WSR 10-20-171
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed October 6, 2010, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-109 and 09-17-003.

Title of Rule and Other Identifying Information: Chapter 388-96 WAC, Nursing facility medicaid payment system.

The following sections are being amended or repealed: Repealing WAC 388-96-202, 388-96-740, 388-96-741, 388-96-742 and 388-96-749; and amending WAC 388-96-010, 388-96-108, 388-96-217, 388-96-218, 388-96-366, 388-96-384, 388-96-534, 388-96-535, 388-96-536, 388-96-542, 388-96-559, 388-96-561, 388-96-565, 388-96-585, 388-96-708, 388-96-709, 388-96-747, 388-96-748, 388-96-758, 388-96-759, 388-96-766, 388-96-776, 388-96-781, 388-96-782, 388-96-802, 388-96-803, 388-96-901, and 388-96-904.

Numerous new sections are being added to absorb the repealed sections of chapter 74.46 RCW, Nursing facility medicaid payment system.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on December 7, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 7, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 23, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature in ESSB 6872 simplified chapter 74.46 RCW by repealing numerous section[s] and granting the department the authority to incorporate the detail of the repealed sections in chapter 388-96 WAC. Also, the department will amend or adopt new rules to implement ESSB 6444 section 206. Finally, the department proposes to [the] following: WAC 388-96-758 and 388-96-759 to incorporate changes made in the low-wage worker add-on by section 206(12), chapter 564, Laws of 2009; WAC 388-96-904 to clarify applying for an adjudicative proceeding; WAC 388-96-781 to add expanded community services (ECS), extraordinary medical placement (EMP), and vent-trach (VT) as categories; WAC 388-96-366 through 388-96-384 that authorizations from clients' trust funds must be obtained for each disbursement; WAC 388-96-366(3) to increase amount of a resident's funds that an NH must deposit from $50 to $100; WAC 388-96-580 to clarify allowable leased office equipment; WAC 388-96-542 to address the "may" in the definition of "home and central office costs": The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of ["]care services to authorized patients." found in RCW 74.46.020; and WAC 388-96-766 to codify the use of e-mail notices as being legally sufficient. Also, requiring nursing facilities to maintain a current e-mail address with the department. Also, to clarify regulations by codifying current policies and practices and editing previous codifications for substance and form. All sections may be amended.

Reasons Supporting Proposal: ESSB 6872 (chapter