. Such notification shall include a copy of proposed changes.

NEW SECTION

WAC 82-65-280 Standards for operation—Changes to interlocal agreement. (1) Changes to any terms of the interlocal agreement shall be approved by a majority of the members, or by a greater majority if provided for in the bylaws or interlocal agreement of the joint self-insurance program. Changes to the interlocal agreement shall be approved during a regular meeting of the governing body or by mail-in ballot. If mail-in ballots are used, the ballots are to be secured and remain unopened until the next regular meeting of the governing body. The opening and counting of the ballots shall be conducted by the governing body of the joint self-insurance program during the next regular meeting and retained in compliance with public records retention laws. Each ballot shall be read orally as to the member name and vote, either in the affirmative or negative, and recorded in the meeting minutes.

(2) Amendments to the interlocal agreement shall be adopted by ordinance or resolution of the governing board or council of each member. The signed amendment and copy of the ordinance or resolution, as appropriate, shall be retained by the joint self-insurance program. The interlocal agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.

(3) Changes to any terms of the interlocal agreement shall require amendment using the approval and adoption process described above.

(4) The addition of new members to a joint self-insurance program and/or the subscription of the interlocal agreement by said new members shall not be considered as amendments to the interlocal agreement.

WSR 10-14-058

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

(Residential Care Services)

[Filed June 30, 2010, 9:05 a.m., effective July 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of amending these rules is to give adult family home residents and their families more time to prepare when there is a change of ownership and to make it easier for residents to examine inspection and complaint investigation reports.

The department is adding new sections WAC 388-76-10584 Resident rights—Examination of license, 388-76-10106 Change of ownership—Notice to department and residents, and 388-76-10107 Change of ownership—Priority processing.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10105 and 388-76-10585.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 10-10-077 on May 3, 2010.

A final cost-benefit analysis is available by contacting Michael Tornquist, P.O. Box 45600, Olympia, WA 98504-

5600, phone (360) 725-2589, fax (360) 438-7903, e-mail tornqmj@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 2, Repealed 0.

Date Adopted: June 30, 2010.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10105 Application—Change of ownership. (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract or otherwise.

(2) A change of ownership of an adult family home requires both a new license application and a new license.

(3) A change of ownership occurs when there is a change in:

- (a) The provider; or
- (b) The control of a provider.
- (4) Events which constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the adult family home is changed, such as when an adult family home forms:

- (i) A partnership;
- (ii) A corporation;
- (iii) A limited liability company; or
- (iv) When it merges with another legal organization.

(b) The adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of real property, personal property, or both.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death, results in only one person operating the home.

(d) Dissolution of a business partnership that is licensed to operate the adult family home.

(e) If the adult family home is a corporation and the corporation:

- (i) Is dissolved;
- (ii) Merges with another corporation, resulting in a change in the control of the provider; or

(iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of its shares to one or more of the following:

- (A) New or former shareholders; or
- (B) Present shareholders, each having less than five percent of the shares before the initial transaction.

(f) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the provider's control of the adult family home.

(5) The new owner:

(a) Must ~~((correct all deficiencies that exist at the time))~~ obtain a new license from the department before transfer of ((the)) ownership ((change));

(b) ~~((Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations))~~ Must not begin operation of the adult family home until the department has granted the license;

(c) Must ~~((obtain a new license from))~~ correct all deficiencies that exist at the time of the ((department before the transfer of)) ownership change; ((and))

(d) ~~((Must not begin operation of the adult family home until the department has granted the license.~~

(6) ~~The home must notify each resident, in writing at least thirty days before the effective date of the ownership change.~~

(7) ~~In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider for the adult family home))~~ Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations; and

(e) Must provide the department with a copy of the written notice of the change of ownership that was given to each resident, or applicable resident representatives.

NEW SECTION

WAC 388-76-10106 Change of ownership—Notice to department and residents. (1) The current adult family home owner must provide written notice to the department, residents or applicable resident representatives, sixty calendar days prior to the date of the proposed change of ownership; and

(2) The home must include the following information in the written notice:

- (a) Names of the present owner and prospective owner;
- (b) Name and address of the adult family home for which the ownership is being changed;
- (c) Date of proposed change;
- (d) The resident's right to decide whether they want to stay or move; and

(e) Any change in the home's policies or operations that could impact a resident's ability to continue to live in the home. For example, if the new owner will be changing the home's policy on serving Medicaid eligible residents, that change might impact a resident's ability to continue receiving services in the home.

NEW SECTION

WAC 388-76-10107 Change of ownership—Priority processing. In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider for the adult family home.

NEW SECTION

WAC 388-76-10584 Resident rights—Examination of license. The adult family home must place its license to operate and any conditions on the license, in a visible location in a common use area where it can be examined by residents, resident representatives, the department and anyone interested without having to ask for them.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10585 Resident rights—Examination of inspection results. (1) The adult family home must

~~((1) Ensure each resident is given an opportunity to examine))~~ place the following documents in a visible location in a common use area where they can be examined by residents, resident representatives, the department and anyone interested without having to ask for them.

(a) A copy of the most recent inspection report ((of the home)) and related ((plans of correction)) cover letter; and

(b) A copy of all complaint investigation reports, and any related cover letters received since the most recent inspection or not less than the last twelve months.

~~((2) ((Post a notice in a visible location in the home indicating the inspection report is available for review))~~ The adult family home must post a notice that the following documents are available for review if requested by the residents, resident representatives, the department and anyone interested.

(a) A copy of each inspection report and related cover letter received during the past three years; and

(b) A copy of any complaint investigation reports and related cover letters received during the past three years.

WSR 10-14-061**PERMANENT RULES****BOARD OF INDUSTRIAL
INSURANCE APPEALS**

[Filed June 30, 2010, 10:04 a.m., effective July 31, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To revise the board's rules of practice and procedure by amending WAC 263-12-01501, 263-12-020, and 263-12-117; and by adding new section WAC 263-12-116, regarding exhibits. Changes are necessary to meet current business needs.

Citation of Existing Rules Affected by this Order: Amending WAC 263-12-01501, 263-12-020, and 263-12-117.

Statutory Authority for Adoption: RCW 51.52.020.

Adopted under notice filed as WSR 10-09-105 on April 21, 2010.

Changes Other than Editing from Proposed to Adopted Version: WAC 263-12-020(3), the proposed addition subsection (e) is removed in its entirety.

WAC 263-12-020 (5)(b)(iii), capitalization is removed from the last occurrence of the word "board."

WAC 263-12-117(3), the proposed language, "portable document format (PDF). The address for submitting electronic depositions is: depositions@biia.wa.gov" is replaced with "format in accordance with procedures established by the board."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 30, 2010.

David E. Threedy
Chairperson

NEW SECTION

WAC 263-12-116 Exhibits. (1) Whenever possible, exhibits should be submitted on paper 8 1/2" x 11" in size. A larger version may be shown to the judge or witness for purpose of demonstration and a smaller version marked and offered as the exhibit.

(2) The board will not accept any hazardous exhibit. A hazardous exhibit is an exhibit that threatens the health and safety of persons handling the exhibit, including exhibits having potentially toxic, explosive, or disease-carrying characteristics. Non-exclusive examples of hazardous exhibits include:

- biohazards (bodily fluid samples, bloody clothing)
- used medical implements or devices (surgical screws, cables, plates, pins, prosthetic devices)
- corrosive or toxic substances
- controlled substances (prescription drugs)
- potential airborne contaminants (asbestos, silica)
- flammable, explosive, or reactive materials
- live ammunition, firearms, knives, and other weapons

(3) Photographs, videotapes, or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristics of hazardous evidence.

(4) If a party is uncertain whether a proposed exhibit conforms to this rule, that party must request a conference for

the judge to make a determination of conformity at least fourteen days before submitting the exhibit.

AMENDATORY SECTION (Amending WSR 06-12-003, filed 5/25/06, effective 6/25/06)

WAC 263-12-01501 Communications and filing with the board. (1) Communications with the board.

(a) **Where to file.** All written communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(b) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, or by telephone facsimile.

(i) **Filing personally.** The filing of a written communication with the board personally is perfected by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(ii) **Filing by mail.** The filing of a written communication with the board is perfected by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(iii) **Filing by telephone facsimile.**

(A) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(B) The hours of operation of the board's telephone facsimile equipment are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next (~~succeeding~~) business day.

(C) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication

relates, and indicating the date of, and the total number of pages included in, such transmission.

(D) No written communication should exceed fifteen pages in length, exclusive of the cover page required by this rule.

(E) The party attempting to file the written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(F) The board may require a party to file an original of any document previously filed by telephone facsimile.

(iv) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's internet site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the notice of appeal is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

(c) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(d) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number which was assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 04-16-009, filed 7/22/04, effective 8/22/04)

WAC 263-12-020 Appearances of parties before the board. (1) Who may appear.

(a) Any party to any appeal may appear before the board at any conference or hearing held in such appeal, either on the party's own behalf or by an attorney at law or other authorized lay representative of the party's choosing as prescribed (~~(by)~~ ~~in~~ (~~section 3~~) subsection (3) below.

(b) Appeals under the Washington Industrial Safety and Health Act.

(i) In an appeal by an employee or employee representative under the Washington Industrial Safety and Health Act, the cited employer may enter an appearance as prescribed in subsection (2) below and will be deemed a party to the appeal.

(ii) In an appeal by an employer, under the Washington Industrial Safety and Health Act, an employee or employee representative may enter an appearance as prescribed in subsection (2) below and will be deemed a party to the appeal.

(c) Where the party appears representing himself or herself, he or she may be accompanied, both at conference and at hearing, by a lay person of his or her choosing who shall be permitted to accompany the party into the conference or hearing room and with whom he or she can confer during such procedures.

(d) Although the industrial appeals judge may not advocate for either party, all parties who appear either at conferences or hearings are entitled to the assistance of the industrial appeals judge presiding over the proceeding. Such assistance shall be given in a fair and impartial manner consistent with the industrial appeals judge's responsibilities to the end that all parties are informed of the procedure which is to be followed and the issues which are involved in the proceedings. Any party who appears representing himself or herself shall be advised by the industrial appeals judge of the burden of proof required to establish a right to the relief being sought.

(2) How to make an appearance.

(a) Appearances shall be made either by:

(i) Filing a written notice of appearance with the board containing the name of the party to be represented, and the name and address of the representative; or by

(ii) Appearing at the time and place of a conference or hearing on the appeal, and notifying the industrial appeals judge of the party to be represented, and the name and address of the representative.

(b) The appearing party shall furnish copies of every written notice of appearance to all other parties or their representatives of record at the time the original notice is filed with the board.

(c) The board shall serve all notices and orders on each representative and each party represented. Service upon the representative shall constitute service upon the party. Where more than one individual associated with a firm, or organization, including the office of the attorney general, has made an appearance, service under this subsection shall be satisfied by serving the individual who filed the notice of appeal, or who last filed a written notice of appearance or, if no notice of appeal or written notice of appearance has been filed on behalf of the party, the individual who last appeared at any proceeding concerning the appeal.

(3) Lay representation. Duly authorized lay representatives may be permitted to appear in proceedings before the board without a formal request for admission to practice before the board so long as the lay representative does not charge a fee and is not otherwise compensated for the representation except as provided below:

(a) A worker or beneficiary may be represented by a person employed by the worker's labor union whose duties include handling industrial insurance matters for the union. Lay persons may not represent workers before the board in return for remuneration received from the worker or from the worker's receipt of benefits under this act.

(b) An employer may be represented by an employee. An employer may also be represented by a firm or firms that contracts with the employer to handle matters pertaining to industrial insurance without regard to whether a fee is charged. Within fourteen days of receipt of an order granting appeal, any representative of an employer must file a written notice of appearance that includes the name, address, and telephone number of the individual who will appear.

(c) In appeals involving the Washington Industrial Safety and Health Act under chapter 49.17 RCW and assessments under chapter 51.48 RCW, an employer may be represented by a lay person without regard to whether a fee is charged.

(d) Paralegals supervised by an attorney licensed in the state of Washington to practice law may represent any party appearing before the board.

(4) Withdrawal or substitution of representatives. An attorney or other representative withdrawing from a case shall immediately notify the board and all parties of record in writing. The notice of withdrawal shall comply with the rules applicable to notices of withdrawal filed with the superior court in civil cases. Withdrawal shall be subject to approval by the industrial appeals judge or the executive secretary. Any substitution of an attorney or representative shall be accomplished by written notification to the board and to all parties of record together with the written consent of the prior attorney or representative. If such consent cannot be obtained, a written statement of the reason therefor shall be supplied.

(5) Conduct. All persons appearing as counsel or representatives in proceedings before the board or before its industrial appeals judges shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(a) Industrial appeals judge. If any such person does not conform to such standard, the industrial appeals judge presiding over the appeal, at his or her discretion and depending on all the circumstances, may take any of the following actions:

(i) Admonish or reprimand such person; ~~or~~

(ii) Exclude such person from further participation in the proceedings and adjourn the same; ~~or~~

(iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100; or

(iv) Report the matter to the board.

(b) The board. In its discretion, either upon referral by an industrial appeals judge as stated above or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, the board may take appropriate disciplinary action including, but not limited to:

(i) A letter of reprimand;

(ii) Refusal to permit such person to appear in a representative capacity in any proceeding before the board or its industrial appeals judges, or

(iii) Certification of the record to the superior court for contempt proceedings as provided in RCW 51.52.100. If the circumstances require, the board may take action as described above prior to notice and hearing if the conduct or fitness of the person appearing before the board requires immedi-

ate action in order to preserve the orderly disposition of the appeal or appeals.

(c) Proceedings. If any person in proceedings before the board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered so to do, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having the oath refuses to be examined according to law, the industrial appeals judge may, at his or her discretion and depending on all the circumstances:

- (i) Admonish or reprimand such person~~(;);~~ ~~((¶))~~
- (ii) Exclude such person from further participation in the proceedings and adjourn the same~~(;);~~ ~~((¶))~~
- (iii) Certify the facts to the appropriate superior court for contempt proceedings as provided in RCW 51.52.100~~(;);~~ or
- (iv) Report the matter to the board for action consistent with (b) ~~((above))~~ of this subsection.

AMENDATORY SECTION (Amending WSR 04-16-009, filed 7/22/04, effective 8/22/04)

WAC 263-12-117 Perpetuation depositions. (1) **Evidence by deposition.** The industrial appeals judge may permit or require the perpetuation of testimony by deposition, subject to the applicable provisions of WAC 263-12-115. Such ruling may only be given after the industrial appeals judge gives due consideration to: (a) ~~((¶))~~the complexity of the issues raised by the appeal; (b) the desirability of having the witness's testimony presented at a hearing; (c) the costs incurred by the parties in complying with the ruling; and (d) ~~((¶))~~the fairness to the parties in complying with the ruling. ~~((The industrial appeals judge may require that depositions be taken and published within prescribed time limits, which time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when appropriate and requested by a party, the industrial appeals judge may allocate costs to parties or their representatives. If the deposition is not transcribed in a reproducible format it may be excluded from the record.))~~

(2) The industrial appeals judge may require that depositions be taken and published within prescribed time limits. The time limits may be extended by the industrial appeals judge for good cause. Each party shall bear its own costs except when the industrial appeals judge allocates costs to parties or their representatives.

(3) The party filing a deposition must submit the deposition in a written format as well as an electronic format in accordance with procedures established by the board. Exhibits to the deposition do not have to be filed electronically but a legible hard copy must accompany the paper transcription of the deposition. If the deposition is not transcribed in a reproducible format it may be excluded from the record.

~~((2))~~ (4) **Procedure at deposition.** Unless the parties stipulate or the industrial appeals judge determines otherwise all depositions permitted to be taken for the perpetuation of testimony shall be taken subject to the following conditions: (a) ~~((¶))~~that all motions and objections, whether to form or otherwise, shall be raised at the time of the deposition and if

not raised at such time shall be deemed waived; (b) that all exhibits shall be marked and identified at the time of the deposition and, if offered into evidence, appended to the deposition; (c) that the deposition be published without necessity of further conference or hearing at the time it is received by the industrial appeals judge; (d) that all motions, including offers to admit exhibits and objections raised at the time of the deposition, shall be ruled upon by the industrial appeals judge in the proposed decision and order; and (e) that the deposition may be appended to the record as part of the transcript, and not as an exhibit, without the necessity of being retyped into the record.

WSR 10-14-072
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed July 1, 2010, 8:34 a.m., effective August 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this proposal is to remove the ongoing six dollar fee associated with property division obligation payments. The ongoing six dollar fee is being removed because the department charges seventy-five dollars for the first property division obligation payment and the ongoing fee has been determined to be unnecessary.

Citation of Existing Rules Affected by this Order: Amending WAC 415-02-500 and 415-02-720.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.50.680.

Adopted under notice filed as WSR 10-09-051 on April 15, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 1, 2010.

Steve Hill
Director

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

WAC 415-02-500 Property division in dissolution orders¹. This section applies to all retirement plans that the

department administers. This section also directs you to additional sections as needed for your particular situation.

(1) **What can a court do?** A court can enter a dissolution order dividing your retirement account in either of the following ways:

(a) Awarding an interest² in your account to your ex-spouse by using WAC 415-02-510 or 415-02-530; or

(b) Splitting³ your account into two separate accounts (one for you and one for your ex-spouse) by using WAC 415-02-520 or 415-02-540, but only if you are vested at the time the dissolution order is entered. "Vested" is defined in subsection (16) of this section.

(2) **Which section should I use?** Consult the following table for direction to the section to use in developing your property division dissolution order. Different sections are provided depending on whether your property division dissolution order is going to provide an interest to your ex-spouse or whether you are splitting your retirement account with your ex-spouse.

If you are in this system and plan:	And the following is true:	Use this section:
Any	You need general information and rules about drafting dissolution orders related to your retirement plan and system.	415-02-500
JRF, JRS, LEOFF Plan 1, and WSPRS Plan 1	You are drafting a dissolution order. (We recommend that you contact the department for assistance because some exceptions may apply.)	415-02-510
LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, and TRS Plan 1 or 2, WSPRS Plan 2	You are drafting a dissolution order that will be entered before you are vested ; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-510
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-520
PERS Plan 3, SERS Plan 3, and TRS Plan 3	You are drafting a dissolution order that will be entered before you are vested ; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse.	415-02-530

If you are in this system and plan:	And the following is true:	Use this section:
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-540
PERS Plan 2, SERS Plan 2, and TRS Plan 2	The department has already accepted your property division order, and you are considering a transfer to Plan 3.	415-02-550

(3) **What are the requirements for dissolution orders and amendments that provide for a property division of my retirement account?** The order must:

(a) Be entered by a court of competent jurisdiction and enforceable in Washington state;

(b) Be filed with the department within ninety days of the court's entry of the order;

(c) Establish the right of your ex-spouse to a portion of your retirement;

(d) Provide the name and date of birth of your ex-spouse;

(e) Incorporate the applicable language in this section and one of the following: WAC 415-02-510, 415-02-520, 415-02-530, or 415-02-540; and

(f) Indicate which WAC section was used in support of the order.

(4) **What else, besides a copy of the dissolution order, must my ex-spouse and I provide to the department?** You must provide addresses and Social Security numbers for both you and your ex-spouse before the department will honor a dissolution order or amendment. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(5) **I belong to more than one retirement plan. Does the order have to be written any differently?** The order must include specific provisions for each plan.

(a) Example for providing an **interest** to an ex-spouse (RCW 41.50.670 and WAC 415-02-510): Paul belongs to both TRS Plan 2 and PERS Plan 3. His preretirement dissolution order gives an interest in his retirement accounts to his ex-spouse. The order should include the language provided in:

(i) WAC 415-02-510 to divide Paul's TRS Plan 2 monthly retirement allowance or accumulated contributions.

(ii) WAC 415-02-530 to divide Paul's PERS Plan 3 monthly retirement allowance and/or accumulated contributions.

(b) Example for **splitting** an account with an ex-spouse: Mary is vested in both TRS Plan 2 and PERS Plan 3. Her preretirement dissolution order provides for splitting her retirement accounts with her ex-spouse. The order should include the language provided in:

(i) WAC 415-02-520 for preretirement splits to divide Mary's TRS Plan 2 retirement account.

(ii) WAC 415-02-540 for preretirement splits to divide Mary's PERS Plan 3 monthly retirement allowance and/or defined contributions.

(6) **What happens if my ex-spouse misses the ninety-day deadline for filing a copy of the dissolution order with the department?**

(a) RCW 41.50.670 requires the "obligee" (ex-spouse) to file a copy of the dissolution order with the department within ninety days of the order's entry with the court of record.

(b) The department will accept an order after the ninety-day deadline but will not make retroactive payments or split your defined contribution account retroactively.

(7) **How will the department divide the "after-tax" and "tax-deferred" dollars in my retirement account between my ex-spouse and me?** Depending on your plan and how long you have been a member, your retirement account may include both "after-tax" and "tax-deferred" dollars. The department will divide the "after-tax" and "tax-deferred" dollars based on the amount(s) awarded to your ex-spouse, unless the dissolution order states otherwise.

Example: At the time of John's marriage dissolution, he had \$50,000 total contributions in his retirement account with \$20,000 in after-taxed dollars and \$30,000 in tax-deferred dollars. The dissolution order awards 50% of his accumulated contributions to his ex-spouse, Susan. Therefore, the department will give Susan \$10,000 of after-tax dollars and \$15,000 of tax-deferred dollars.

(8) **If I am in a retirement plan that offers survivor options, can the court order me to name my ex-spouse as my survivor beneficiary?** Yes. To do so, the dissolution order must include the language in RCW 41.50.790(1).

(9) **Is there a minimum benefit amount that the department will pay to my ex-spouse if the property division dissolution order splits my retirement account with my ex-spouse?** The answer is different depending on if the department accepts the property division dissolution order BEFORE or AFTER you retire.

(a) BEFORE retirement split: Yes. If the court order splits your account with your ex-spouse, and your ex-spouse's monthly payment will be less than the minimum monthly dollar amount for your retirement plan, the department may make a lump sum payment instead of monthly payments. The lump sum payment will be equal to the present value of the monthly payments. The department will NOT make the lump sum payment until your ex-spouse meets the age requirement for a normal retirement for your system and plan.

(b) AFTER retirement split: No. The department will pay the amount specified in the dissolution order as the ex-spouse's monthly payment amount even if it is less than the minimum monthly dollar amount for your system and plan.

(10) **Is there a maximum payment amount that the department will pay to my ex-spouse?** Yes. A court may not order the department to pay more than seventy-five percent of your monthly retirement allowance to your ex-spouse. See RCW 41.50.670(4).

(11) **How much is the fee the department charges for making payments directly to my ex-spouse?** The ~~((department charges))~~ fee for making payment to your former spouse is seventy-five dollars ~~((for making the first disbursement and six dollars for each subsequent disbursement))~~. The

~~((department will divide the fees evenly between you and your ex-spouse))~~ fee will be divided evenly between you and your former spouse. See RCW 41.50.680.

(12) **What happens to my account if I return to retirement system membership?** Please contact the department for information if you are in this situation.

(13) **What language should the property division order use to divide my deferred compensation program (DCP) account?** Refer to WAC 415-501-495 or contact DCP for information about your DCP account and your marriage dissolution.

(14) **How do I contact the department for additional assistance?** Complete information is available in WAC 415-06-100 (How do I contact the department?).

(15) **Where can I find examples of completed property division dissolution orders?** Following are examples of the required language from the statutes and WAC sections that must be used in a dissolution order. The information in *bold italics* will be dictated by your own circumstances.

(a) **Example 1.** Jane Doe, a nonvested member of PERS Plan 2, and her husband, John Doe, decide to divorce. WAC 415-02-510 governs dissolution orders of nonvested members of PERS Plan 2. Jane and John complete the paragraphs in RCW 41.50.670(2) and WAC 415-02-510(2) as follows:

Defined Benefits:

RCW 41.50.670(2), paragraph two, and WAC 415-02-510(2)

If *Jane Doe* (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to *John Doe* (the obligee), *N/A* dollars from such payments or *a fraction where the numerator is equal to 24 (the number of months in which service credit was earned while the marital community was in existence), and the denominator is equal to the number of months of service credit earned by the obligor at the time of retirement X 50* percent of such payments.

If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

Accumulated Contributions:
RCW 41.50.670(2), paragraph three, and WAC 415-02-510(2)

If *Jane Doe* (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to *John Doe* (the obligee) **\$5,700** dollars plus interest at the rate paid by the Department of Retirement Systems on member contributions. Such interest will accrue from the date of this order's entry with court of record.

(b) **Example 2:** Binh Nguyen (a TRS Plan 3 retiree) and his wife, Lan Nguyen, are obtaining a property division dissolution order that splits his retirement account. When he retired, Binh had selected Lan to receive survivor benefits. WAC 415-02-540 applies, and the couple completes the required paragraphs.

Defined Benefits:
WAC 415-02-540(12)

The Department of Retirement Systems (department) shall create a **defined benefit account** for Lan Nguyen (ex-spouse) in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and pay him or her **\$350** (amount) for his or her life. To pay for this benefit, Binh Nguyen's (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective no more than 30 days after the department's acceptance of the order.

Defined Contributions:
WAC 415-02-540(9)

The Department of Retirement Systems (department) shall split Binh Nguyen's (member's) **defined contribution account** in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and create a separate account for Lan Nguyen (ex-spouse). The amount of **\$25,000** (amount) shall be transferred from Binh Nguyen's (member's) **defined contribution account** to Lan Nguyen's (ex-spouse's) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(16) Terms used:

- (a) Department's acceptance - The department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.
- (b) Dissolution order - RCW 41.50.500.
- (c) Obligee - RCW 41.50.500(5).
- (d) Obligor - RCW 41.50.500(6).
- (e) Plan 3 - WAC 415-111-100.
- (f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnotes for section:

- 1 "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state. RCW 41.50.500(3) (2002).
- 2 When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.
- 3 When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account has been established, your account and your ex-spouse's account are not tied in any way.

AMENDATORY SECTION (Amending WSR 04-04-040, filed 1/29/04, effective 3/1/04)

WAC 415-02-720 What does the department charge for processing split payments? This section applies whenever the department administers split payments for child support, mandatory benefit assignment orders (MBAOs), or other direct pay orders.

	Type	Amount	Statutory Authority
(1)	Child support	Ten dollars for the first disbursement and one dollar for each additional. Fees will be charged to the obligor.	RCW 26.18.110(4); 26.23.060(9) and 74.20A.080(15)
(2)	Mandatory assignment of retirement benefits (MBAO)	Twenty-five dollars for the first disbursement and six dollars for each additional. Fees will be charged to the obligor.	RCW 41.50.600(4)

	Type	Amount	Statutory Authority
(3)	Property division obligations (see also WAC 415-02-500(11))	Seventy-five dollars (for the first disbursement and six dollars for each additional). Fee((s)) will be divided equally between the obligor and obligee <u>and deducted from your first payment.</u>	RCW 41.50.680

WSR 10-14-074

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed July 1, 2010, 10:36 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Such action is required by state statute chapter 18.300 RCW and SSB 5391.

Purpose: Chapter 18.300 RCW, the law relating to body art, body piercing, and tattooing was passed by legislature during the 2009 legislative session. The department has developed rules to carry out this new law.

Citation of Existing Rules Affected by this Order: New sections WAC 308-22-010 Definitions, 308-22-020 Standard universal precautions for preventing the spread of diseases by using sterilization procedures and infection control in body art, body piercing, and tattooing, 308-22-040 Issuance of licenses—Requirements, 308-22-050 Fees, and 308-22-070 Requirements and standards—Minimum safety and sanitation standards for artist and shops, mobile units and event locations.

Statutory Authority for Adoption: RCW 43.24.086, 43.24.023, chapter 18.300 RCW.

Other Authority: SSB 5391.

Adopted under notice filed as WSR 10-10-124 on May 5, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 0, Repealed 0.

Date Adopted: July 1, 2010.

Walt Fahrer
Rules Coordinator

Chapter 308-22 WAC

BODY ART, BODY PIERCING, AND TATTOOING RULES

NEW SECTION

WAC 308-22-010 Definitions. For purposes of these rules, the following words and phrases have the following meanings unless the context clearly indicates otherwise.

"Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.

"Aseptic technique" means a procedure that prevents contamination of any object or person.

"Bloodborne pathogens" means microorganisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).

"Branding" means inducing a pattern of scar tissue by application of a heated material (usually metal) to the skin creating a serious burn which eventually results in a scar.

"Cleaning area" means an area, physically separated from all work stations or waiting areas, where contaminated tools or equipment are sanitized and disinfected.

"Department" means the department of licensing.

"Disinfect" or "disinfection" means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

"Disinfectant" means a substance or solution, registered with the United States Environmental Protection Agency (EPA) that kills or inactivates viruses and pathogenic microorganisms, but not necessarily their spores.

"Event license" is a temporary location license to hold a body art, body piercing, or tattooing convention or event in the state of Washington. Event license holders must meet the same requirements for a location license as defined under RCW 18.300.010.

"FDA" means United States food and drug administration.

"Gloves" mean single-use disposable medical grade gloves that are FDA approved.

"Hand sanitizer" means an alcohol-based sanitizer with a concentration of sixty percent to ninety-five percent ethanol or isopropanol.

"Jewelry" means any personal ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel, solid 14k or 18k white or yellow gold, niobium, titanium, or platinum, or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

"Licensee" means a shop, business or individual licensed to practice body art, body piercing, or tattooing.

"Mobile unit" is a location license under this chapter where the practice of body art, body piercing, or tattooing is conducted in a mobile structure. Mobile units must conform to the health and safety standards as defined under chapter 18.300 RCW.

"Mucous membranes" line various body cavities that are exposed to the external environment and internal organs. They are at several places continuous with skin at the: Nostrils, lips, ears, genital area, and anus. The sticky, thick fluid secreted by the mucous membranes and glands is termed mucus. The term mucous membrane refers to where they are found in the body and not every mucous membrane secretes mucus.

"Permanent cosmetics" includes the application of permanent eyeliner, eyebrows, lip liner, full lip color, and repigmentation using tattooing techniques of placing pigment under the skin. It is a form of tattooing.

"Procedure" means a body art, body piercing, and tattooing procedure.

"Procedure area" means any surface of an inanimate object that contacts the client's skin during a procedure and all surfaces where instruments and supplies are placed during a procedure.

"Sanitize" means a procedure that reduces the level of microbial contamination so that the item or surface is considered safe.

"Scarification" means altering skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, which result in permanently raised wheals or bumps known as keloids.

"Sharps" means any objects (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucous membrane including, but not limited to, pre-sterilized, single-use needles, scalpel blades, and razor blades.

"Sharps container" means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the international biohazard symbol.

"Single use" means products, instruments or items that are intended for one-time use and are disposed of after each use including, but not limited to, cotton swabs or balls, tissue or paper products, paper or plastic cups, gauze and sanitary coverings, razors, needles, scalpel blades, stencils, ink cups, and protective gloves.

"Sterilization" means a process that destroys all forms of microbial life, including highly resistant bacterial spores.

"Sterilizer" means an apparatus that is registered and listed with the FDA for destroying all forms of microbial life, including highly resistant bacterial spores.

"Universal precautions" is an approach to infection control as defined by the Center for Disease Control (CDC). According to the concept of universal precautions, all human blood and certain body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV) and other bloodborne pathogens.

"Work stations" means the area or room used for the purpose of performing body art, body piercing, or tattooing procedures.

NEW SECTION

WAC 308-22-020 Standard universal precautions for preventing the spread of diseases by using sterilization procedures and infection control in body art, body piercing, and tattooing. Every licensee shall comply with the requirements established by the department of health under WAC 246-145-015, 246-145-050, and 246-145-060.

NEW SECTION

WAC 308-22-040 Issuance of licenses—Requirements. Upon completion of an application and payment of the proper fee, the director shall issue the appropriate license to any person who:

(1) Is at least eighteen years old or older. Minors are prohibited from working in tattoo studios or any occupation where there is a risk of exposure to fluids or transmission of infectious agents. WAC 296-125-030.

(2) Provides proof of bloodborne pathogen certification. All bloodborne pathogen training courses must comply with OSHA 29 C.F.R. 1910.1030 standards.

(3) No artist may apply a tattoo to any minor under the age of eighteen. RCW 26.28.085.

NEW SECTION

WAC 308-22-050 Fees. The following fees shall be charged by the professional licensing division of the department of licensing. The department may require payment of fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve.

Title of Fee	Fee
Individual License:	
Tattoo	\$250
Body Art	\$250
Body Piercing	\$250
Permanent Cosmetics	\$250
Location License:	
Shop/Business	\$300
Mobile Unit	\$300
Event	\$300
Individual License Renewal:	
Tattoo	\$250
Body Art	\$250
Body Piercing	\$250
Permanent Cosmetics	\$250
Location License Renewal:	
Shop/Business	\$300

Title of Fee	Fee
Mobile Unit	\$300
Event	\$300
Individual License Late Renewal:	
Tattoo	\$350
Body Art	\$350
Body Piercing	\$350
Permanent Cosmetics	\$350
Location License Late Renewal:	
Shop/Business	\$400
Mobile Unit	\$400
Duplicate License	\$50

NEW SECTION**WAC 308-22-070 Requirements and standards—Minimum safety and sanitation standards for artists and shops, mobile units, and event locations.****(1) Every licensee shall maintain the following safety and sanitation standards:**

(a) Each location shall have a waiting area that is physically separated from the work stations and equipment cleaning area.

(b) Locations that use only disposable equipment are exempt from having a separate equipment cleaning area.

(c) The work stations and equipment cleaning area must be separated from living quarters by a floor to ceiling wall and closed doors during business hours.

(d) All locations must have access to an equipment cleaning area with a sink available. Sinks must have hot and cold running water. Sinks in equipment cleaning areas are to be used for disinfecting supplies, tools, equipment, and other materials. These sinks must be labeled "not for public use."

(e) All locations must have access to a separate hand washing sink, with hot and cold running water, for public use. Sinks must be supplied with single-use hand soap and disposable towels or an air dryer.

(f) Creams and lotions must be dispensed using a disposable or sanitized and disinfected applicator.

(g) After restroom use and before providing services to clients, licensees must wash hands with single-use soap and/or hand sanitizer and use disposable or single-use hand-drying towels or an air dryer.

(h) Waste containers must be emptied, sanitized, and disinfected daily.

(i) All locations shall be kept free of rodents and vermin and protected from infestation by insects.

(2) Work stations.

(a) No two workstations should overlap or share workspace.

(b) Each workstation must have a sealable, rigid, puncture-proof sharps container. Each container must be labeled with the international biohazard symbol.

(3) **Client records.** The shop/business must keep a record of all customers receiving services. Those records must include, but are not limited to:

(a) Customer's name, age, and address;

(b) Date of the procedure;

(c) Body art, body piercing, or tattoo practitioner's name;

(d) Location of and type of procedure;

(e) Customer signature;

(f) Client records must be retained for a minimum of two years and made available upon request by department personnel.

(4) Articles in contact with a client.

(a) All items, which come in direct contact with the client's skin that do not require disinfecting, must be sanitized.

(b) All articles, which come in direct contact with the client's skin that cannot be sanitized and disinfected, must be disposed of in a covered waste receptacle immediately after use.

(c) Disposable protective gloves must be disposed of upon removal.

(d) Liquids must be dispensed with a squeeze bottle or pump.

(5) Refuse and waste material.

(a) All chemical, flammable, toxic or otherwise harmful waste material must be deposited in a hands free covered waste receptacle and disposed of properly at the close of each business day.

(b) All nonchemical waste related to the performance of services must be deposited in a hands free covered waste receptacle to avoid the potential for cross contamination through release of or exposure to infectious waste materials.

(c) Containers located in the reception or office area, which do not contain waste relating to the performance of services, are exempt from having covers.

(6) **Disinfecting electrical tools and implements.** Electrical tools and implements must be disinfected after service on each client in the following order:

(a) Remove any foreign matter or debris;

(b) Disinfect with an EPA hospital grade disinfectant.

(7) Storage of tools and implements.

(a) New and/or sanitized and disinfected tools and implements must be stored separately from all others.

(b) Roller storage receptacles and contents must be sanitized and disinfected and free of foreign material.

(c) Storage cabinets, work stations, and storage drawers for sanitized and disinfected tools and implements must be clean, free of debris, and used only for sanitized and disinfected tools and implements.

(d) All used nondisposable tools and implements must be kept in a separate, puncture resistant container.

(8) Floors, walls, and other surfaces.

(a) All floors in work station areas must be made of a smooth, durable, nonabsorbent, nonporous material that is easily cleanable and can be maintained in a sanitary manner at all times.

(b) All other floors and floor coverings that are not in work station areas must be kept clean and in good repair or replaced so that they do not become a hazard to safety or health.

(c) All surfaces, including counters, tables, and client chairs, shall be made of smooth, nonabsorbent, and nonporous material that is easily cleanable and can be maintained in a sanitary manner at all times.

WSR 10-14-079
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 1, 2010, 1:41 p.m., effective August 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The low-income choice program is not related to the provisions for school choice under the Elementary and Secondary Education Act (no child left behind).

There is no reference to the low-income choice program in the Revised Code of Washington (RCW). Previous reference to the program was contained within the state operating budget.

The low-income choice transportation program was not utilized for several years prior to the 2009 legislative session. In the 2009-11 operating budget, all reference to the program was removed. This CR-103 removes the sections of WAC 392-141-205, 392-141-210, 392-141-215, 392-141-220, 392-141-225, and 392-141-230 that refer to the distribution of funding for this program.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-141-205, 392-141-210, 392-141-215, 392-141-220, 392-141-225, and 392-141-230.

Statutory Authority for Adoption: RCW 28A.150.150.

Adopted under notice filed as WSR 10-08-072 on April 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 6.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 6; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: May 11, 2010.

Randy Dorn
 State Superintendent

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-141-205	Choice low-income criteria.
WAC 392-141-210	Choice program transportation eligibility for reimbursement.
WAC 392-141-215	Choice calculation of payment.

WAC 392-141-220	Choice reimbursement limitations.
WAC 392-141-225	Choice method of payment.
WAC 392-141-230	Choice appropriation limitation.

WSR 10-14-080
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed July 1, 2010, 1:58 p.m., effective August 1, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Effective January 1, 2010, reseller permits replaced resale certificates as the means to substantiate wholesale purchases. Legislation from chapter 112, Laws of 2010, and chapter 563, Laws of 2009, authorize the department of revenue (department) to accept applications for reseller permits, issue reseller permits, and adopt rules for the effective implementation of the legislation. The department has adopted these rules to explain the application process and eligibility requirements for businesses to receive department-issued reseller permits as well as the appeals process for those applicants for reseller permits that are denied.

The adopted rules are WAC 458-20-10201 Application process and eligibility requirements for reseller permits, and 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits.

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

Other Authority: RCW 82.32.780 and 82.32.783.

Adopted under notice filed as WSR 10-01-203 on December 23, 2009.

Changes Other than Editing from Proposed to Adopted Version:

- **Subsection (301)**, language was changed to explain that the department may issue reseller permits to contractors without the contractor being required to submit an application for a permit to the department.
- **Subsection (302)**, language was changed to recognize that "contractor" is defined by reference to contractor registration and licensing statutes. The definition of "wholesale construction activity" was also added.
- **Subsection (305)**, language was added to explain that for applications filed on or after July 1, 2010, twenty-five percent of a contractor's material and labor purchases for the preceding twenty-four months must have been for retail and wholesale construction activities.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: July 1, 2010.

Alan R. Lynn
Rules Coordinator

NEW SECTION

WAC 458-20-10201 Application process and eligibility requirements for reseller permits.

Part I - General

(101) Introduction. Effective January 1, 2010, reseller permits issued by the department of revenue (department) replace resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction. Unique requirements and provisions apply to construction contractors. (See Part III of this section.) This section explains the criteria under which the department will automatically issue a reseller permit, the application process for both contractors and taxpayers engaging in other business activities when the department does not automatically issue or renew a reseller permit, and the criteria that may result in the denial of an application for a reseller permit.

(102) What is a reseller permit? A reseller permit is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. See RCW 82.04.060; 82.08.020. Reseller permits are to be used for wholesale purchases made on and after January 1, 2010.

(103) Can any business obtain a reseller permit? No. This act was passed by the legislature to address the significant retail sales tax noncompliance problem resulting from both the intentional and unintentional misuse of resale certificates. The department will not issue a reseller permit unless the business can substantiate that the business is entitled to make wholesale purchases. Some businesses may not receive a reseller permit, and if they do make wholesale purchases, they will need to pay retail sales tax to the seller and then claim a "taxable amount for tax paid at source" deduction or request a refund from the department as discussed in subsection (205) of this section.

In addition to this section, information regarding the reseller permit is available at the following sources:

- <http://dor.wa.gov>, which is the department's web site;
- WAC 458-20-10202, which explains the process a taxpayer uses when appealing the department's denial of an application for a reseller permit; and
- WAC 458-20-102, which explains the taxpayer's responsibilities regarding the use of a reseller permit, the seller's responsibility for retaining a copy of a reseller permit, and the implications for a taxpayer not properly using a reseller permit and a seller not obtaining a copy of a reseller permit from the taxpayer.

Buyers and sellers should refer to the following for information regarding the resale certificate, which is the document used to substantiate the wholesale nature of a sales transaction occurring before January 1, 2010:

- WAC 458-20-102A (Resale certificates), which explains the taxpayer's responsibilities regarding the use of a resale certificate, the seller's responsibility for retaining a resale certificate, and the implications for a taxpayer not properly using a certificate and a seller not obtaining a certificate from the taxpayer. It is important to note that sellers should retain resale certificates for five years from the date of last use (e.g., December 31, 2014, for sales made in 2009) as the certificates may be requested by the department to verify the wholesale nature of a sale made before January 1, 2010.

Part II - Businesses Other than Contractors

(201) How does a business obtain a reseller permit?

The department will automatically issue a reseller permit to a business if it appears to the department's satisfaction, based on the nature of the business's activities and any other information available to the department, that the business is entitled to make purchases at wholesale.

Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit. Applications are available at: <http://dor.wa.gov> or by calling 1-800-647-7706. Completed applications should be mailed or faxed to the department at:

Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(202) When does a business apply for a reseller permit? A business can apply for a reseller permit at any time.

(203) What criteria will the department consider when making its decision whether a business will receive a reseller permit?

(a) Except as provided in (b) of this subsection, a business other than a contractor will receive a reseller permit if it satisfies the following criteria (contractors should refer to subsection (305) of this section for an explanation of the requirements unique to them):

(i) The business has an active tax reporting account with the department;

(ii) The business must have reported gross income on tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the business reports on an annual basis, on the immediately preceding annual tax return; and

(iii) Five percent or more of the business's gross income reported during the applicable six- or twelve-month period described in (a)(ii) of this subsection was reported under a retailing, wholesaling, or manufacturing business and occupation (B&O) tax classification.

(b) Notwithstanding (a) of this subsection, the department may deny an application for a reseller permit if:

(i) The department determines that an applicant is not entitled to make purchases at wholesale or is otherwise pro-

hibited from using a reseller permit based on the nature of the applicant's business;

(ii) The applicant has been assessed the penalty for the misuse of a resale certificate or a reseller permit;

(iii) The application contains any material misstatement;

(iv) The application is incomplete; or

(v) The department determines that denial of the application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(d) For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(e) For purposes of this subsection and subsection (305) of this section, a "material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department.

(f) In the event that a business has reorganized, the new business resulting from the reorganization may be denied a reseller permit if the former business would not have qualified for a reseller permit under (a) or (b) of this subsection. For purposes of this subsection, "reorganize" means:

(i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however effected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(204) What if I am a new business and don't have a past reporting history? New businesses will generally be issued permits if they indicate they will engage in activity taxable under a retailing, wholesaling, or manufacturing B&O tax classification.

(205) What if I don't get a reseller permit and some of my purchases do qualify as wholesale purchases? It is possible that some taxpayers that do not qualify for a reseller permit will make wholesale purchases. In these circumstances, the taxpayer must pay retail sales tax on these purchases and then claim a "taxable amount for tax paid at source" deduction on the taxpayer's excise tax return. Alternatively, the taxpayer may request a refund from the department of retail sales tax if paid on purchases that are later resold without being used (intervening use) by the taxpayer or for purchases that would otherwise have met the definition of wholesale sale if the taxpayer had provided the seller with a reseller permit or uniform exemption certificate as authorized in RCW 82.04.470. See also WAC 458-20-229 (Refunds). However, such a deduction in respect to the purchase of services is not permitted if the services are not of a

type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Part III - Construction Contractors

(301) How does a contractor obtain a reseller permit?

The department will automatically issue a reseller permit to a contractor if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing the reseller permit is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in subsection (305) of this section.

Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit in the same manner as provided in subsection (201) of this section.

(302) How do I determine whether I am a "contractor"? For purposes of the reseller permit:

(a) A "contractor" is a person whose primary business activity is as a contractor as defined under RCW 18.27.010 or an electrical contractor as defined under RCW 19.28.006.

(b) "Retail construction activity" means the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building, government contracting, public road construction, logging road construction, radioactive waste cleanup on federal lands, or designated hazardous site clean-up jobs.

(c) "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers. For purposes of this subsection, "consumer" has the same meaning under RCW 82.04.190.

(d) "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in subsection (305)(a)(iii) of this section, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(e) "Labor" is defined as the work of subcontractors (including personnel provided by temporary staffing companies) hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of speculative builders, labor includes the work of any construction contractor hired by the speculative builder. Labor does not include the work of taxpayer's employees. Nor does the term include consultants, engineers, construction managers, or other independent contractors hired to oversee a project. However, for purposes of the percentage discussed in subsection (305)(a)(iii) of this section, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(303) How does a contractor apply for a reseller permit? A contractor applies for a reseller permit in the same manner as businesses apply as provided in subsection (201) of this section. However, the application identifies information specific to contractors that must be provided.

(304) When does a contractor apply for a reseller permit? The same guidelines for business applicants as provided in subsection (202) of this section also apply to contractor applicants.

(305) What are the criteria specific to contractors to receive a reseller permit?

(a) The department may issue a permit to a contractor that:

(i) Provides a completed application with no material misstatement as that term is defined in subsection (203)(e) of this section;

(ii) Demonstrates it is entitled to make purchases at wholesale; and

(iii) Reported on its application:

(A) Filed July 1, 2010, and after that at least twenty-five percent of its total dollar amount of material and labor purchases in the preceding twenty-four months were for retail and wholesale construction activities performed by the contractor;

(B) Filed from January 1, 2010, through June 30, 2010, that at least twenty-five percent of its total dollar amount of material and labor purchases in the preceding twelve months were for retail construction activities.

The department may, however, approve an application not meeting this criterion if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under Title 82 RCW.

(b) If the criteria in (a) of this subsection are satisfied, the department will then consider the following factors when determining whether to issue a reseller permit to a contractor:

(i) Whether the contractor has an active tax reporting account with the department;

(ii) Whether the contractor has reported gross income on tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the contractor reports on an annual basis, on the immediately preceding annual tax return;

(iii) Whether the contractor has the appropriate certification and licensing with the Washington state department of labor and industries;

(iv) Whether the contractor has been assessed the penalty for the misuse of a resale certificate or a reseller permit; and

(v) Any other factor resulting in a determination by the department that denial of the contractor's application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on the same materials and information as discussed in subsection (203)(c) of this section.

(d) For purposes of this subsection, "gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(e) The provisions of subsection (203)(f) of this section are equally applicable to contractors.

(306) What if a contractor does not obtain a reseller permit and some of its purchases do qualify as wholesale purchases? The provisions of subsection (205) of this section are equally applicable to contractors.

NEW SECTION

WAC 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits. (1) Introduction.

The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this section the brief adjudicative procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings for the following matters related to reseller permits:

(a) A determination of whether an applicant for a reseller permit meets the criteria for a reseller permit per WAC 458-20-10201; and

(b) On the administrative appeal of an initial order denying the taxpayer's application for a reseller permit, a determination as to whether the department's order denying the application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201.

This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings.

(2) **Record in brief adjudicative proceedings.** The record with respect to a taxpayer's appeal per RCW 34.05.482 through 34.05.485 of the department's denial of an application for a reseller permit will consist of:

(a) The taxpayer's application for the reseller permit, the taxpayer's notice of appeal, the taxpayer's written response, if any, to the reasons set forth in the department's notice of denial of a reseller permit, and all records relied upon by the department or submitted by the taxpayer; and

(b) All correspondence between the taxpayer requesting the reseller permit and the department regarding the application for the reseller permit.

(3) **Conduct of brief adjudicative proceedings.** If the department denies an application for a reseller permit, it will notify the taxpayer of the denial in writing, stating the reasons for the denial. To initiate an appeal of the denial of the reseller permit application, the taxpayer must file a written

appeal no later than twenty-one days after service of the department's written notice that the taxpayer's application has been denied.

(a) A form notice of appeal of the denial of a reseller permit application (Reseller Permit Appeal Petition) is available at <http://dor.wa.gov> or by calling 1-800-647-7706. The completed form should be mailed or faxed to the department at:

Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(b) A presiding officer, who will be either the assistant director of the taxpayer account administration division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in responding to the taxpayer's application for a reseller permit.

(c) As part of the appeal, the taxpayer or the taxpayer's representative may present written documentation and explain the taxpayer's view of the matter. The presiding officer may request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(d) No witnesses may appear to testify.

(e) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(f) Within twenty-one days of receipt of the taxpayer's appeal of the denial of a reseller permit, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless an appeal is filed with the department's appeals division in subsection (4) of this section.

(4) **Review of initial orders from brief adjudicative proceeding.** A taxpayer that had its application for a reseller permit denied in an initial order issued per subsection (3) of this section may request a review by the department by filing a petition for review or by making an oral request for review with the department's appeals division within twenty-one days after the service of the initial order on the taxpayer. A form for an appeal of an initial order per subsection (3) of this section denying the taxpayer's application for a reseller permit is available at <http://dor.wa.gov>. A request for review should state the reasons the review is sought. A taxpayer making an oral request for review may at the same time mail a written statement to the address below stating the reasons for the appeal and its view of the matter. The address, telephone number, and fax number of the appeals division are:

Appeals Division, Reseller Permit Appeals
Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476
Telephone Number: 1-800-647-7706
Fax: 360-705-6733

(a) A reviewing officer, who will be either the assistant director of the appeals division or such other person as designated by the director, will conduct brief adjudicative proceedings and determine whether the department's denial of the taxpayer's application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within twenty days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(d) A request for administrative review is deemed denied if the department does not issue an order on review within twenty days after the petition for review is filed or orally requested.

(5) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this section and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this section or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (8) of this section is deemed complete upon mailing.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served

on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

- (i) In person;
- (ii) By first-class, registered or certified mail;
- (iii) By fax and same-day mailing of copies;
- (iv) By commercial parcel delivery company; or
- (v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this section.

(g) Service to the reviewing officer must be to the appeals division at the address shown in subsection (4) of this section.

(h) Where proof of service is required, the proofs of service must include:

- (i) An acknowledgment of service;
- (ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the taxpayer, the department, or on its own motion.

WSR 10-14-084
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 2, 2010, 9:01 a.m., effective August 2, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 388-310-2100 in order to help the department to stay within budget appropriations for the program by eliminating nonassistance food stamp (NAFS) recipients from career services program eligibility requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-2100.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010.

Adopted under notice filed as WSR 10-06-117 on March 3, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 2, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-029, filed 12/30/08, effective 2/1/09)

WAC 388-310-2100 Career services program. (1) What is the career services program?

Career services, administered by employment security department, within available funds, provides up to six months of:

- Basic needs payments;
- Wage progression services; and
- Job retention services.

(2) How can I get career services?

(a) To get career services, you must meet the following eligibility requirements:

(i) Be working thirty hours or more per week in a paid unsubsidized job; and

(ii) Not have left temporary assistance for needy families (TANF)/state family assistance (SFA) in sanction status within the previous six months; and

(iii) Be a custodial parent or caretaker relative who(~~(=~~
~~(A))~~) received TANF/SFA or diversion cash assistance (DCA) within at least one of the past two calendar months(~~(=~~
~~or~~

~~(B) Receives basic food assistance for your family and does not qualify under subsection (A) of this section or does not currently receive cash benefits under the TANF, SFA, refugee, or general assistance programs).~~

(b) You must also enroll with the employment security department during the following timeframes:

(i) Within the first two calendar months after your TANF/SFA ends; or

(ii) Within the first two calendar months after you received your first diversion cash assistance (DCA) payment(~~(=~~
~~or~~

~~(iii) Anytime starting the month after you meet eligibility criteria for career services while receiving basic food. You aren't eligible for career services based on receiving basic~~

~~food assistance if you have already received career services during the current state fiscal year (July 1 through June 30)).~~

(c) Each adult in your family who meets these conditions and enrolls in the program can receive the payments and services.

(3) What services and payments are available while I am enrolled in the career services program?

The career services program provides wage progression services, job retention services and basic needs payments.

(a) Services include employment planning that will help you keep your job and increase your wages.

(b) As shown in the chart below, cash payments and bonuses are made monthly, for up to six consecutive months after leaving TANF/SFA, ~~or receiving DCA~~~~((, or while receiving Basic Food assistance)).~~

(c) You may receive up to six hundred fifty dollars in cash payments and bonuses over the six-month period following your TANF/SFA case closing, ~~((getting)) or receiving your first DCA payment~~~~((, or while receiving Basic Food assistance)).~~

Program	Enrollment Period	Frequency	Payment Period	Payment & Bonus Amount	Payment Description
TANF/SFA or DCA	<ul style="list-style-type: none"> • First two months after TANF/SFA ends, or • Two months after first DCA payment 	People can enroll the first two months after they: <ul style="list-style-type: none"> • Exit TANF/SFA or • Receive first DCA payment 	Month 1 or 2	\$150.00	One-time enrollment bonus when you sign up for the program.
			Month 1-6 after TANF/SFA ends	\$50.00	Monthly payments begin once you enroll. If you enroll during Month 2, then you are not eligible for the Month 1 payment.
			Month 4 and 6	\$100.00 month 4 \$100.00 month 6	Bonus for completing the career services assessment and employment planning interview.
((Basic Food))	((Any time starting the month after becoming eligible for career services))	((One time in a fiscal year (July through June)))	((1st Month))	(((\$150.00))	((One time enrollment bonus when you sign up for the program.))
			((Month 1-6))	(((\$50.00))	((Monthly payments begin once you enroll.))
			((Month 4 and 6))	(((\$100.00 month 4 \$100.00 month 6))	((Bonus for completing the career services assessment and employment planning interview.))

(4) How long can I receive career services?

(a) Career services are available for a maximum of six consecutive months. Month one begins the calendar month after your TANF/SFA assistance ends or the calendar month after you receive your first DCA payment.

~~(b) ((If you are eligible for career services because you receive basic food assistance, career services are available for a maximum of six consecutive months beginning the month you enroll.~~

~~(e))~~ Your career services will stop for any of the following reasons:

- (i) The employment security department (ESD) learns you are no longer working thirty hours a week in unsubsidized employment;
- (ii) You begin receiving TANF/SFA assistance;
- (iii) ESD does not have your current mailing address;
- (iv) You are not living in Washington; or
- (v) It has been more than six months since your initial DCA payment or since you stopped receiving TANF/SFA

~~((or since you enrolled in the career services program because you receive basic food assistance)).~~

(5) What happens if the employment security department learns I am no longer working thirty hours or more per week?

(a) The employment security department will provide you with a letter with at least ten days advance notice that your career services will close. Your career services will stop at the end of the month in which your ten days notice expires. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(b) If you find a new job or increase your hours back up to thirty hours before the end of the month, you will remain eligible for career services payments.

(c) Employment security staff can help you find new employment or work with you to increase your hours of employment.

(6) What happens if I am approved for TANF/SFA assistance while I am receiving career services?

If you start receiving TANF/SFA assistance, the employment security department will provide you with a letter and close your career services case at the end of the month. The letter will tell you how to request an administrative hearing if you disagree with the decision.

(7) What can I do if I disagree with decisions about career services?

(a) You have the right to request an administrative hearing if you disagree with a decision or action regarding the career services program. For more information, see chapter 388-02 WAC and RCW 74.08.080.

(b) If you receive continued benefits, they will still end when you reach your benefit maximum as outlined under (3)(c) and (4) regardless of any other pending administrative hearing.

WSR 10-14-091
PERMANENT RULES
SECRETARY OF STATE
(Elections Division)

[Filed July 6, 2010, 9:18 a.m., effective August 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Clarifies the processes for special filing periods, withdrawal periods, poll voters, direct recording electronic voting devices, ballot processing, voting centers, precinct committee officer elections, and voter registration transfers. Repeals references to ranked choice voting.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-215-160, 434-230-120, 434-250-150, 434-253-330 and 434-262-210; and amending WAC 434-215-005, 434-215-065, 434-250-030, 434-250-100, 434-250-120, 434-250-330, 434-261-005, 434-261-050, and 434-262-075.

Statutory Authority for Adoption: RCW 29A.04.611.

Other Authority: RCW 29A.08.420, 29A.24.131, 29A.40.110, 29A.46.020, and 29A.80.041.

Adopted under notice filed as WSR 10-10-068 on April 30, 2010.

Changes Other than Editing from Proposed to Adopted Version: Language in WAC 434-250-120(2), 434-261-050(4), and 434-324-076, clarified.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 9, Repealed 5.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 9, Repealed 5; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 6, 2010.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

WAC 434-215-005 Filing information—Questionnaire—Compiling and dissemination. (1) Prior to March 1, the county auditor shall send a questionnaire to the administrative authority of each local jurisdiction for which the auditor is the candidate filing officer subject to the provisions of RCW 29A.04.321 and 29A.04.330. The questionnaire must be sent in the year the local jurisdiction is scheduled to elect officers. The purpose of the questionnaire shall be to confirm information which the auditor must use to properly conduct candidate filings for each office. The questionnaire should request, at a minimum, confirmation of offices to be filled at the general election that year, the name of the incumbent, and the annual salary for the position at the time of the filing period. Responses should be received prior to April 1 of that year so that the filing information can be compiled and disseminated to the public at least two weeks prior to the candidate filing period.

(2) If a jurisdiction fails to notify the county auditor that an office is to be filled at the general election and therefore the office is not included in the regular candidate filing period, the county auditor shall conduct a special three-day filing period for that office under the time frames established in RCW 29A.24.171 through 29A.24.191.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-215-065 Withdrawal of candidacy. Consistent with RCW 29A.24.131, a candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods. The filing officer has discretion to permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary election ballots have not been (~~ordered~~) formatted. If no primary election is held for (~~the~~) that office, the filing officer has discretion to permit the withdrawal at any time before the general election ballots are (~~ordered~~) formatted. If the jurisdiction is located in more than one county, withdrawal of a filing may only be accepted if ballots have not been formatted in all affected counties.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-215-160 Ranked choice voting.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-230-120 Ranked choice voting.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-030 Applications. (1) ~~((As authorized by RCW 29A.40.040, requests for status as an ongoing absentee voter must be made in writing. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing.))~~ Each county auditor who does not conduct all elections by mail must provide a form to allow a poll voter to become an ongoing absentee voter. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed; and

(c) A space for the voter to sign and date the application.

~~((A voter may request status as an ongoing absentee voter by indicating such on a standard voter registration form.))~~

(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, or in writing, and may be made by a family member. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:

(a) A space for the voter to print his or her name and the address at which he or she is registered to vote;

(b) The address to which the ballot is to be mailed;

(c) A space for the voter to indicate for which election or elections the application is made; and

(d) A space for the voter to sign and date the application.

(3) As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section, the form must include:

(a) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; and

(b) A checkbox requesting that a single absentee ballot be forwarded as soon as possible.

The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

(4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to

apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-250-100 Ballot deposit sites and voting centers. (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If a deposit site is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open from 7:00 a.m. until 8:00 p.m. Staffed deposit sites may be open prior to the election according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be posted according to standard public notice procedures;

(b) Be an accessible location consistent with chapters 29A.16 RCW and 434-257 WAC;

(c) Be marked with signage outside the building indicating the location as a place for voting;

(d) Offer disability access voting in a location or manner that provides for voter privacy;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) ~~((Record the name, signature and other relevant information for))~~ Require each voter who votes on a direct recording electronic voting device to sign and date the following

oath, and record the information in such a manner that the ballot cannot be traced back to the voter((:));

I do solemnly swear or affirm under penalty of perjury that I am:

A citizen of the United States;

A legal resident of the state of Washington;

At least eighteen years old on election day;

Voting only once in this election;

Not ineligible to vote due to a felony conviction; and

Not disqualified from voting due to a court order.

It is illegal to forge a signature or cast a ballot in another person's name. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of ten thousand dollars, or both.

(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;

(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;

(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;

(j) Provide either a voters' pamphlet or sample ballots;

(k) Provide voter registration forms;

(l) Display a HAVA voter information poster;

(m) Display the date of that election;

(n) Provide instructions on how to properly mark the ballot;

(o) Provide election materials in alternative languages if required by the Voting Rights Act; and

(p) Use an accountability form to account for all ballots issued.

(3) Ballot boxes must be secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must be placed into secured transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

WAC 434-250-120 Verification of the signature and postmark on ballots. (1) A ballot shall be counted only if:

~~((1))~~ (a) It is returned in the return envelope, or a similar envelope if it contains the same information ~~((and signed affidavit and is approved by the auditor))~~;

~~((2))~~ (b) The affidavit is signed with a valid signature in the place afforded for the signature on the envelope;

~~((3))~~ (c) The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark;

~~((4))~~ (d) The envelope is postmarked not later than the day of the election, or deposited in the auditor's office, a polling location, or a designated deposit site not later than 8:00 p.m. on election day; and

~~((5))~~ (e) The ballot is received prior to certification of the election.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the oath determines the validity of the ballot, per RCW 29A.40.110.

(3) The signature on the return envelope, or on a copy of the return envelope, must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a return envelope may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

WAC 434-250-330 County auditor's office as a voting center. (1) For elections conducted entirely by mail, the county auditor's office must operate as a voting center ~~((beginning the day that ballots are mailed to voters, excluding))~~ starting twenty days before an election until the day of the election. The county auditor's office is not required to be open as a voting center on Saturdays, Sundays, ~~((and))~~ legal holidays, or other days that the office is officially closed.

(2) If the persons providing services at the county auditor's office are not employees of the county auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political parties and must subscribe to an oath regarding the discharge of duties.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-250-150 Ranked choice voting.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-253-330 Ranked choice voting.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-261-005 Definitions. (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed on an absentee ballot as part of the initial processing, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election;

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of voter intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" on a ballot envelope for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) A mark witnessed by two people.

(6) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one."

(7) "Undervote" is no selections made for a race or measure.

(8) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures.

(9) "Seal log" is a log documenting each time a numbered seal is attached or removed from a ballot container. The log must include the seal number, date, and identifying information of persons attaching or removing the seal. Following certification of the election, the seal log must include documentation as to why the seal was removed from a ballot container.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

WAC 434-261-050 Unsigned oath or mismatched signatures. (1) If a voter neglects to sign the oath on an absentee or provisional ballot envelope, signs the oath with a mark and fails to have two witnesses attest to the signature, or signs the ballot envelope but the signature on the envelope does not

match the signature on the voter registration record, the auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign the oath on an absentee or provisional ballot envelope, or signs the oath with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the affidavit no later than the day before certification of the primary or election; or

(b) Sign a copy of the affidavit provided by the auditor, or mark the affidavit in front of two witnesses, and return it to the auditor no later than the day before certification of the primary or election.

(3) If the signature on the oath of an absentee or provisional ballot envelope does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the new registration form becomes the signature on the voter registration record for the current election and future elections; or

(b) Sign a copy of the affidavit provided by the auditor, and provide a photocopy of a valid government or tribal identification that includes the voter's current signature. The signature on the affidavit must match the signature on the identification, and both of those signatures must match the signature on the ballot envelope. The voter must return the signed affidavit and identification to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections; or

(c) Sign a copy of the affidavit provided by the auditor in front of two witnesses who attest to the signature. The signature on the affidavit must match the signature on the ballot envelope. The voter must return the signed affidavit to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections.

(4) If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the name is different, the ballot may be counted as long as the handwriting is clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the auditor shall send the voter a change-of-name form under RCW 29A.08.-440 and direct the voter to complete the form. If the signature on an absentee or provisional ballot envelope does not match the signature on the registration record because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(5) If the name on the signature does not match the name printed on the absentee ballot envelope, and the signature on the absentee ballot envelope does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the envelope if:

(a) The voter who signed the envelope can be identified;

(b) The voter who signed the envelope is registered at the same address as the voter to whom the envelope was issued;

(c) The signature on the envelope matches the signature on the voter registration record; and

(d) The voter who signed the envelope has not returned another ballot.

(6) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

((6)) (7) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-262-075 Election of political party precinct committee officers. (1) Candidates for precinct committee officer file and appear on the ballot as members of a major political party. The election of political party precinct committee officers is not conducted according to a top two primary established by chapter 2, Laws of 2005 (Initiative 872). Candidates must make a public declaration of party affiliation in the form of a precinct committee officer declaration of candidacy. Write-in votes cast for an individual who has not filed a write-in declaration of candidacy shall not be counted. The candidate of each political party who receives the most votes in the August primary election is declared elected.

(2) RCW 29A.80.051 includes a requirement that, to be declared elected, a candidate for precinct committee officer must receive at least ten percent of the number of votes cast for a candidate of the same party who received the most votes in the precinct. This requirement for election is not in effect because candidates for public office do not represent a political party.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-262-210 Ranked choice voting.

NEW SECTION

WAC 434-324-076 Voter registration updates. If a voter submits a registration transfer to a new county by the statutory deadline, but the voter's previous county issues the voter a ballot before the transfer is processed and the voter

votes the ballot issued by the previous county, the previous county must treat the voted ballot as if it is a provisional ballot and forward it to the voter's new county. The previous county does not need to forward the ballot if none of the races or issues on the voted ballot from the previous county is on a ballot in the voter's new county.

WSR 10-14-095

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed July 6, 2010, 11:16 a.m., effective July 6, 2010]

Effective Date of Rule: July 6, 2010.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The stumpage values provided in WAC 458-40-660 are required by statute (RCW 84.33.091) to be effective for the period of July through December 31.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage values.

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

Other Authority: RCW 48.33.091.

Adopted under notice filed as WSR 10-10-063 on April 30, 2010.

A final cost-benefit analysis is available by contacting Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6133, e-mail markbohe@dor.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 6, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-02-032, filed 12/29/09, effective 1/1/10)

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 ((January)) July 1 through ((June 30)) December 31, 2010:

**((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⁽¹⁾

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
		2	241	234	227	220	213
		3	241	234	227	220	213
		4	241	234	227	220	213
Western-Redcedar ⁽²⁾	RC	1	539	532	525	518	511
Western-Hemlock ⁽²⁾	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	
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 ⁽⁴⁾	CHW	1	3	2	1	1	
RC-Shake & Shingle-Blocks ⁽⁵⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

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
		4	229	222	215	208	201
Western-Redcedar ⁽²⁾	RC	1	539	532	525	518	511
Western-Hemlock ⁽²⁾	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	
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 ⁽⁴⁾	CHW	1	3	2	1	1	
RC-Shake & Shingle-Blocks ⁽⁵⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$226	\$219
		2	226	219	212	205	198
		3	226	219	212	205	198
		4	226	219	212	205	198
Western-Redcedar ⁽³⁾	RC	1	539	532	525	518	511
Western-Hemlock ⁽⁴⁾	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 ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle-Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ 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⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$271	\$264
		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
Ponderosa-Pine	PP	1	77	70	63	56	49
		2	54	47	40	33	26
Western-Redcedar ⁽³⁾	RC	1	539	532	525	518	511
Western-Hemlock ⁽⁴⁾	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 ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle-Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas-Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ 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⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$244	\$237	\$230	\$223	\$216
		2	244	237	230	223	216
		3	244	237	230	223	216
		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 ⁽³⁾	RC	1	539	532	525	518	511
Western Hemlock ⁽⁴⁾	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 ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	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 ⁽³⁾	RC	1	412	405	398	391	384
True Firs and Spruce ⁽⁴⁾	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 ⁽⁵⁾	SML	1	19	18	17	16	15
Chipwood ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

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

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	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 ⁽³⁾	RC	1	412	405	398	391	384
True Firs and Spruce ⁽⁴⁾	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 ⁽⁵⁾	SML	1	19	18	17	16	15
Chipwood ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

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

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	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
Ponderosa Pine	PP	1	77	70	63	56	49
		2	54	47	40	33	26
Western Redcedar ⁽³⁾	RC	1	525	518	511	504	497
Western Hemlock ⁽⁴⁾	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 ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1**
July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$267	\$260	\$253	\$246	\$239
		2	267	260	253	246	239
		3	267	260	253	246	239
		4	267	260	253	246	239
Western Redcedar ⁽²⁾	RC	1	495	488	481	474	467
Western Hemlock ⁽³⁾	WH	1	230	223	216	209	202
		2	230	223	216	209	202
		3	230	223	216	209	202
		4	230	223	216	209	202
Red Alder	RA	1	290	283	276	269	262
		2	261	254	247	240	233
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	171	164	157	150	143
Douglas-Fir Poles & Piles	DFL	1	547	540	533	526	519
Western Redcedar Poles	RCL	1	1273	1266	1259	1252	1245
Chipwood ⁽⁴⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2**
July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

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	247	240	233	226	219
Western Redcedar ⁽²⁾	RC	1	495	488	481	474	467
Western Hemlock ⁽³⁾	WH	1	239	232	225	218	211
		2	239	232	225	218	211
		3	239	232	225	218	211
		4	239	232	225	218	211
Red Alder	RA	1	290	283	276	269	262
		2	261	254	247	240	233
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	171	164	157	150	143
Douglas-Fir Poles & Piles	DFL	1	547	540	533	526	519
Western Redcedar Poles	RCL	1	1273	1266	1259	1252	1245
Chipwood ⁽⁴⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3
 July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$232	\$225	\$218	\$211	\$204
		2	232	225	218	211	204
		3	232	225	218	211	204
		4	232	225	218	211	204
Western Redcedar ⁽³⁾	RC	1	495	488	481	474	467
Western Hemlock ⁽⁴⁾	WH	1	227	220	213	206	199
		2	227	220	213	206	199
		3	227	220	213	206	199
		4	227	220	213	206	199
Red Alder	RA	1	290	283	276	269	262
		2	261	254	247	240	233
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	171	164	157	150	143
Douglas-Fir Poles & Piles	DFL	1	547	540	533	526	519
Western Redcedar Poles	RCL	1	1273	1266	1259	1252	1245
Chipwood ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
 July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$307	\$300	\$293	\$286	\$279
		2	307	300	293	286	279
		3	307	300	293	286	279
		4	283	276	269	262	255
Lodgepole Pine	LP	1	79	72	65	58	51
Ponderosa Pine	PP	1	76	69	62	55	48
		2	61	54	47	40	33
Western Redcedar ⁽³⁾	RC	1	495	488	481	474	467
Western Hemlock ⁽⁴⁾	WH	1	239	232	225	218	211
		2	239	232	225	218	211
		3	239	232	225	218	211
		4	239	232	225	218	211
Red Alder	RA	1	290	283	276	269	262
		2	261	254	247	240	233
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	171	164	157	150	143
Douglas-Fir Poles & Piles	DFL	1	547	540	533	526	519
Western Redcedar Poles	RCL	1	1273	1266	1259	1252	1245
Chipwood ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**TABLE 5—Proposed Stumpage Value Table
Stumpage Value Area 5**
July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$269	\$262	\$255	\$248	\$241
		2	269	262	255	248	241
		3	269	262	255	248	241
		4	269	262	255	248	241
Lodgepole Pine	LP	1	79	72	65	58	51
Ponderosa Pine	PP	1	76	69	62	55	48
		2	61	54	47	40	33
Western Redcedar ⁽³⁾	RC	1	495	488	481	474	467
Western Hemlock ⁽⁴⁾	WH	1	215	208	201	194	187
		2	215	208	201	194	187
		3	215	208	201	194	187
		4	215	208	201	194	187
Red Alder	RA	1	290	283	276	269	262
		2	261	254	247	240	233
Black Cottonwood	BC	1	15	8	1	1	1
Other Hardwood	OH	1	171	164	157	150	143
Douglas-Fir Poles & Piles	DFL	1	547	540	533	526	519
Western Redcedar Poles	RCL	1	1273	1266	1259	1252	1245
Chipwood ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**TABLE 6—Proposed Stumpage Value Table
Stumpage Value Area 6**
July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$86	\$79	\$72	\$65	\$58
Lodgepole Pine	LP	1	79	72	65	58	51
Ponderosa Pine	PP	1	76	69	62	55	48
		2	61	54	47	40	33
Western Redcedar ⁽³⁾	RC	1	331	324	317	310	303
True Firs and Spruce ⁽⁴⁾	WH	1	81	74	67	60	53
Western White Pine	WP	1	55	48	41	34	27
Hardwoods	OH	1	1	1	1	1	1
Western Redcedar Poles	RCL	1	331	324	317	310	303
Small Logs ⁽⁵⁾	SML	1	10	9	8	7	6
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

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

**TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7**
July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$86	\$79	\$72	\$65	\$58
Lodgepole Pine	LP	1	79	72	65	58	51
Ponderosa Pine	PP	1	76	69	62	55	48
		2	61	54	47	40	33
Western Redcedar ⁽³⁾	RC	1	331	324	317	310	303
True Firs and Spruce ⁽⁴⁾	WH	1	81	74	67	60	53
Western White Pine	WP	1	55	48	41	34	27
Hardwoods	OH	1	1	1	1	1	1
Western Redcedar Poles	RCL	1	331	324	317	310	303
Small Logs ⁽⁵⁾	SML	1	10	9	8	7	6
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

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

**TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10**
July 1 through December 31, 2010

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$293	\$286	\$279	\$272	\$265
		2	293	286	279	272	265
		3	293	286	279	272	265
		4	269	262	255	248	241
Lodgepole Pine	LP	1	79	72	65	58	51
Ponderosa Pine	PP	1	76	69	62	55	48
		2	61	54	47	40	33
Western Redcedar ⁽³⁾	RC	1	481	474	467	460	453
Western Hemlock ⁽⁴⁾	WH	1	225	218	211	204	197
		2	225	218	211	204	197
		3	225	218	211	204	197
		4	225	218	211	204	197
Red Alder	RA	1	276	269	262	255	248
		2	247	240	233	226	219
Black Cottonwood	BC	1	1	1	1	1	1
Other Hardwood	OH	1	157	150	143	136	129
Douglas-Fir Poles & Piles	DFL	1	533	526	519	512	505
Western Redcedar Poles	RCL	1	1259	1252	1245	1238	1231
Chipwood ⁽⁵⁾	CHW	1	3	2	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	144	137	130	123	116
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this table.
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) 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 ((January)) July 1 through ((June 30)) December 31, 2010:

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

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
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
II. Logging conditions		
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
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
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
 ((January)) July 1 through ((June 30)) December 31, 2010

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
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
II. Logging conditions		
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.	
III. Remote island adjustment:		
	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.

WAC 246-810-030 should have been repealed as it was replaced by WAC 246-810-031. The adopted rule is house-keeping to correct this omission.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-810-030.

Statutory Authority for Adoption: RCW 18.19.050.

Other Authority: Chapter 18.19 RCW.

Adopted under notice filed as WSR 10-06-021 on February 22, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: July 6, 2010.

Mary C. Selecky
Secretary

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-810-030 Client disclosure information.

WSR 10-14-099

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed July 6, 2010, 1:21 p.m., effective September 1, 2010]

Effective Date of Rule: September 1, 2010.

Purpose: This rule making is a result of SHB 2602, which passed the 2008 legislature and became effective on April 1, 2008. This bill requires employers to provide employees with reasonable or intermittent leave from work upon advance notice, except in emergencies, for specified activities if the employee or family member is a victim of domestic violence, sexual assault, or stalking. Leave can be used for seeking or obtaining legal or law enforcement assistance, medical treatment, social services, counseling, or for safety planning or relocation.

Employers are prohibited from discriminating against employees who exercise rights protected by this bill. Administrative and civil causes of action for violation of the provisions of the bill are created. Rules are needed to administer

WSR 10-14-096

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed July 6, 2010, 11:16 a.m., effective August 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: 2SHB 2674 (chapter 135, Laws of 2008) changed the requirement for client disclosure information. RCW 18.19.060 only requires certified counselors and certified advisers to provide disclosure information to clients. When the rules to implement 2SHB 2941 were adopted,

and enforce SHB 2602. The legislature directed the adoption of rules through the passage of this bill.

The new rules will:

- Clarify the meaning of terms; and
- State the scheme of administration and enforcement.

Statutory Authority for Adoption: Chapter 49.76 RCW and chapter 286, Laws of 2008 (SHB 2602).

Adopted under notice filed as WSR 10-09-090 on April 20, 2010.

Changes Other than Editing from Proposed to Adopted Version: The following amendments were made to the proposed rules:

- WAC 296-135-010(6), added "and individuals in state registered domestic partnerships."
- WAC 296-135-010(6), added reference to RCW 1.12.080.
- WAC 296-135-010(8), added "or of a partner in a state registered domestic partnership."
- WAC 296-135-010(8), added reference to RCW 1.12.080.
- WAC 296-135-010(12), added "partner in a state registered domestic partnership."
- WAC 296-135-010(12), added reference to RCW 1.12.080.
- WAC 296-135-010(14), added "or "reduced work schedule"."
- WAC 296-135-010 (19)(c), added ", including but not limited to a licensed mental health counselor under chapter 18.225 RCW and a licensed dentist under chapter 18.32 RCW."
- WAC 296-135-020, deleted Example 1 and 2.
- WAC 296-135-030, deleted "to comfort the family member" from Example 2.
- WAC 296-135-040(1), added subsection (c) and deleted "available to the employee."
- WAC 296-135-040 (2)(b), deleted "leave" and replaced with "work."
- WAC 296-135-040, added subsection (c) to read "in a single block of time."
- WAC 296-135-060 (1)(b), deleted "five calendar days' notice" and replaced with "advance notice as soon as practicable."
- WAC 296-135-090, in note change "employer" to "employers."
- WAC 296-135-120, deleted "and unless prohibited by an employer's health plan."
- WAC 296-135-150, deleted proposed subsection (4).
- WAC 296-135-150, added new subsection (4) to include the following language "The appeal shall be in writing, stating the reasons why the proposed decision is incorrect, and must be filed with the director. The appealing party must serve on all other parties or their representatives a copy of the notice of appeal at the time it is filed."
- WAC 296-135-150, renumbered subsection (5).
- WAC 296-135-150, renumbered subsection (6) and added "if any."
- WAC 296-135-150, renumbered subsection (7).
- WAC 296-135-150, renumbered subsection (8).

A final cost-benefit analysis is available by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail yous235@lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 22, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 22, Amended 0, Repealed 0.

Date Adopted: July 6, 2010.

Judy Schurke
Director

Chapter 296-135 WAC

LEAVE FOR VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING

NEW SECTION

WAC 296-135-001 Purpose. The purpose of these rules is to administer and enforce the provisions of chapter 49.76 RCW, leave for victims of domestic violence, sexual assault, or stalking.

NEW SECTION

WAC 296-135-010 Definitions. (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries, or the director's designated representative.

(3) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. See RCW 49.12.005.

(4) "Employee" means an employee who is employed in the business of the employee's employer, whether by way of manual labor or otherwise. See RCW 49.12.005.

(5) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is:

- (a) Under eighteen years of age; or

(b) Eighteen years of age or older and incapable of self-care because of a mental or physical disability. See RCW 49.12.265(1).

(6) "Spouse" means a husband or wife, and individuals in state registered domestic partnerships. See RCW 49.12.265(6) and 1.12.080.

(7) "Parent" means a biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. See RCW 49.12.265(3).

(8) "Parent-in-law" means a parent of the spouse or of a partner in a state registered domestic partnership of an employee. See RCW 49.12.265(4) and 1.12.080.

(9) "Grandparent" means a parent of a parent of an employee. See RCW 49.12.265(2).

(10) "Sick leave and other paid time off" means "sick leave or other paid time off." "Sick leave or other paid time off" means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for illness, vacation, and personal holiday. If paid time is not allowed to an employee for illness, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability under a plan, fund, program, or practice that is:

(a) Not covered by the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.; and

(b) Not established or maintained through the purchase of insurance. See RCW 49.12.265(5).

(11) "Dating relationship" means a social relationship of a romantic nature. Factors for consideration in making this determination include:

(a) The length of time the relationship has existed;

(b) The nature of the relationship; and

(c) The frequency of interaction between the parties. See RCW 26.50.010.

(12) "Family member" means any individual whose relationship to the employee can be classified as a child, spouse, partner in a state registered domestic partnership, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship. See RCW 49.76.020(5) and 1.12.080.

(13) "Intermittent leave" means leave taken in separate blocks of time due to a single qualifying reason. See RCW 49.78.020(9).

(14) "Reduced leave schedule" or "reduced work schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee. See RCW 49.78.020(15).

(15) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(b) Sexual assault of one family or household member by another; or

(c) Stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. See RCW 26.50.010.

(16) "Sexual assault" means any sexual assault as defined in RCW 70.125.030.

(17) "Stalking" means stalking as defined in RCW 9A.46.110.

(18) "Victim" means a person against whom domestic violence, sexual assault, or stalking has been committed. See RCW 41.04.655(9).

(19) "Health care provider" means:

(a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW;

(b) A person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or

(c) Any other person, including, but not limited to, a licensed mental health counselor under chapter 18.225 RCW and a licensed dentist under chapter 18.32 RCW, determined by the director to be capable of providing health care services. See RCW 49.78.020(8).

(20) "Advocate for victims of domestic violence, sexual assault, or stalking" includes, but is not limited to:

(a) A sexual assault advocate under RCW 5.60.-060(7)(a); and

(b) A domestic violence advocate under RCW 5.60.-060(8)(a).

(21) "Filed" or to "file" means actual receipt of the document during office hours at the office of the director, or at such other place designated by the department for filing of the document.

(22) "Service," "served," or to "serve" means service under RCW 34.05.010(19).

(23) "Issue" or "issuance" means service under RCW 34.05.010(19).

NEW SECTION

WAC 296-135-020 Reasons for taking leave. An employee may take leave under these rules to:

(1) Seek legal or law enforcement assistance or remedies to ensure the employee's or family member(s)' health and safety including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking. "Related to or derived from" means any civil or criminal legal proceeding that is triggered, in whole or in part, by an act of domestic violence, sexual assault, or stalking against any employee or family member covered by these rules.

Note: Whether a legal proceeding is "related to or derived from" domestic violence, sexual assault, or stalking depends on the facts and must be reviewed on an individual basis.

(2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking.

(3) Attend to health care treatment for a victim who is the employee's family member.

(4) Obtain, or assist the employee's family member(s) in obtaining, services from:

(a) A domestic violence shelter; or

(b) A rape crisis center; or

(c) A social services program for relief from domestic violence, sexual assault, or stalking.

(5) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking.

(6) Participate, for the employee's own self or for the employee's family member(s), in:

- (a) Safety planning; or
- (b) Temporary or permanent relocation; or
- (c) Other actions to increase the safety from future incidents of domestic violence, sexual assault, or stalking.

NEW SECTION

WAC 296-135-030 Types of activities for which leave is allowed. To qualify for leave and protections under these rules, an employee must engage in one or more of the activities described in WAC 296-135-020, regardless of when the employee or family member became a victim.

Example 1: An employee's family member becomes a victim of domestic violence and suffers physical injuries. The employee takes time off from work to take the family member to the hospital for treatment for the injuries. The employee is covered by these rules.

Example 2: An employee's family member becomes a victim of domestic violence. The employee takes time off from work but does not engage in any of the activities described in WAC 296-135-020. The employee is not covered by these rules.

NEW SECTION

WAC 296-135-040 Choice and manner of leave allowed. (1) An employee may choose to take any of the following types of leave under these rules:

- (a) Unpaid leave; or
 - (b) Paid leave, including sick leave and other paid time off; or
 - (c) Compensatory time.
- (2) An employee may choose to take leave, whether unpaid or paid, in any manner as follows:
- (a) Intermittent leave; or
 - (b) Leave on a reduced work schedule; or
 - (c) In a single block of time.

NEW SECTION

WAC 296-135-050 Duration of leave allowed. An employee is allowed to take leave that is reasonable in duration. The reasonableness of duration of leave must be determined on a case-by-case basis considering the reasons for taking leave under RCW 49.76.030 and WAC 296-135-020.

NEW SECTION

WAC 296-135-060 Advance notice and timing. (1) **Advance notice for foreseeable leave.** As a condition of taking foreseeable leave, an employee shall give advance oral or written notice of the employee's intention to take leave under RCW 49.76.030 and these rules, subject to subsection (2) of this section.

(a) If the employer has a stated policy that requires advance notice for foreseeable leave then the employee shall follow that policy. A "stated policy" means a written policy communicated to the employee prior to the employee requesting leave under these rules.

(b) If the employer does not have a stated policy that requires advance notice for foreseeable leave under these rules by a certain time, then the employee must give advance notice as soon as practicable for the leave requested.

(2) **Exemption from advance notice for unforeseeable leave.** When an employee is unable to give advance notice to the employer because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his or her designee must give oral or written notice to the employer no later than the end of the first day that the employee takes such leave.

NEW SECTION

WAC 296-135-070 Verification. (1) An employer may require an employee requesting leave to verify that:

- (a) The employee or the employee's family member is a victim; and
- (b) The leave taken was for one of the activities described in RCW 49.76.030 and WAC 296-135-020.

(2) Timing of verification:

(a) An employee must provide verification in a timely manner from when the employee receives the request for verification.

(b) When an employee is unable to give advance notice because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, and the employer requires verification, an employee must provide verification to the employer within a reasonable time period during or after the leave.

(3) An employer cannot request that an employee submit a specific type of document to verify the need for leave under these rules. An employee may submit his or her choice of any of the following documents, or any combination thereof, to satisfy an employer's request for verification:

- (a) A police report indicating that the employee or employee's family member was a victim; or
- (b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking; or

(c) Other evidence from the court or the prosecuting attorney showing that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking; or

(d) Documentation that the employee or employee's family member is a victim from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking:

- (i) An advocate for victims of domestic violence, sexual assault, or stalking; or
- (ii) An attorney; or
- (iii) A member of the clergy; or

(iv) A medical or other professional, such as a social services provider, paralegal, realtor, or other professional determined by the director to be capable of assisting with a protected activity as described in RCW 49.76.030 and WAC 296-135-020; or

(e) An employee's written statement that the employee or family member is a victim and that the leave was taken for one of the activities described in RCW 49.76.030 and WAC 296-135-020.

(4) Verification of familial relationship. An employee may verify a victim is a family member by providing:

- (a) A written statement from the employee;
- (b) A birth certificate;
- (c) A court document; or
- (d) Other similar documents showing a familial relationship between the employee and the victim.

NEW SECTION

WAC 296-135-080 Employee's duty to provide information to the employer. (1) An employee is required to provide only the information required under RCW 49.76.040(2) and WAC 296-135-070 to establish that the leave is protected under RCW 49.76.030.

(2) An employer is prohibited from requiring any information that is beyond the scope of RCW 49.76.040(2) and WAC 296-135-070.

(3) An employee is not required to produce or discuss with the employer, and the employer is prohibited from requiring, any information that would compromise the employee's or employee's family member's safety in any way.

NEW SECTION

WAC 296-135-090 Employer's duty to keep information confidential. For purposes of this section, designated representatives include supervisors, human resource and payroll personnel, members of a safety team, and other personnel whose job duties require them to act on requests for leave by employees.

(1) An employer and designated representatives shall maintain the confidentiality of all information provided by the employee, including:

- (a) The fact that the employee or a family member is a victim; and
- (b) That the employee requested or obtained leave; and
- (c) Any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

(2) An employer may disclose information given by an employee to third parties, including other employees, only if:

- (a) The employee requests or consents that the employer disclose the information; or
- (b) A court or administrative agency orders disclosure of the information; or
- (c) Federal or state law otherwise requires the employer to disclose the information.

Example 1: The owner of a company discloses to the company's bookkeeper that an employee is taking leave under these rules and should be given access to available sick leave and other paid time off. This disclosure is permissible.

Example 2: A manager holds a staff meeting and reports to all workers, without consent of the employee requesting leave under these rules, that the employee or his or her family member is a victim. This disclosure is not permissible.

Note: **Safety plans at work.** Employees should work cooperatively with their employers to permit communication of information, including safety plans, necessary to protect the safety of the employee and others.

NEW SECTION

WAC 296-135-100 Maintaining pay and benefits accrued before taking leave. When an employee takes leave under RCW 49.76.030 and these rules, the employee shall not lose any pay or benefits that accrued to the employee before the date on which the leave started.

NEW SECTION

WAC 296-135-110 Employer's duty after employee returns from leave. (1) Upon an employee's return from leave under RCW 49.76.030 and these rules, an employer shall either:

(a) Restore the employee to the position of employment held by the employee when the leave commenced; or

(b) Restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The provisions of subsection (1) of this section do not apply if:

(a) The employee works for a staffing company and is assigned to work on a temporary basis for another organization that directs and supervises the employee to:

(i) Support or supplement the other organization's workforce; or

(ii) Provide assistance in special work situations such as, but not limited to:

- (A) Employee absences; and
- (B) Skill shortages; and
- (C) Seasonal workloads; and
- (D) Special assignments and projects; or

(b) The employee:

(i) Was hired for a specific term, or only to perform work on a discrete project; and

(ii) The employment term or project is over, and the employer would not otherwise have continued to employ the employee.

NEW SECTION

WAC 296-135-120 Health insurance during leave. To the extent allowed by law, an employer must maintain coverage under any health insurance plan for an employee who takes leave under RCW 49.76.030 and these rules. Coverage must be for the duration of the leave and at the level and under the conditions coverage would have been provided if the employee had not taken the leave.

NEW SECTION

WAC 296-135-130 Rights are in addition to other rights. (1) The rights under chapter 49.76 RCW and this chapter are in addition to any other rights provided by state and federal law.

(2) An employer may adopt policies that provide greater leave rights to employees who are or who have family members who are victims.

(3) These rules do not diminish an employer's obligation to comply with any collective bargaining agreement, or any employment benefit program or plan, that provides greater leave rights to employees than the rights provided under chapter 49.76 RCW and these rules.

NEW SECTION

WAC 296-135-140 Complaints—Investigation—Notice of infraction—Determination of compliance. (1) Upon complaint by an employee of an employer's violation of chapter 49.76 RCW and these rules, the director shall investigate the complaint.

(2) If the director determines that an employer has violated chapter 49.76 RCW and these rules, the director shall issue a notice of infraction and may:

(a) Impose a fine of up to five hundred dollars for the first infraction; and

(b) Impose a fine of up to one thousand dollars for each subsequent infraction committed within three years of a previous infraction; and

(c) Order an employer to restore the employee to a position of employment under RCW 49.76.050(2) and WAC 296-135-110(1), except as limited by RCW 49.76.050(3) and WAC 296-135-110(2).

(3) If the director determines that an employer has not violated chapter 49.76 RCW and these rules, the director shall issue a determination of compliance.

NEW SECTION

WAC 296-135-150 Appeals from notices of infraction and determinations of compliance. (1) Except as otherwise provided in chapter 49.76 RCW and these rules, appeal from the director's decision is governed by the Administrative Procedure Act, chapter 34.05 RCW and the model rules of procedure, chapter 10-08 WAC. An employer or employee may file an appeal from a notice of infraction or determination of compliance under chapter 49.76 RCW and these rules within twenty days of issuance of the decision. The appealing party shall file two copies of its notice of appeal with the department at the office designated on the notice of infraction or determination of compliance. If no party files an appeal from the notice of infraction or determination of compliance within twenty days of its issuance, the notice of infraction or determination of compliance is final and binding and not subject to further appeal.

(2) Upon receipt of a timely appeal of a notice of infraction or determination of compliance, the department must:

(a) Notify the employer and employee of the receipt of the appeal; and

(b) Conduct a hearing in accordance with chapter 34.05 RCW and chapter 10-08 WAC.

(3) Appeals shall be assigned to the office of administrative hearings. The burden of proof at hearing shall be on the party alleging violation of chapter 49.76 RCW and these rules. The standard of proof is by a preponderance of the evidence. The administrative law judge will issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate, any penalty for infraction.

(4) The employee, employer, and/or department may appeal to the director within thirty days after the date of issuance of the proposed decision. The appeals shall be in writing, stating the reasons why the proposed decision is incorrect, and must be filed with the director. The appealing party must serve on all other parties or their representatives a copy of the notice of appeal at the time it is filed. The director may also determine that the proposed decision be reviewed.

(5) If none of the parties files an appeal within thirty days of issuance of a proposed decision, and the director does not order review within such time, the proposed decision shall become final without further action and may not be appealed either to the director or the courts.

(6) The respondent parties must file with the director and serve upon all other parties or their representatives their responsive written arguments, if any, within thirty days after the date the notice of appeal from a proposed decision and the arguments of the appellant were served upon them.

(7) The director or the director's designee will review the administrative law judge's proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision. In addition, the director may:

(a) Allow the parties to present oral arguments as well as the written arguments;

(b) Require the parties to specify the portions of the record on which the parties rely;

(c) Require the parties to submit additional information by affidavit or certificate;

(d) Remand the matter to the administrative law judge for further proceedings; or

(e) Require a departmental employee to prepare a summary of the record for the director to review.

(8) The director or the director's designee will serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to the Administrative Procedure Act, chapter 34.05 RCW. If no party files an appeal within thirty days of service of the final decision, the final decision is conclusive and binding on all parties.

NEW SECTION

WAC 296-135-160 Civil actions—Right to file; exhaustion of administrative remedies not required. (1)

An employee aggrieved by any act in violation of chapter 49.76 RCW and these rules has the right to file a civil action in court for an injunction, actual damages, costs, and reasonable attorneys' fees.

(2) An employee need not exhaust administrative remedies before filing a civil action.

(3) The right to file a civil action under RCW 49.76.100 is in addition to any common law remedy or any other remedy that may be available to an employee.

NEW SECTION

WAC 296-135-170 Effect of administrative actions and resulting legal proceedings on any civil action by employee. Regardless of whether the prior administrative action was between the same or related parties or involved the same facts, any finding, determination, conclusion, declaration, notice of infraction, or determination of compliance (collectively called "administrative actions") resulting from a complaint by an employee against an employer to the department under chapter 49.76 RCW and these rules is neither conclusive nor binding in any civil suit by an employee against an employer. Such administrative actions are actions by the director, an appeal tribunal, an administrative law judge, or a reviewing officer, to include a member of the judiciary upon judicial review under chapter 34.05 RCW.

NEW SECTION

WAC 296-135-180 Confidentiality of information.

(1) Information and records of employees contained in the department's complaint files under chapter 49.76 RCW and these rules are confidential and shall not be open to public inspection, except as provided in subsection (2) of this section.

(2) Except as limited by federal or state statutes or regulations:

(a) The department may provide information and records in subsection (1) of this section to public employees in the performance of their official duties; and

(b) A complainant, or a representative of a complainant, whether it is an individual or an organization, may review a complaint file or receive specific information after providing a signed authorization of the complainant to the department.

NEW SECTION

WAC 296-135-190 Prohibited acts. An employer cannot discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee:

(1) Exercised or attempted to exercise the right to take leave under RCW 49.76.030;

(2) Filed or communicated to the employer an intent to file a complaint with the department under RCW 49.76.070 or a civil action under RCW 49.76.100; or

(3) Participated or assisted, as a witness or otherwise, in another employee's attempt to exercise rights under RCW 49.76.030, 49.76.070, or 49.76.100.

NEW SECTION

WAC 296-135-200 Posting requirement. (1) The department shall include notice of the provisions under chapter 49.76 RCW in its posters under RCW 49.78.340.

(2) Employers shall post the notice as required by RCW 49.78.340.

NEW SECTION

WAC 296-135-210 Notice to employees—Prosecutors—Victims' advocates. Prosecuting attorney and victim/witness offices are encouraged to make information regarding chapter 49.76 RCW and these rules available for distribution at their offices.

**WSR 10-14-100
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed July 6, 2010, 1:22 p.m., effective September 1, 2010]

Effective Date of Rule: September 1, 2010.

Purpose: The department made minor amendments to the crane certifier accreditation and crane certification rules, as well as the crane operator qualifications and certification rules, located in chapter 296-155 WAC, Part L. These minor changes were housekeeping in nature and are being adopted for clarification reasons.

WAC 296-155-52900 Scope.

- Changed the numbers of the subsections in this section.
- Subsection (1), updated the internal reference from subsection "(2)" to "(3)."
- Subsection (1), added the words "cranes being used as" before the words "dedicated pile drivers."
- Added a new subsection (2) that reads, "Attachments. This standard applies to equipment included in subsection (1) when used with attachments. Such attachments, whether crane-attached or suspended include, but are not limited to: Hooks, magnets, grapples, clamshell buckets, orange peel buckets, concrete buckets, drag lines, personnel platforms, augers or drills and pile driving equipment."
- Subsection (3), updated the internal reference from "WAC 296-155-53214" to "WAC 296-155-53300."

WAC 296-155-52901 Certification and proof load testing—Requirement.

- Added this new section explaining that effective January 1, 2010, all cranes and derricks covered in WAC 296-155-52900, must be certified and proof load tested annually by an accredited certifier recognized by the department.

WAC 296-155-52902 Definitions.

- Modified the definition of "operational aid" by removing the words "crane level indicator."
- Modified the definition of "safety devices" by adding the words "crane level indicator."

WAC 296-155-53108 Duration and renewal of an accreditation.

- Subsection (2), added an "s" to the word "exam" in the last sentence.

WAC 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and preproof load test requirements for all cranes.

- Subsection (5)(d), modified language to read, "Remove wire rope from service if reduction from nominal diameter is greater than five percent."
- Deleted Table 2, Maximum allowable reduction from nominal diameter.

WAC 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes.

- Subsection (4)(a), added language to the first sentence, it now reads, "Proof load tests must be completed on all hoist lines to maximum line pull as configured. Any hoist line not proof load tested is not considered certified."
- Subsection (4)(c), added language to this subsection, it now reads, "Quadrennial proof load testing. No major component (luffing boom, swing-away jibs, fly sections, jibs at variable offsets, boom sections, and back masts) may be used unless it has been proof load tested within the prior four-year period. For jibs with variable offset angles, tests at the maximum offset used and maximum extension of all boom sections. All major components are to be proof load tested to a minimum of one hundred percent, not to exceed one hundred ten percent of each component's charted structural capacity. Hoist line pull or rigging is not to be a limiting factor for structural proof load tests."
- Subsection (4)(d)(i), fixed a grammatical error.

WAC 296-155-53206 Additional inspection criteria and proof load testing—Tower cranes.

- Subsection (2), added the words "structural supports" after "crane foundation." Also, changed the word "movement" to "moment" at the end of the sentence.

WAC 296-155-533 Crane operator qualifications and certification.

- Changed the title of this section to "Qualifications and certification."

WAC 296-155-53300 Operator qualifications and certification.

- Subsection (1)(a), added the words "for each crane category listed in Table 2 and by crane type for mobile cranes" at the end of the subsection.
- Note after subsection (1), added a new note, it reads, "If there is no accredited written or practical test for operator certification available, the employer must ensure the operator has been completely trained, evaluated and tested by the employer on the operating procedures for the piece of equipment in use as recommended by the crane equipment manufac-

turer. This process must be documented and made available upon request.

- Table 1, fixed a grammatical error in the small telescopic boom crane category and renumber the table to "Table 2."
- Note following Table 1, updated an internal reference.

Citation of Existing Rules Affected by this Order: Amending WAC 296-155-52900 Scope, 296-155-52902 Definitions, 296-155-53108 Duration and renewal of an accreditation, 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and preproof load test requirements for all cranes, 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes, 296-155-53206 Additional inspection criteria and proof load testing—Tower cranes, 296-155-533 Crane operator qualifications and certification, and 296-155-53300 Operator qualifications and certification.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 10-08-068 on April 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 6, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/10)

WAC 296-155-52900 Scope. (1) Except as provided in subsection ((~~2~~)) (3) of this section, this part applies to power-operated cranes and derricks used in construction that can hoist, lower and horizontally move a suspended load (with or without attachments). Such equipment includes, but is not limited to: Articulating boom cranes (such as knuckle-boom cranes); crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes (such as wheel-mounted, rough-terrain, all-terrain, commercial truck-mounted, and boom truck cranes); multipurpose machines when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load; industrial cranes (such as carry-deck cranes); cranes being used as dedicated pile drivers; service/mechanic trucks with a hoisting

device; a crane on a monorail; tower cranes (such as fixed jib ("hammerhead boom"), luffing boom and self-erecting); pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

(2) Attachments. This standard applies to equipment included in subsection (1) of this section when used with attachments. Such attachments, whether crane-attached or suspended include, but are not limited to:

- Hooks;
- Magnets;
- Grapples;
- Clamshell buckets;
- Orange peel buckets;
- Concrete buckets;
- Draglines;
- Personnel platforms;
- Augers or drills; and
- Pile driving equipment.

(3) Exemptions. WAC 296-155-529 through ~~((296-155-53214))~~ 296-155-53300 do not apply to the following:

(a) Cranes having a maximum rated capacity of one ton or less are exempt from this rule for the purposes of crane certification and operator certification.

(b) Equipment included in subsection (1) of this section while it has been converted or adapted for nonhoisting/lifting use. Such conversions/adaptations include, but are not limited to, power shovels, excavators and concrete pumps.

(c) Power shovels, excavators, wheel loaders, backhoes, loader backhoes, track loaders. This machinery is also excluded when used with chains, slings or other rigging to lift suspended loads.

(d) Automotive wreckers and tow trucks when used to clear wrecks and haul vehicles.

(e) Service trucks with mobile lifting devices designed specifically for use in the power line and electric service industries or handling associated materials.

(f) Equipment originally designed as vehicle-mounted aerial devices (for lifting personnel) and self-propelled elevating work platforms.

(g) Hydraulic jacking systems, including telescopic/hydraulic gantries.

(h) Stacker cranes.

(i) Powered industrial trucks (forklifts).

(j) Mechanic's truck with a hoisting device when used in activities related to equipment maintenance and repair.

(k) Equipment that hoists by using a come-a-long or chainfall.

(l) Dedicated drilling rigs.

(m) Gin poles used for the erection of communication towers.

(n) Tree trimming and tree removal work.

(o) Anchor handling with a vessel or barge using an affixed A-frame.

(p) Roustabouts.

(q) Service cranes with booms that rotate manually.

(r) Machines equipped with a boom that is limited to up and down movement only and does not rotate.

(s) Conveyors.

(t) Pump hoists with booms that do not rotate.

(u) Cranes used on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work; and

(v) Crane operators operating cranes on-site in manufacturing facilities or powerhouses for occasional or routine maintenance and repair work.

~~((3))~~ (4) Where provisions of this standard direct an operator, crewmember, or other employee to take certain actions, the employer must establish, effectively communicate to the relevant persons, and enforce work rules, to ensure compliance with such provisions.

NEW SECTION

WAC 296-155-52901 Certification and proof load testing—Requirement. Effective January 1, 2010, all cranes and derricks covered in WAC 296-155-52900 and not exempt in subsection (3) of that section, must be certified and proof load tested annually by an accredited crane certifier recognized by the department.

- Note:** For additional inspection criteria and proof load testing requirements for specific types of cranes, see:
- WAC 296-155-53202 for mobile cranes.
 - WAC 296-155-53204 for articulating boom cranes.
 - WAC 296-155-53206 for tower cranes.
 - WAC 296-155-53208 for self-erecting tower cranes.
 - WAC 296-155-53210 for overhead and bridge cranes.
 - WAC 296-155-53212 for derricks.

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/10)

WAC 296-155-52902 Definitions. Accredited crane certifier means a crane inspector who has been accredited by the department.

Apprentice operator or trainee means a crane operator who has not met requirements established by the department under RCW 49.17.430.

Articulating boom crane means a crane whose boom consists of a series of folding, pin connected structural members, typically manipulated to extend or retract by power from hydraulic cylinders.

Audible signal means a signal made by a distinct sound or series of sounds. Examples include, but are not limited to, sounds made by a bell, horn, or whistle.

Bogie. See "travel bogie."

Boom (equipment other than tower crane) means an inclined spar, strut, or other long structural member which supports the upper hoisting tackle on a crane or derrick. Typically, the length and vertical angle of the boom can be varied to achieve increased height or height and reach when lifting loads. Booms can usually be grouped into general categories of hydraulically extendible, cantilevered type, latticed section, cable supported type or articulating type.

Boom (tower cranes) on tower cranes: If the "boom" (i.e., principal horizontal structure) is fixed, it is referred to as a jib; if it is moveable up and down, it is referred to as a boom.

Boom angle indicator means a device which measures the angle of the boom relative to horizontal.

Boom hoist limiting device includes boom hoist disengaging device, boom hoist shut-off, boom hoist disconnect,

boom hoist hydraulic relief, boom hoist kick-outs, automatic boom stop device, or derricking limiter. This type of device disengages boom hoist power when the boom reaches a pre-determined operating angle. It also sets brakes or closes valves to prevent the boom from lowering after power is disengaged.

Boom length indicator indicates the length of the permanent part of the boom (such as ruled markings on the boom) or, as in some computerized systems, the length of the boom with extensions/attachments.

Boom stop includes boom stops (belly straps with struts/standoff), telescoping boom stops, attachment boom stops, and backstops. These devices restrict the boom from moving above a certain maximum angle and toppling over backward.

Boom suspension systems means a system of pendants, running ropes, sheaves, and other hardware which supports the boom tip and controls the boom angle.

Certified crane inspector means a crane certifier accredited by the department.

Climbing means the process in which a tower crane is raised to a new working height, either by adding additional tower sections to the top of the crane (top climbing), or by a system in which the entire crane is raised inside the structure (inside climbing).

Counterjib (counterweight jib) means a horizontal member of the tower crane on which the counterweights and usually the hoisting machinery are mounted.

Counterweight means weight used to supplement the weight of equipment in providing stability for lifting loads by counterbalancing those loads.

Crane means power-operated equipment used in construction that can hoist, lower, and horizontally move a suspended load. "Crane" includes, but is not limited to: Articulating boom cranes, such as knuckle-boom cranes; crawler cranes; floating cranes; cranes on barges; locomotive cranes; mobile cranes, such as wheel-mounted, rough-terrain, all-terrain, commercial truck mounted, and boom truck cranes; multipurpose machines when configured to hoist and lower by means of a winch or hook and horizontally move a suspended load; industrial cranes, such as carry-deck cranes; dedicated pile drivers; service/mechanic trucks with a hoisting device; a crane on a monorail; tower cranes, such as fixed jib, hammerhead boom, luffing boom, and self-erecting; pedestal cranes; portal cranes; overhead and gantry cranes; straddle cranes; side-boom tractors; derricks; and variations of such equipment.

Crane/derrick type means cranes or derricks as established by American Society of Mechanical Engineers (ASME). Crane operator means an individual engaged in the operation of a crane.

Crawler crane means equipment that has a type of base mounting which incorporates a continuous belt of sprocket driven track.

Critical lift means a lift that:

- Exceeds seventy-five percent of the crane or derrick rated load chart capacity; or
- Requires the use of more than one crane or derrick.

Crossover points means locations on a wire rope which is spooled on a drum where one layer of rope climbs up on

and crosses over the previous layer. This takes place at each flange of the drum as the rope is spooled onto the drum, reaches the flange, and begins to wrap back in the opposite direction.

Dedicated drilling rig means a machine which creates bore holes and/or shafts in the ground.

Dedicated pile-driver is a machine that is designed to function exclusively as a pile-driver. These machines typically have the ability to both hoist the material that will be pile-driven and to pile-drive that material.

Derrick is an apparatus consisting of a mast or equivalent member held at the end by guys or braces, with or without a boom, for use with a hoisting mechanism and operating ropes.

Directly under the load means a part or all of an employee is directly beneath the load.

Dismantling includes partial dismantling (such as dismantling to shorten a boom or substitute a different component).

Drum rotation indicator is a device on a crane or hoist which indicates in which direction and at what relative speed a particular hoist drum is turning.

Electrical contact means when a person, object, or equipment makes contact or comes close in proximity with an energized conductor or equipment that allows the passage of current.

Equipment means equipment covered by this part.

Equipment criteria means instructions, recommendations, limitations and specifications.

Fall protection equipment means guardrail systems, safety net systems, personal fall arrest systems, positioning device systems or fall restraint systems.

Flange points means a point of contact between rope and drum flange where the rope changes layers.

Floating cranes/derricks means equipment designed by the manufacturer (or employer) for marine use by permanent attachment to a barge, pontoons, vessel or other means of flotation.

Free rated load test means testing stability and operation of crane, carrier, wheels, tires, tracks, brakes, etc., under load, when lifting without outriggers and/or traveling with the load are permitted at the activity for the type of crane being tested.

Hoist means a mechanical device for lifting and lowering loads by winding rope onto or off a drum.

Hoisting means the act of raising, lowering or otherwise moving a load in the air with equipment covered by this standard. As used in this standard, "hoisting" can be done by means other than wire rope/hoist drum equipment.

Jib means an extension attached to the boom point to provide added boom length for lifting specified loads. The jib may be in line with the boom or offset to various angles in the vertical plane of the boom. For tower cranes, see boom (tower cranes).

Land crane/derrick means equipment not originally designed by the manufacturer for marine use by permanent attachment to barges, pontoons, vessels, or other means of flotation.

Load is the weight of the object being lifted or lowered, including the weight of the load-attaching equipment such as

the load block, ropes, slings, shackles, and any other auxiliary attachment.

Load moment (or rated capacity) indicator means a system which aids the equipment operator by sensing the overturning moment on the equipment, i.e., load X radius. It compares this lifting condition to the equipment's rated capacity, and indicates to the operator the percentage of capacity at which the equipment is working. Lights, bells, or buzzers may be incorporated as a warning of an approaching overload condition.

Load moment (or rated capacity) limiter means a system which aids the equipment operator by sensing the overturning moment on the equipment, i.e., load X radius. It compares this lifting condition to the equipment's rated capacity, and when the rated capacity is reached, it shuts off power to those equipment functions which can increase the severity of loading on the equipment, e.g., hoisting, telescoping out, or luffing out. Typically, those functions which decrease the severity of loading on the equipment remain operational, e.g., lowering, telescoping in, or luffing in.

Locomotive crane means a crane mounted on a base or car equipped for travel on a railroad track.

Load sustaining/bearing parts means those parts of a crane that support the crane or load and upon failure could cause dropping, uncontrolled shifting, or uncontrolled movement of the crane or load.

Luffing boom is a member hinged to the rotating superstructure and used for supporting the hoisting tackle.

Luffing jib limiting device is similar to a boom hoist limiting device, except that it limits the movement of the luffing jib.

Mobile cranes means a lifting device incorporating a cable suspended latticed boom or hydraulic telescopic boom designed to be moved between operating locations by transport over the road. These are referred to in Europe as a crane mounted on a truck carrier.

Multiple lift rigging means a rigging assembly manufactured by wire rope rigging suppliers that facilitates the attachment of up to five independent loads to the hoist rigging of a crane.

Nationally recognized accrediting agency is an organization that, due to its independence and expertise, is widely recognized as competent to accredit testing organizations.

Nonstandard tower crane base means any deviation from the structural support or base configuration recommended by the crane manufacturer.

Occasional or routine maintenance and repair work means regular, customary and foreseeable work necessary to keep equipment in good repair and/or condition. This also includes regular, customary and foreseeable work necessary to return equipment to sound condition after damage.

Operational aid means an accessory that provides information to facilitate operation of a crane or that takes control of particular functions without action of the operator when a limiting condition is sensed. Examples of such devices include, but are not limited to, the following: Anti-two-block device, rated capacity indicator, rated capacity (load) limiter, boom angle or radius indicator, lattice boom hoist disconnect device, boom length indicator, (~~crane level indicator,~~) drum rotation indicator, load indicator, and wind speed indicator.

Operational controls means levers, switches, pedals and other devices for controlling equipment operation.

Operator is a person who is operating the equipment.

Overhead and gantry cranes includes overhead/bridge cranes, semigantry, cantilever gantry, wall cranes, storage bridge cranes, launching gantry cranes, and similar equipment, irrespective of whether it travels on tracks, wheels, or other means.

Pendants includes both wire and bar types. Wire type: A fixed length of wire rope with mechanical fittings at both ends for pinning segments of wire rope together. Bar type: Instead of wire rope, a bar is used. Pendants are typically used in a latticed boom crane system to easily change the length of the boom suspension system without completely changing the rope on the drum when the boom length is increased or decreased.

Powerhouse means a plant wherein electric energy is produced by conversion from some other form of energy (e.g., chemical, nuclear, solar, mechanical, or hydraulic) by means of suitable apparatus. This includes all generating station auxiliaries and other associated equipment required for the operation of the plant. Not included are stations producing power exclusively for use with communication systems.

Power lines means electrical distribution and electrical transmission lines.

Qualified crane operator means a crane operator who meets the requirements established by the department under RCW 49.17.430.

Qualified person means a person who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training and experience, successfully demonstrated the ability to solve/resolve problems relating to the subject matter, the work, or the project.

Rated capacity means the maximum working load permitted by the manufacturer under specified working conditions. Such working conditions typically include a specific combination of factors such as equipment configuration, radii, boom length, and other parameters of use.

Rated capacity indicator, see load moment indicator.

Rated capacity limiter, see load moment limiter.

RPE means a registered professional engineer licensed under RCW 18.43.040(1).

RPSE means a registered professional structural engineer licensed under RCW 18.43.040(1).

Running wire rope is a wire rope that moves over sheaves or drums.

Safety devices, examples of safety devices are, but are not limited to, the following: Horn, boom/jib or trolley stops, crane level indicator, hydraulic holding device/check valve, rail clamps, rail stops, brakes, deadman control or forced neutral return control, emergency stop switch, guards, handrails, audible and visual alarms, etc.

Safety or health standard means a standard adopted under this chapter.

Taglines means a rope (usually fiber) attached to a lifted load for purposes of controlling load spinning and pendular motions or used to stabilize a bucket or magnet during material handling operations.

Tower crane means a type of lifting structure which utilizes a vertical mast or tower to support a working boom (jib)

suspended from the working boom. While the working boom may be fixed horizontally or have luffing capability, it can always rotate about the tower center to swing loads. The tower base may be fixed in one location or ballasted and moveable between locations.

Travel bogie (tower cranes) means an assembly of two or more axles arranged to permit vertical wheel displacement and equalize the loading on the wheels.

Two blocking means a condition in which a component that is uppermost on the hoist line such as the load block, hook block, overhaul ball, or similar component, comes in contact with the boom tip, fixed upper block or similar component. This binds the system and continued application of power can cause failure of the hoist rope or other component.

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/09)

WAC 296-155-53108 Duration and renewal of an accreditation. (1) The accreditation will be valid for three years. Crane certifiers must complete forty hours of crane related training every three years, in courses recognized by the department.

(2) Application for renewal must be filed with the department not less than sixty days prior to expiration of the accredited crane certifier's certification. A renewal may be obtained by filing a completed application for renewal meeting the requirements of WAC 296-155-53102 hereof providing the applicant has been actively inspecting cranes during their prior accreditation period. An applicant is considered active if he/she has certified/inspected at least twenty-one cranes during their accreditation period. If the applicant certified cranes in another state, then that applicant must provide documentation showing they were active during their accreditation period. An applicant who has not certified/inspected at least twenty-one cranes during the accreditation period may take the written exams to become recertified.

(3) At a minimum, all applicants for renewal must successfully complete the written examinations every six years.

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/10)

WAC 296-155-53200 General inspection criteria, wire rope inspection and removal criteria, and preproof load test requirements for all cranes. (1) The accredited crane certifier must review the following documents as part of the crane certification process:

(a) Crane maintenance records of critical components to ensure maintenance of these components has been performed in accordance with the manufacturer's recommendations.

(b) Crane periodic and frequent inspection documentation.

(2) Safety devices. Make sure all safety devices are installed on equipment in accordance with the requirements located in chapter 296-155 WAC, Part L.

(3) Operational aids. Operations must not begin unless operational aids are in proper working order, except where the owner or lessee meets the specified temporary alternative measures. See chapter 296-155 WAC, Part L for the list of operational aids.

Note: All accredited crane certifiers must meet and follow the requirements relating to fall protection, located in chapter 296-155 WAC, Part C-1, Fall restraint and fall arrest.

(4) General.

(a) The accredited crane certifier must determine that the configurations of the crane are in accordance with the manufacturer's equipment criteria.

(b) Where the manufacturer equipment criteria are unavailable, a registered professional engineer (RPE), familiar with the type of equipment involved, must ensure criteria are developed for the equipment configuration.

(5) Wire rope.

(a) Wire ropes must meet the crane or wire rope manufacturer's specifications for size, type and inspection requirements. In the absence of the manufacturer's specifications, follow the requirements for removal criteria located in this section, including Table 1.

Table 1 - Wire Rope Inspection/Removal Criteria
(See also Figure 1 - Wire Rope)

Category of Crane Types	Running Ropes* # of broken wires in		Rotation Resistant* # of broken wires in		Standing Ropes* # of broken wires	
	1 rope lay	1 strand in 1 lay	Specified diameters		In 1 lay beyond end connection	At end connection
Mobile	6	3	2 (in 6xd)	4 (in 30xd)	3	2
Articulating	6	3	Consult rope mfg.	Consult rope mfg.	3	2
Tower	12	4	2 (in 6xd)	4 (in 30xd)	3	3
Self-Erector	6	3	2 (in 6xd)	4 (in 30xd)	3	2
Overhead & Bridge	12	4	2 (in 6xd)	4 (in 30xd)	—	—
Derricks	6	3	Consult rope mfg.	Consult rope mfg.	3	2

*Also remove if you detect 1 wire broken at the contact point with the core or adjacent strand; so called valley breaks or evidence from any heat damage from any cause.

Note: xd means times the "diameter."

(b) The accredited crane certifier must perform a complete and thorough inspection covering the surface of the working range plus three additional wraps on the drum of the wire ropes.

(c) If a deficiency is identified, an immediate determination must be made by the accredited crane certifier as to whether the deficiency constitutes a safety hazard. If the deficiency is determined to constitute a safety hazard, the crane must not be certified until:

(i) The wire rope is replaced and verified by the accredited crane certifier; or

(ii) If the deficiency is localized, the problem is corrected by severing the wire rope; the undamaged portion may continue to be used. Joining lengths of wire rope by splicing is prohibited.

(d) Remove wire rope from service if reduction((s) from nominal diameter ((are)) is greater than ((those shown below in Table 2)) five percent.

~~(Table 2 - Maximum Allowable Reduction from Nominal Diameter~~

Rope Diameter	Maximum Allowable Reduction from Nominal Diameter
Up to 5/16 inch (8 mm)	1/64 inch (0.4 mm)
3/8 inch (9.5 mm) to 1/2 inch (13 mm)	1/32 inch (0.8 mm)
9/16 inch (14.5 mm) to 3/4 inch (19 mm)	3/64 inch (1.2 mm)
7/8 inch (22 mm) to 1 1/8 inch (29 mm)	1/16 inch (1.6 mm)
Over 1 1/8 inch (32 mm) to 1 1/2 inch (38 mm)	3/32 inch (2.4 mm))

(e) Replacement rope must be of a compatible size and have a strength rating at least as great as the original rope furnished or recommended by the crane manufacturer.

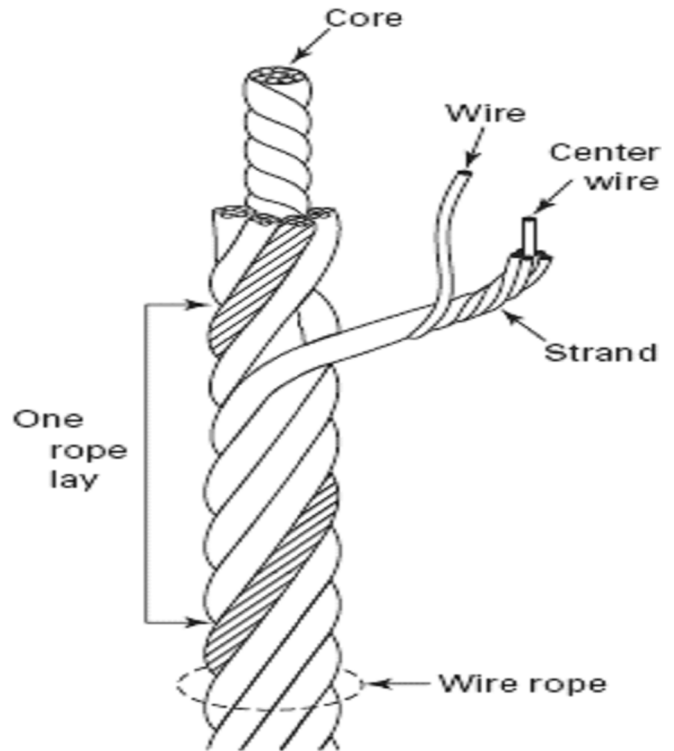


Figure 1 - Wire Rope

(6) Sheaves.

(a) Sheave grooves must be free from surface defects that could damage the rope. The cross-sectional radius at the bottom of the groove should be such as to form a close fitting saddle for the size of rope used. The sides of the groove must be tapered outward and rounded at the rim to facilitate entrance of the rope into the groove. Flange rims must run true about the axis of rotation.

(b) Sheave guards must be in place to:

(i) Guide the rope back into the sheave groove, when using ropes that can be momentarily unloaded.

(ii) Prevent ropes from becoming fouled when the block is lying on the ground with loose ropes.

(c) Sheave bearings, except for permanently lubricated ones, must have a means of lubrication.

(7) Prior to performing a proof load test:

(a) A safe test area must be selected and all traffic and unauthorized personnel and equipment must be cleared from test area. This test area must be roped off or otherwise secured to prevent entry of unauthorized personnel and equipment;

(b) Rigging gear must be inspected by a qualified person prior to using for load test of crane;

(c) The employer must ensure all load test personnel understand the safety procedures of the test;

(d) Proof load tests, with the exception of tower cranes, are overload tests and extreme caution must be observed at all times. Personnel must remain clear of suspended loads and areas where they could be struck in the event of boom failure. The test load must be raised only to a height sufficient to perform the test;

(e) During tests, safe operating speeds must be employed. Rated speeds in accordance with manufacturer's specifications need not be attained. Emphasis must be placed on the ability to safely control loads through all motions at normal speeds;

(f) Proof load tests require the use of certified weights, or scaled weights using a certified scale with a current certificate of calibration;

(g) Proof load tests must not exceed the manufacturer's specifications. Where these specifications are unavailable, a registered professional engineer familiar with the type of equipment involved must develop written specifications.

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/10)

WAC 296-155-53202 Additional inspection criteria and proof load testing—Mobile cranes. (1) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must conduct a visual inspection of the following components, if applicable, which can be visually inspected without disassembly (not including removal of inspection covers):

(a) All control and drive mechanisms for adjustments interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(c) Hydraulic system for proper fluid level;

(d) Safety latches on hooks for damage;

(e) Hooks for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(f) A legible and applicable operator's manual and load chart is in the operator's cab or station;

(g) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(h) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(i) Wire rope reeving for compliance with the manufacturer's specifications;

(j) Wire rope, in accordance with WAC 296-155-53200(5);

(k) Electrical apparatus for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation;

(l) Tires (when in use) for proper inflation and condition;

(m) Ground conditions around the equipment for proper support, including ground settling under and around outriggers and supporting foundations, ground water accumulation, or similar conditions;

(n) The equipment for level position;

(o) Operator cab windows for significant cracks, breaks, or other deficiencies that would hamper the operator's view;

(p) Rails, rail stops, rail clamps and supporting surfaces when the equipment has rail traveling;

(q) Equipment structure (including the boom and, if equipped, the jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

(ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.

(iii) Welds for cracks.

(r) Sheaves and drums for cracks or significant wear;

(s) Parts such as pins, bearings, shafts, gears, rollers and locking devices for distortion, cracks or significant wear;

(t) Brake and clutch system parts, linings, pawls and ratchets for excessive wear;

(u) Safety devices and operational aids for proper operation (including significant inaccuracies);

(v) Gasoline, diesel, electric, or other power plants for safety-related problems (such as leaking exhaust and emergency shut-down feature), condition and operation;

(w) Chains and chain drive sprockets for excessive wear of sprockets and excessive chain stretch;

(x) Travel steering, brakes, and locking devices, for proper operation;

(y) Tires for damage or excessive wear;

(z) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing.

(aa) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks.

(bb) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents.

(v) Rod eyes and connecting joints: Loose or deformed.

(cc) Outrigger pads/floats and slider pads for excessive wear or cracks; cribbing/dunnage for proper installation;

(dd) Electrical components and wiring for cracked or split insulation and loose or corroded terminations;

(ee) Legible warning labels and decals as required by the manufacturer;

(ff) Operator seat: Missing or unusable;

(gg) Equipped with original, or the equivalent, steps, ladders, handrails, guards;

(hh) Steps, ladders, handrails, and guards are in safe and usable condition;

(2) Crane deficiencies. If the accredited crane certifier determines other findings need to be monitored, the accredited crane certifier must provide written notification to the owner or lessee.

(3) Operational testing. An operational test must be made without a load applied to the hook of the following

items if they are applicable to the crane to ensure they function correctly:

- (a) Load lifting/hoisting and lowering mechanisms;
- (b) Boom lifting/hoisting and lowering mechanisms;
- (c) Boom extension and retraction mechanism;
- (d) Swing mechanism;
- (e) Travel mechanism;
- (f) Brakes and clutches;
- (g) Limit, locking, and safety devices;
- (h) Suspension systems for cranes that work on rubber (tires); and
- (i) During the operational testing, special attention must be paid to hydraulic and pneumatic valves: Spools (sticking, improper return to neutral, and leaks); leaks; valve housing cracks; relief valves.

(4) Annual and quadrennial proof load testing.

(a) Proof load tests must be completed on all hoist lines to maximum line pull as configured. Any hoist line not proof load tested is not considered certified. The test load must be at least one hundred percent but not to exceed one hundred and ten percent of rated capacity (i.e., for the crane's configuration of reeving, boom length, etc.). The rated capacity must be the capacity shown on the posted load chart or as limited by other factors such as hook block capacity or wire rope line pull if the crane is not fully reeved. The test load includes the weight of (or deduction values for) the hook, block, slings, and auxiliary lifting devices (and for some cranes hoist wire rope not accounted for in load charts), and the combined weight deduction values must be subtracted from the nominal test load in order to determine the amount of test weights to be used. Follow original equipment manufacturer (OEM) load chart instructions for weight deduction values. Check accuracy of load indicators where installed. Test procedures for these cranes must follow OEM procedures and recommendations.

(b) Annual proof load testing. After the crane has passed the visual and operational tests, a proof load test must be conducted in the as-configured condition and must be performed within the structural and stability section of the manufacturer's load chart, as applicable. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(c) Quadrennial proof load testing. No major component (luffing boom, swing-away jibs, fly sections, jibs at variable offsets (~~and~~), boom sections, and back masts) may be used unless it has been proof load tested within the prior four-year period. For jibs with variable offset angles, tests at the maximum offset used and maximum extension of all boom sections. All major components are to be proof load tested to a minimum of one hundred percent, not to exceed one hundred ten percent of each component's charted structural capacity. Hoist line pull or rigging is not to be a limiting factor for structural proof load tests.

(i) This test must be performed in accordance with this section and documented on the form or in the format approved by the department.

(ii) A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the inspection.

(d) Free rated load test ("on rubber"). Check the stability and operation of crane, carrier, wheels, tires, tracks, brakes, etc., under load by performing the following tests, when lifting without outriggers and/or traveling with the load are permitted at the activity for the type of crane being tested.

Note: Ensure all free rated load tests "on rubber" lifting requirements established by the OEM are complied with. Attach taglines to the load to control oscillation. For cranes with outriggers, extend outriggers and maintain minimal clearance (three to four inches) above ground. Test personnel must stand clear of tires during load tests. This test is only required if the owner/lessee wants an "on rubber" certification. If the crane has "on rubber" capabilities and the owner does not desire this certification, the crane certifier must document it on the certification document.

(i) Maximum free rated load. Hoist maximum free rated test load at minimum possible radius over the rear (or over the front as required by the OEM). Slowly boom down to the maximum radius for the load((-)), with boom and load hoist pawls (dogs) engaged where applicable, complete (d)(i)(A) and (B) of this subsection.

(A) Rotate through the appropriate working arc;

(B) Travel a minimum of fifty feet with test load over the rear (or front as required by the OEM) with the boom parallel to the longitudinal axis of the crane carrier.

(ii) Stability test. Repeat the step in (d)(i) of this subsection with a test load corresponding to the radii determined as follows: For telescoping boom cranes, test with the boom approximately halfway between fully retracted and fully extended but do not exceed OEM's boom length limitation for lifting on rubber. If no ratings are governed by stability, no stability test is required.

Note: When lifting test loads, always lift the load well within the maximum radius and slowly boom down to a premeasured radius. Lift the test load only high enough to perform the required tests.

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/10)

WAC 296-155-53206 Additional inspection criteria and proof load testing—Tower cranes. (1) Tower cranes and tower crane assembly parts must be inspected by a crane certifier both prior to assembly, following erection of the tower crane, after each climbing operation, or reconfiguring the boom, jib, or counterjib before placing the crane in service.

(2) The accredited crane certifier must verify a registered professional structural engineer, licensed under chapter 18.43 RCW, has certified that the crane foundations/structural supports and underlying soil are adequate support for the tower crane with its maximum overturning (~~(movement))~~ moment.

(3) Prior to erecting a tower crane on a nonstandard tower crane base, the accredited crane certifier must verify that the engineering configuration of this base has been reviewed and acknowledged as acceptable by an independent registered professional structural engineer, licensed under chapter 18.43 RCW.

(4) The accredited crane certifier must review the following documents as part of the crane certification process for the current location and inspection period:

(a) Crane maintenance records of critical components to ensure maintenance of these components has been performed in accordance with the manufacturer's recommendations;

(b) Crane periodic and frequent inspection documentation.

(5) After it is determined that the crane configurations meet the criteria in WAC 296-155-53200, the accredited crane certifier must visually inspect the following items, if applicable, on tower cranes for sound physical condition and that they are functional within the manufacturer's recommendations (not including removal of inspection covers):

(a) All control and drive mechanisms for interfering with proper operation and for excessive wear or contamination by lubricants or other foreign matter;

(b) Motion limiting devices for proper operation with the crane unloaded; each motion should be inched into its limiting device by carefully running at slow speed;

(c) Load limiting devices for proper operation and accuracy of settings;

(d) Air, hydraulic, and other pressurized lines for deterioration or leakage, particularly those which flex in normal operation;

(e) Hydraulic system for proper fluid level;

(f) Hydraulic, pneumatic and other pressurized hoses, fittings and tubing, as follows:

(i) Flexible hose or its junction with the fittings for indications of leaks.

(ii) Threaded or clamped joints for leaks.

(iii) Outer covering of the hose for blistering, abnormal deformation or other signs of failure/impending failure.

(iv) Outer surface of a hose, rigid tube, or fitting for indications of excessive abrasion or scrubbing;

(g) Hydraulic and pneumatic pumps and motors, as follows:

(i) Performance indicators: Unusual noises or vibration, low operating speed.

(ii) Loose bolts or fasteners.

(iii) Shaft seals and joints between pump sections for leaks;

(h) Hydraulic and pneumatic cylinders, as follows:

(i) Drifting.

(ii) Rod seals and welded joints for leaks.

(iii) Cylinder rods for scores, nicks and dents.

(iv) Case (barrel) for significant dents;

(i) Electrical components for malfunctioning, signs of apparent excessive deterioration, dirt or moisture accumulation, wiring for cracked or split insulation, and loose or corroded terminations;

(j) Stationary cranes for manufacturer's recommended grounding of structure and power supply. Rail traveling cranes for grounding of each rail and the power supply per the manufacturer's recommendations;

(k) Runway rail and clamps. Inspect for loose, broken or missing clamps;

(l) Hooks and safety latches for deformation, cracks, excessive wear, or damage such as from chemicals or heat;

(m) Wedges and supports of climbing cranes for looseness or dislocation;

(n) Braces or guys supporting cranes' masts (towers) and anchor bolt base connections for looseness;

(o) Crane structure (including the boom, jib and counter jib):

(i) Structural members: Deformed, cracked, or significantly corroded.

(ii) Bolts, rivets and other fasteners: Loose, failed or significantly corroded.

(iii) Welds for cracks.

(p) Cracked or worn sheaves and drums;

(q) Worn, cracked, or distorted parts such as pins, bearings, shafts, gears, rollers, locking and clamping devices, sprockets, and drive chains or belts;

(r) Excessive wear on brake and clutch system parts, linings, pawls, and ratchets;

(s) Load, wind, and other indicators for inaccuracies outside the tolerances recommended by the manufacturer;

(t) Travel mechanisms for malfunction, excessive wear or damage;

(u) A legible and applicable operator's manual and load chart is in the operator's cab;

(v) Crane cleanliness and housekeeping. Inspect for trash, oil, grease, debris or excessive dirt on crane components and catwalks, if applicable;

(w) A portable fire extinguisher, with a basic minimum extinguishing rating of ten BC must be installed in the cab or at the machinery housing;

(x) When applicable, tower tie-in collars, struts, and connections to building structure are structurally sound, free of cracks, distortion, excessive wear or corrosion. Pins and structural bolts are tight and installed per the manufacturer's specification;

(y) Ballast blocks in place and secured per manufacturer's recommendations;

(z) For cranes that telescope, the raising mechanism operates within the manufacturer's specifications;

(aa) For cranes that top climb, the climbing frame operates within the manufacturer's specifications;

(bb) A means to prevent traveling tower cranes running into stops while under power;

(cc) A functional audible warning alarm that automatically sounds whenever the traveling tower crane travels;

(dd) Wire rope reeving for compliance with the manufacturer's specifications;

(ee) Wire rope, in accordance with WAC 296-155-53200(5);

(ff) Safety devices and operational aids for proper operation (including significant inaccuracies);

(gg) Legible warning labels and decals as required by the manufacturer;

(hh) Steps, ladders, handrails and guards are in safe and usable condition.

(6) Additional requirements for tower cranes prior to performing a proof load test.

Note: General requirements relating to preproof load tests for all cranes are located in WAC 296-155-53200.

(a) When tower cranes are erected, and before placing in service, all functional motions, motion limiting, load limiting

devices, locking and safety devices, brakes and clutches must be tested for operation and be within the manufacturer's specification prior to placing the crane in operation.

(b) Proof load tests require the use of certified weights, or scaled weights using a certified scale with a current certificate of calibration.

(c) Functional motion test must be at crane manufacturer's rated load. Each test must include:

- (i) Load hoisting and lowering;
- (ii) Jib (boom) hoisting and lowering, or trolley travel;
- (iii) Slewing motion;
- (iv) Travel motion when rail mounted;
- (v) Brakes and clutches; and
- (vi) Limit, locking, and safety devices.

Note: Functional motion tests made after climbing or telescoping may be performed without a load.

(d) The functional motion test listed in (c) of this subsection must continue until all controls, drives, and braking systems have been engaged and have functioned per the crane manufacturer's specifications.

(e) Order in which tests of tower cranes are to be performed is as follows:

- (i) Functional motion test without rated load;
- (ii) Functional motion test at crane manufacturer's rated load. For other than traveling cranes, these tests may be combined with test of base structural support or foundation system given in (c) of this subsection;
- (iii) Test of base structural support or foundation under (f) of this subsection.

(f) During functional motion tests, the crane's base structural support or foundation system must be visually checked by the accredited crane certifier. If any part of the crane's base structural support or foundation system shows excessive visual displacement, visual distress, or audible distress, then the lifted load must be lowered at hoist creep speed and all crane operations are to cease. An evaluation must then be made by the accredited crane certifier.

(7) Proof load testing of tower cranes. Setting hoist load limits for tower cranes.

(a) Annual proof load testing. After the crane has passed the visual and operational tests, the accredited crane certifier must ensure a proof load test is conducted and must be performed according to the manufacturer's recommendations. This test must be documented on the form or in the format approved by the department. A copy of this completed form and inspection worksheets must be sent to the department within ten working days upon completion of the examination.

(b) Tower crane hoist load limit switches must be set in accordance with the manufacturer's specifications using specified certified weights. Procedure is to be verified by the accredited crane certifier. In the absence of the manufacturer's specifications, hoist load limit switches must be verified by means of a static test using test loads of one hundred and two and one-half percent to one hundred and ten percent of the applicable ratings. Test loads are to be lifted at creep speed until just clear of the ground.

(c) Setting of hoist load limits must be documented on the form provided by the department. A copy of the completed form and inspection worksheets must be sent to the

department within ten days upon completion of the examination.

(d) After erection of fixed freestanding tower cranes, the base structural support or foundation system on which the crane is supported must be tested before placing the crane in service. The test must be conducted with the crane manufacturer's rated load placed at maximum radius permitted by site conditions. When the base structural support or foundation is symmetrical, the crane's jib (boom) must be rotated through ninety degrees with ten minute stops at the starting position and at each forty-five degree position. When the support is asymmetrical, the crane's jib (boom) must be rotated through three hundred and sixty degrees with ten minute stops at the starting position and at each forty-five degree position.

(e) After erection of rail traveling tower cranes, the base structural support or foundation system to which the rail is attached must be tested before placing the crane in service. The test must be conducted with the crane manufacturer's rated load placed at maximum radius permitted by site conditions. The jib (boom) must be located over the bogie. The crane must travel the entire length of runway, returning with the same load over the bogie on the opposite rail.

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/10)

WAC 296-155-533 (~~Crane operator~~) Qualifications and certification.

AMENDATORY SECTION (Amending WSR 08-22-080, filed 11/4/08, effective 1/1/10)

WAC 296-155-53300 Operator qualifications and certification. (1) Prior to operating any crane covered under chapter 296-155 WAC, Part L, with the exception of the trainee/apprentice requirements outlined in subsection (2) of this section, the employer must ensure that the crane operator:

(a) Has a valid crane operator certificate, for the type of crane to be operated, issued by a crane operator testing organization accredited by a nationally recognized accrediting agency. The operator certification must include a successful passing of a written and practical examination for each crane category listed in Table 2 and by crane type for mobile cranes.

- Notes:**
- An operator's certificate issued by the accredited testing agency is valid for a five-year period, and must be renewed to ensure operators maintain qualified operator status.
 - For self-erecting tower cranes, the department will accept a tower crane certification issued by a nationally accrediting testing agency.
 - For derricks, the department will accept, at a minimum, a lattice boom truck or crawler mobile crane operator's certificate.
 - If there is no accredited written or practical test for operator certification available, the employer must ensure the operator has been completely trained, evaluated and tested by the employer on the operating procedures for the piece of equipment in use as recommended by the crane equipment manufacturer. This process must be documented and made available upon request.

(b) Has crane hours of experience as shown in Table ((+)) 2; and

(c) Pass a substance abuse test conducted by a recognized laboratory.

Exemption: When it is necessary in the performance of their duties, manufacture representatives, factory representatives and maintenance personnel are not required to be certified crane operators.

Crane Operator Experience for Cranes Used in the Construction Industry
Table ((4)) 2

The 5 Categories of Cranes and their Types	Number of Hours of Actual Crane Operating Experience	Number of Hours of Crane Related Experience
(1) Mobile Cranes		
(a) Lattice Boom Crawler Cranes (LBC)	300 tons and above 1000 Hours	300 tons and above 1000 Hours
	Under 300 tons 500 Hours	Under 300 tons 500 Hours
(b) Lattice Boom Truck Cranes (LBT)	300 tons and above 1000 Hours	300 tons and above 1000 Hours
	Under 300 tons 500 Hours	Under 300 tons 500 Hours
(c) Large Telescopic Boom Cranes (Swing Cab) (TLL)	Over 130 tons 750 Hours	Over 130 tons 750 Hours
	Over 40 tons to 130 tons 250 Hours	Over 40 tons to 130 tons 250 Hours
	40 tons and under 40 Hours	40 tons and under 40 Hours
(d) Small Telescopic Boom Cranes (Fixed Cab) (TSS)	15 tons and above 40 Hours	15 tons and above 40 Hours
	Over 5 tons ((5)) and under 15 tons 20 Hours	Over 5 tons ((5)) and under 15 tons 20 Hours
	5 tons and under 8 hours	5 tons and under 16 hours
(2) Articulating Boom Cranes	20 Hours	20 Hours
(3) Tower Cranes		
(a) Hammerhead	500 Hours	500 Hours
(b) Luffer	500 Hours	500 Hours
(c) Self-Erecting	50 Hours	50 Hours
(4) Overhead Cranes		
(a) Cab Operated	40 Hours	40 Hours
(b) Pendant/Remote	40 Hours	40 Hours
(5) Derricks	20 Hours	500 Hours
<p>Hours of actual crane operating experience. For all cranes: Time while the operator is at the controls of the crane; and/or has direct control of that crane; and/or a combination of operating hours within the same crane type. For mobile cranes: It also includes time while installing/removing boom sections, luffing boom, jib, extending and retracting outriggers/stabilizers, leveling crane, and replacing hoisting rope. For tower cranes: It includes time while jumping (increasing the height of the tower/mast).</p> <p>Note: Additional actual crane operator experience may account for crane related experience.</p> <p>Hours of crane related experience: Time as a signalman/bellman, oiler, crane mechanic, crane inspector, formal classroom training, crane simulator operation, and a combination of operating hours on other categories of cranes.</p>		

Note: Cranes and other lifting machines that are exempt can be found in WAC 296-155-52900((2)) (3).

(2) Prequalification/certification training period. An employee who is not a qualified crane operator as outlined in

subsection (1) of this section is permitted to operate the crane as part of his/her training providing the following requirements are met:

(a) The employee ("trainee/apprentice") must be provided with sufficient training prior to operating the crane to

enable the trainee to operate the crane safely under limitations established by this section (including continuous supervision) and any additional limitations established by the employer.

(b) The tasks performed by the trainee/apprentice while operating the crane must be within the trainee's ability, as determined by the supervising qualified crane operator.

(c) Qualified crane operator. While operating the equipment, the trainee/apprentice must be continuously supervised by a qualified crane operator who meets the following requirements:

(i) The qualified crane operator is an employee or agent of the trainee's/apprentice's employer.

(ii) The qualified crane operator under this section is familiar with the proper use of the equipment's controls.

(iii) While supervising the trainee/apprentice, the qualified crane operator performs no tasks that detract from the qualified crane operator's ability to supervise the trainee/apprentice.

(iv) For cranes other than tower cranes: The qualified crane operator and the trainee/apprentice must be in direct line of sight of each other. In addition, they must communicate verbally or by hand signal.

(v) For tower cranes: The qualified crane operator and the trainee/apprentice must be in direct communication with each other.

(d) The trainee/apprentice must not operate the crane in any of the following circumstances:

(i) If any part of the crane, load line or load (including rigging and lifting accessories), if operated up to the crane's maximum working radius in the work zone, could get within twenty feet of a power line that is up to three hundred fifty kV, or within fifty feet of a power line that is over three hundred fifty kV;

(ii) If the crane is used to hoist personnel;

(iii) In a multiple-crane lift situation; or

(iv) Multiple-lift rigging, as defined in WAC 296-155-52902, can only be accomplished by the trainee/apprentice when the qualified crane operator determines that the trainee's/apprentice's skills are sufficient for this high-skill work.

(v) Critical lifts, as defined in WAC 296-155-52902, can only be accomplished by the trainee/apprentice when the qualified crane operator determines that the trainee's/apprentice's skills are sufficient for this high-skill work.

(3) The employer must obtain documentation showing hours of crane operator experience and crane related experience separated out by crane type and capacity.

(4) The department may recognize crane operator certification from another state or territory of the United States as equivalent to qualified crane operator requirements if the department determines that the other jurisdiction's credentialing standards are substantially similar to the qualified crane operator requirements.

(5) For experience obtained prior to January 1, 2010, the employer may accept a signed declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience separated out by crane type and capacity. Hours documented prior to 2010 will count

towards the hour requirements of actual crane operating experience and crane related experience.

Note: For experience obtained while working outside of the department's jurisdiction, the employer may accept a signed declaration from the crane operator attesting to actual hours of crane operator experience and crane related experience separated out by crane type and capacity.

(6) Beginning January 1, 2010, crane operator experience and crane related experience must be documented and separated out by crane type and capacity. If the employer is documenting crane operating and/or related crane experience hours, the employer must provide a copy of the hours to the operator as soon as practical, if requested.

WSR 10-14-101
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 6, 2010, 1:24 p.m., effective August 6, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose is to amend WAC 296-31-030 to be consistent with regulations of the department of health (DOH) adopted in response to 2SHB 2674 (chapter 135, Laws of 2008). This legislation required DOH to abolish the credential of registered counselor as a licensed mental health profession by July 1, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 296-31-030.

Statutory Authority for Adoption: RCW 7.68.030.

Adopted under notice filed as WSR 10-09-087 on April 20, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 6, 2010.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 01-22-105, filed 11/7/01, effective 12/8/01)

WAC 296-31-030 What are the eligibility requirements of a mental health treatment provider under the Crime Victims Act? (1) Mental health providers must qual-

ify as an approved provider and register with the crime victims compensation program before they are authorized to provide treatment and receive payment in accordance with these rules.

(2) The following providers who are permanently licensed (~~or registered~~) in Washington are eligible to register with this program:

(a) Psychiatrists;

(b) Psychologists;

(c) Advanced registered nurse practitioners with a specialty in psychiatric and mental health nursing;

(d) Ph.D.s not licensed as psychologists and master level counselors whose degree is in a field of study related to mental health services including, but not limited to, social work, marriage and family therapy or mental health counseling.

(3) Out-of-state providers must be currently licensed, (~~registered and~~) or certified within the state in which they practice. Washington requires mental health counselors to have a masters degree to treat Washington crime victim clients.

EXCEPTION: In areas where the department has determined licensed, (~~registered and~~) or certified providers are not available, the department may consider registration exceptions on an individual basis.

WSR 10-14-110

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed July 7, 2010, 8:00 a.m., effective August 7, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The farmed salmon commission was formed in December 1992 under the Washington State Agricultural Commodities Board Act (formerly titled Agricultural Enabling Act of 1961), chapter 15.65 RCW. In September 1999, the board of the farm [farmed] salmon commission filed written application with the director of agriculture to terminate the commission because the activities of the commission could no longer effectuate the policies of chapter 15.65 RCW. The director of agriculture determined in accordance with RCW 15.65.190 that all of the affected producers of farmed salmon with one hundred percent of the production had assented to the termination of the commission. This action repeals the marketing order for the farmed salmon commission.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-580-010, 16-580-020, 16-580-030, 16-580-040, 16-580-041, 16-580-050, 16-580-060, 16-580-070, and 16-580-080.

Statutory Authority for Adoption: RCW 15.65.190.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 10-10-088 on May 3, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 9.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 9.

Date Adopted: July 7, 2010.

Dan Newhouse
Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-580-010	Definition of terms.
WAC 16-580-020	Farmed salmon commodity board.
WAC 16-580-030	Marketing order purposes.
WAC 16-580-040	Assessments and collections.
WAC 16-580-041	Time—Place—Method for payment and collection of assessments—Production reports.
WAC 16-580-050	Obligations of the board.
WAC 16-580-060	Termination of the order.
WAC 16-580-070	Effective time.
WAC 16-580-080	Separability.

WSR 10-14-112

PERMANENT RULES

DEPARTMENT OF RETIREMENT SYSTEMS

[Filed July 7, 2010, 8:36 a.m., effective August 7, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These rules were amended and created to implement ESHB 2680, passed by the 2006 legislature, and HB 3024, passed by the 2008 legislature. These bills set criteria for teachers' retirement system (TRS) plans 2 and 3 members to purchase TRS service credit for teaching in another state or for the federal government.

Citation of Existing Rules Affected by this Order: Amending WAC 415-112-290 and 415-112-295.

Statutory Authority for Adoption: RCW 41.50.050(5).

Other Authority: RCW 41.32.065 and 41.32.300.

Adopted under notice filed as WSR 10-10-071 on April 30, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: July 6, 2010.

Steve Hill
Director

AMENDATORY SECTION (Amending WSR 05-12-042, filed 5/25/05, effective 6/25/05)

WAC 415-112-290 May I purchase Plan 1 service credit for out-of-state teaching? (1) ~~((Do I qualify to purchase service credit for out-of-state teaching?))~~ As a Plan 1 member, you may establish service credit for teaching out-of-state, which includes teaching out of the country, only if:

(a) ~~((Plan 1. If you are a Plan 1 member, you may establish service credit for teaching out-of-state, which includes teaching out of the country, only if:~~

~~((i))~~ You were on an official leave of absence granted by your employer when you provided the service; and

~~((ii))~~ (b) You returned to public school service in Washington state.

~~((b) Plans 2 and 3. If you are a Plan 2 or 3 member, you may not purchase service credit for out-of-state teaching.))~~

(2) ~~((As a Plan 1 member, how do I apply to purchase service credit for out-of-state teaching?))~~ To establish such service credit, you must submit the following to the department within the time limits set in RCW 41.32.310:

(a) Proof of your out-of-state service;

(b) Proof of your official leave of absence; and

(c) Payment of contributions.

(3) ~~((What is the maximum amount of service credit I may purchase? If you meet the requirements in this section,))~~ You may establish a maximum of four years of service credit for teaching out-of-state. Except that, ~~((at the time of retirement,))~~ you may not ~~((have))~~ qualify for retirement by counting more years of service credit for out-of-state teaching than for Washington state service, unless you established the out-of-state service credit prior to July 2, 1947.

NEW SECTION

WAC 415-112-292 May I purchase TRS Plan 2 or Plan 3 service credit for public education experience gained by teaching out-of-state or for the federal government? If you earned service credit for teaching out-of-state or for the federal government, you may be eligible to pur-

chase that public education experience as TRS service credit. The public education claimed must have been covered by a retirement or pension plan and must have been as a teacher, as defined by that retirement or pension plan.

(1) **Do I qualify to purchase TRS service credit for public education experience outside of the state of Washington?** You are eligible to purchase service credit under this section if you meet all the following requirements at the time of purchase:

(a) You are employed in a TRS Plan 2 or Plan 3 eligible position;

(b) You have at least two years of TRS service credit;

(c) You earned the education experience service credit by teaching in a public school in another state within the United States or with the United States federal government;

(d) The service was covered by a state, political subdivision of a state, or federal retirement plan;

(e) You are not receiving a benefit from the other system; and

(f) You are not eligible for an unreduced benefit from the other system.

(2) **Do I qualify to purchase public education experience service credit if I am a substitute teacher?** You may purchase service credit under this section if your employer is currently reporting you as an active substitute teacher and you meet the requirements in subsection (1)(b) through (f) of this section.

(3) **If I purchase TRS service credit for public education experience, how may it be used?** The service credit you purchase under this section will be treated the same as service credit you earn in TRS. It will be used in the calculation of your retirement allowance, to qualify for retirement or early retirement, and to meet the Plan 3 ten-year vesting requirement.

(4) **What is the cost of the service credit?** You must pay the actuarial value of the resulting increase in your retirement allowance. The following formula is used to calculate the cost:

$$\text{Average earnings}^1 \times \text{Years of service credit being purchased} \times \text{Factor 1} = \text{Cost}$$

EXAMPLE: Will is an active TRS Plan 2 member, age sixty-one, with seventeen years of service credit. If he was eligible to retire, his annual AFC would be \$50,000. He would like to purchase three years and six months of service credit for his public education experience. The cost is calculated as follows:

$$\$50,000 \times 3.5 \times .2151 = \$37,642.50$$

The cost for Will to purchase his service credit is \$37,642.50. Factor 1 from the actuarial table in WAC 415-02-370(3) is .2151. This is determined by finding the difference between Will's age at the time of purchase (sixty-one) and age sixty-five; the difference is forty-eight months (four

years). From the table, Factor 1 for forty-eight months is .2151.

(5) How much TRS service credit may I purchase for out-of-state or federal public education experience? If you meet the requirements in this section, you may purchase up to seven years (eighty-four months) of TRS service credit. You may purchase service credit in one-month increments but may not purchase a partial month of service credit.

(6) May I purchase some service credit now and some at a later date? No, you may not purchase some service credit now and some at a later date. You have one opportunity to purchase service credit under this section. You may purchase service credit from more than one retirement system provided you purchase it at the same time.

(7) How do I purchase the service credit? To purchase TRS Plan 2 or Plan 3 service credit for out-of-state or federal public education experience, you must do the following:

(a) You must complete an application provided by the department.

(i) You must complete, sign, and forward the application to your former retirement system(s).

(ii) Your former retirement system(s) must verify your service credit according to the instructions on the application.

(iii) If you are purchasing service credit from more than one retirement system, each retirement system must verify your service on a separate application.

(iv) Upon receipt of your properly completed application, the department will bill you for the service credit using the formula in subsection (4) of this section; the department will set a due date for the payment.

(b) You must make payment in full by the due date. If your payment is not received by the due date, your bill will become null and void. You may request a new bill from the department at a later date and it will reflect factors in effect at that time.

(i) You may make direct payment with either a personal or cashier's check. It may be possible to transfer funds from another eligible retirement account to pay your bill. However, DRS cannot accept funds in excess of the cost to make your purchase. You are advised to check with the administrator of your account to see if you can transfer those dollars.

(ii) Your employer may, at its option, pay some or all of the cost of the service credit.

(iii) If you are a Plan 2 member, your payment will be placed in your member account.

(iv) If you are a Plan 3 member, fifty percent of your payment will be placed in your defined contribution account and fifty percent will be placed in the trust fund from which your retirement allowance will be paid.

(8) Do I need to give up my right to a benefit from my previous retirement system for the service credit I purchase in TRS? No, you do not need to give up your right to a benefit from your previous retirement system for the service credit you purchase in TRS. At the time you purchase TRS service credit, you only need to prove that you are not currently receiving a benefit from your previous system and that you are not currently eligible for an unreduced benefit. Your previous retirement system will be required to verify this information on your application.

(9) May I purchase public education experience service credit to add to my TRS service credit and also use out-of-state teaching service credit to qualify for early retirement? Yes, you may purchase public education experience to add to your TRS service credit and/or use out-of-state teaching to qualify for early retirement. However, you may not use the same out-of-state service for both programs. Please see WAC 415-112-295. For example, if you have seven years of eligible out-of-state service credit, you may purchase five years to increase your TRS service credit and use the remaining two years to qualify for early retirement.

¹Up to sixty months of service credit will be used in determining your average earnings; for this formula, average earnings is the amount your average final compensation (AFC) would be if you retired on the date of the service credit purchase.

AMENDATORY SECTION (Amending WSR 06-18-006, filed 8/24/06, effective 9/24/06)

WAC 415-112-295 May I use ("~~unpurchased~~") out-of-state teaching service credit to determine eligibility for retirement? See RCW 41.32.065. (1) If you earned service credit in an out-of-state retirement system that covers teachers in public schools and do not purchase that service credit, you may use it (~~solely~~) to qualify for retirement.

(2) If you use ("~~unpurchased~~") out-of-state service credit to qualify for retirement, your retirement benefit:

(a) Will be based solely on your years of service credit in the Washington teachers' retirement system (TRS); and

(b) Will be actuarially reduced according to the age you would have been eligible to retire if you had not counted your out-of-state service credit. (~~See RCW 41.32.065.~~

~~(3) You may also be eligible to purchase a limited amount of service credit for out-of-state teaching under this chapter.)~~

Example:

Jane is (~~a member of TRS Plan 1. She has five years of out-of-state service credit as a public school teacher and twenty-five years of service credit in TRS Plan 1. She is eligible to retire from TRS Plan 1 with thirty years of service credit; however, her retirement benefit will be based solely on her twenty-five years of TRS service credit.~~) fifty-eight years old with twenty-four years of TRS Plan 1 service credit. She has one year of service credit in an out-of-state retirement system that covers public school teachers. A TRS Plan 1 member is eligible to retire at age fifty-five with twenty-five years of service credit. Jane may add her twenty-four years of TRS service credit with her one year of out-of-state service credit to qualify for retirement under this provision.

Jane's retirement benefit will be based solely on her twenty-four years of TRS Plan 1 service credit. If she retires at age fifty-eight, her benefit will be reduced by

an early retirement factor. The early retirement factor, .8270, is based on the difference between her actual retirement age (age fifty-eight) and the earliest age she could have received an unreduced benefit based on her twenty-four years of TRS service credit (age sixty). Jane's average final compensation (AFC) is \$5,500 and her benefit will be calculated as follows:

$2\% \times \text{years of service credit} \times \text{AFC} \times \text{factor}$

$2\% \times 24 \times \$5,500 \times .8270 = \$2,183.28$

WSR 10-14-129
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 10-137—Filed July 7, 2010, 11:46 a.m., effective August 7, 2010]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend rules for commercial salmon fishing Puget Sound, including WAC 220-47-302, 220-47-307, 220-47-311, 220-47-401, 220-47-411, 220-47-427, and 220-47-428.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-302, 220-47-307, 220-47-311, 220-47-401, 220-47-411, 220-47-427, and 220-47-428.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 10-06-091 on March 1, 2010.

Changes Other than Editing from Proposed to Adopted Version: In WAC 220-47-311, the dates for openings were adjusted for Areas 7, 7A, 7B, 7C, 8A, 12, and 12B. Opening hours were adjusted for Areas 8D, 10 and 11. Wild coho retention was prohibited in Areas 12, 12B, and 12C.

In WAC 220-47-411, dates for openings were adjusted for Areas 6D, 7, 7A, 7B, 7C, 8A, 8D, 9A, 10, 11, 12, 12B, and 12C. Opening hours were adjusted for Areas 8D, 10 and 11.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 7, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 7, 2010.

Philip Anderson
Director

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-302 Puget Sound—Lawful gear—Gill net. (1) It is unlawful to use drift gill net salmon gear in Puget Sound that exceeds 1,800 feet in length or contains meshes of a size less than 5 inches.

(2) It is unlawful to use skiff gill net salmon nets in Puget Sound that exceed 600 feet in length, 90 meshes in depth, or that contain meshes of a size less than 5 inches, except in Area 9A, where skiff gill nets are further restricted by not being more than 60 meshes deep. It is unlawful to retrieve skiff gill nets by any means except by hand (no hydraulics may be used). It is unlawful to fail to attend to skiff gill nets at all times.

(3) Drift gill nets and skiff gill nets shall be operated substantially in a straight line. It is unlawful to set such nets in a circle or to set them in other than a substantially straight line.

(a) It is unlawful to operate any drift gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, two red ((polyform)) size A-3 buoys, marking the visible end of the cork line portion of the net. One of the two buoys shall be marked in a visible, legible, and permanent manner with the name and gill-net license number of the fisher.

(b) The cork line portion of the net shall be marked every 50 fathoms of the net with ((polyform)) size A-1 buoys.

(4) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A sockeye or pink salmon fisheries unless said gill net gear is constructed so that the first 20 meshes below the cork line are composed of five-inch mesh, white opaque, minimum 210/30d (#12) diameter, nylon twine.

(5) It is unlawful to take or fish for salmon with gill net gear when recovery box(es) are required in areas defined under WAC 220-22-030 unless the gill net vessel has aboard and uses said operable recovery box(es) as described in this subsection.

(a) Dimensions and capacities of required recovery boxes:

(i) Recovery boxes must have two chambers, if one box, or one chamber in each box, if two boxes.

(ii) Each recovery box chamber must have an inside length measurement of 48 inches, an inside width measurement of 10 inches, and an inside height measurement of 16 inches.

(iii) Each chamber of the recovery box must have an inlet hole measuring between 3/4 inch and 1 inch in diameter. The inlet hole must be centered horizontally across the door or wall of the chamber, and the bottom of the hole must be located 1-3/4 inches above the floor of the chamber.

(iv) Each chamber of the recovery box must include a water outlet hole on the opposite wall from the inlet hole, and the outlet hole must be at least 1-1/2 inches in diameter, with the bottom of the outlet hole located 12 inches above the floor of the chamber.

(v) Flow of water through each chamber of the recovery boxes must be not less than 16 gallons per minute, nor more than 20 gallons per minute.

(b) Each box and chamber must be operating during any time that the net is being retrieved or picked.

(c) The vessel operator must demonstrate to department employees, upon request, that the pumping system is delivering the proper volume of fresh seawater into each chamber.

(d) All salmon not to be retained must be released immediately with care and with the least possible injury to the fish, or placed into the operating recovery box.

(e) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

(f) All fish placed in the recovery boxes must be released within the same catch area as the area of capture, and the release must occur prior to landing or docking.

(6) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure:

Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - ~~((+))~~ That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

~~((2) Additional coho seasonal closure: Those waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W) and then southeastward along that line to Fish Point.))~~

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D.

(2) Additional pink and coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional coho seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Four-mile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspoint marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- ((10/12, 10/13, 10/16, 10/17,)) 10/10, 10/11, 10/14, 10/15, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6
	7AM - 5PM	- ((11/1, 11/2, 11/3, 11/4, 11/5, 11/6,)) 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13((-11/14))
Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).		
((7B, 7C:	6AM—9PM	- 8/12))
7B, 7C:	6AM - 8PM	- ((8/19, 8/26, 9/2)) 8/18, 8/25, 9/1
7B:	7AM - 8PM	- ((9/9)) 9/8
	7AM - 7PM	- ((9/14, 9/16, 9/18)) 9/13, 9/15, 9/17
	7AM ((9/20)) 9/19	- 6PM ((10/31)) 10/30
	7AM ((11/2)) 11/1	- 4PM ((11/6)) 11/5
	7AM ((11/9)) 11/8	- 4PM ((11/13)) 11/12
	7AM ((11/16)) 11/15	- 4PM ((11/20)) 11/19
	7AM ((11/23)) 11/22	- 4PM ((11/27)) 11/26
	8AM ((11/30)) 11/29	- 4PM ((11/4)) 12/3
Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.		
((8:	6AM—8PM	- 8/17, 8/19, 8/25, 8/27
8A:	6AM—8PM	- 8/18, 8/20, 8/24, 8/26))
8A:	7AM - 7PM	- Limited participation - two boats ((9/28, 10/5)) 9/27, 10/4.
	7AM - 6PM	- ((11/13)) 10/11
8D:	7AM - 7PM	- ((9/21, 9/28, 10/5)) 9/20, 9/27, 10/4
	7AM - 6PM	- ((10/12, 10/19, 10/26, 10/28)) 10/11, 10/18, 10/25, 10/27, 11/3
	7AM - 5PM	- ((11/4, 11/10, 11/12, 11/18)) 11/9, 11/11, 11/17
	7AM - 4PM	- ((11/23, 11/25)) 11/22, 11/24
((10:	6AM—8PM	- Limited participation - two boats (8/25, 8/27, 8/31,))
10, 11:	7AM - 6PM	- ((10/20,)) 10/18, 10/26, 10/28, 11/1
	7AM - 5PM	- ((11/3,)) 11/9, 11/11, ((11/17)) 11/15
	7AM - 4PM	- 11/23
(Note: In Area 10 during any open period occurring from 8/25 through 8/31 it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon with department observers on board.)		
12, 12B:	7AM - 6PM	- ((10/20,)) 10/18, 10/26, 10/28, 11/1

AREA	TIME	DATE
	7AM - 5PM	- ((11/3)11/9, 11/11, (11/17) 11/15)
12C:	7AM - 5PM	- 11/9, (11/17) 11/11, 11/15
	7AM - 4PM	- 11/23

Note: In Areas 12, 12B, and 12C, it is unlawful to take or fish for salmon during any open period with purse seine gear unless purse seine fishers are using a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October (~~(25)~~) 23 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, prior to September (~~(6)~~) 5 in Area 7B(~~, and during September in those waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W) and then southeastward along that line to Fish Point~~), and wild coho in Areas 12, 12B, and 12C.

Chum salmon - prior to October 1 in Areas 7 and 7A.
All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	((9/13-11/14) <u>9/12 - 11/13</u>)

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: (~~Jeremy Jording~~) Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia WA, 98501-1091.

(4) All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-411 Gill net—Open periods. It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gill net only, <u>definition WAC 220-16-046 and lawful gear description WAC 220-47-302.</u>	7AM - 7PM	9/21, 9/22, 9/23, 9/24, ((9/25)) <u>9/27</u> , 9/28, 9/29, 9/30, 10/1, ((10/2)) <u>10/4</u> , 10/5, 10/6, 10/7, 10/8, ((10/9)) <u>10/11</u> , 10/12, 10/13, 10/14, 10/15, ((10/16)) <u>10/18</u> , 10/19, 10/20, 10/21, 10/22((10/23))	((5-1/2) <u>5"</u>)

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM	- Midnight; use of recovery box required	((10/12, 10/13, 10/16, 10/17) <u>10/10, 10/11, 10/14, 10/15</u>)	6 1/4"
	7AM	- Midnight	10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13((11/14))	6 1/4"

Note: In Areas 7 and 7A after September (~~(28)~~) 26 but prior to October (~~(18)~~) 17, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

(7B, 7C):	8PM	- 7AM	NIGHTLY 8/10	7")
<u>7B, 7C:</u>	7PM	- 8AM	NIGHTLY <u>8/15</u> , 8/17, 8/18, ((8/20)) <u>8/22</u> , 8/24, 8/25, ((8/27)) <u>8/29</u> , 8/31, 9/1 ((9/3))	7"

AREA	TIME		DATE(S)	MINIMUM MESH
7B:	(12:01) 7AM	-	(Midnight) 7 AM the day following	5"
	7AM	-	Midnight ((10/24)) 10/23	5"
	((9/20)) 9/19	-	Midnight ((10/31)) 10/30	6 1/4"
	12:01AM ((10/25)) 10/24	-	4PM ((11/6)) 11/5	6 1/4"
	7AM ((11/2)) 11/1	-	4PM ((11/13)) 11/12	6 1/4"
	((7AM-11/9)) 6AM 11/8	-	4PM ((11/20)) 11/19	6 1/4"
	((7AM-11/16)) 6AM 11/15	-	4PM ((11/27)) 11/26	6 1/4"
	7AM ((11/23)) 11/22	-	4PM ((12/4)) 12/3	6 1/4"
	8AM ((11/30)) 11/29	-		

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until ~~((6:00))~~ 4:00 PM on the first Friday in December.

((8-	6AM	-	10PM	8/18, 8/20, 8/24, 8/26	5" minimum and 5 1/2" maximum
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gill nets greater than 60 mesh maximum depth.

8A:	6AM	-	10PM	8/17, 8/19, 8/25, 8/27	5" minimum and 5 1/2" maximum))
8A:	6PM	-	8AM	NIGHTLY ((10/6)) 10/4	5"
	7AM	-	((6PM)) 8PM	10/12, 10/13, 10/14	5"
8D:	6PM	-	8AM	NIGHTLY 9/19, 9/20, 9/21, 9/22, 9/23, 9/26, 9/27, 9/28, 9/29, 9/30, 10/3, 10/4, 10/5, 10/6, 10/7	5"
	5PM	=	8AM	10/10, 10/11, 10/12, 10/13, 10/14	5"
	7AM	-	9PM	9/21, 9/22, ((9/23,)) 9/28, 9/29, ((9/30, 9/6, 9/7)) 10/5, 10/6	5"
	7AM	-	8PM	((10/15, 10/22, 10/29)) 10/12, 10/13, 10/21, 10/28, 11/4	5"
	7AM	-	4PM	((10/16, 10/23, 10/30)) 10/22, 10/29, 11/5	5"
	((7AM)) 6AM	-	((7PM)) 6PM	((11/11, 11/19)) 11/10, 11/18	6 1/4"
	7AM	-	6PM	((11/26)) 11/25	6 1/4"
	((7AM)) 6AM	-	4PM	((11/13, 11/20, 11/27)) 11/12, 11/19	6 1/4"
	7AM	=	4PM	11/26	6 1/4"
9A: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	((8/24, 8/25, 8/26)) 8/22 through 10/30 daily	5"
	((6AM 8/30	-	8PM 10/31		5"))

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish. ~~((Legal gear defined in WAC 220-47-302.~~

10	6AM	-	10PM	Limited participation - two boats (8/24, 8/25, 8/31)	5" minimum and 5 1/2" maximum
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Note: In Area 10 during September coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).))

10, 11:	5PM	-	9AM	NIGHTLY ((10/18, 10/29)) 10/19, 10/24, 11/2	6 1/4"
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AREA	TIME		DATE(S)	MINIMUM MESH
	5PM	-	8AM NIGHTLY ((40/21)) <u>10/27</u>	6 1/4"
	4PM	-	8AM NIGHTLY ((41/1, 41/10, 41/12, 41/15)) <u>11/7, 11/10, 11/16</u>	6 1/4"
	3PM	-	8AM NIGHTLY ((41/22)) <u>11/21</u>	6 1/4"
	4PM	-	Midnight NIGHTLY ((40/21, 41/4, 41/18, 41/25)) <u>10/20, 11/3, 11/17, 11/24</u>	6 1/4"
12A: Skiff gill net only, <u>definition WAC 220-16-046 and lawful gear description WAC 220-47-302.</u>	7AM	-	7PM ((9/1, 9/8, 9/15, 9/22, 9/31)) <u>Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gill net gear.</u>	5"
12, 12B:	7AM	-	8PM 10/19, 10/21, <u>10/25</u> , 10/27, ((40/29)) <u>11/2, 11/4</u>	6 1/4"
	((7AM)) <u>6AM</u>	-	((7PM)) <u>6PM</u> (((41/2, 41/4,))) <u>11/8, 11/10, ((41/12,)) 11/16, 11/18</u>	6 1/4"
12C:	((7AM)) <u>6AM</u>	-	((7PM)) <u>6PM</u> <u>11/8, 11/10, ((41/12,)) 11/16, 11/18</u>	6 1/4"
	7AM	-	6PM (((41/24, 41/26))) <u>11/22, 11/25</u>	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-427 Puget Sound—Beach seine—Emerging commercial fishery—Eligibility—Lawful gear.

(1) The Puget Sound beach seine salmon fishery is designated as an emerging commercial fishery for which a vessel is required. An emerging commercial fishery license and an experimental fishery permit are required to participate in this fishery.

(2) The department will issue ~~((two))~~ four salmon beach seine experimental fishery permits.

(3) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department established a pool of applicants by drawing on August 13, 2002. The pool established by this drawing will be maintained to replace any permit(s) which may be voided.

(4) Permit holders are required to participate in the salmon beach seine experimental fishery.

(a) For purposes of this section, "participation" means the holder of the salmon beach seine experimental permit being aboard the designated vessel in the open fishery.

(b) If the salmon beach seine experimental permit holder fails to participate, the salmon beach seine experimental permit issued to that fisher will be void and a new salmon beach seine experimental permit will be issued through a random drawing from the applicant pool established in 2002.

(c) The department may require proof of participation by maintaining a department approved log book or registering

with state officials each day the salmon beach seine experimental permit holder participates.

(d) Persons who participate, but violate conditions of a salmon beach seine experimental permit, will have the permit voided and a new salmon beach seine experimental permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) In Quilcene Bay, chum salmon may not be retained by a salmon beach seine experimental permit holder. Chum salmon in Quilcene Bay must be released alive.

(6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a salmon beach seine experimental permit will have his or her name permanently withdrawn from the pools.

(7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed 600 feet in length or 100 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME		DATE(S)
12A:	7AM	-	7PM
			<u>8/23</u> , 8/24, 8/25, <u>8/26</u> , <u>8/30</u> , 8/31, 9/1, 9/2, <u>9/6</u> , 9/7, 9/8, <u>9/9</u> , <u>9/13</u> , 9/14, 9/15, <u>9/16</u> , <u>9/20</u> , 9/21, 9/22, <u>9/23</u> , <u>9/27</u> , 9/28, 9/29, <u>9/30</u>
12H:	7AM	-	7PM
			November (dates determined per agreement with tribal comanagers in-season if harvestable surplus of salmon remain).

It is unlawful to retain chinook taken with beach seine gear in all areas, and unlawful to retain chum from Area 12A.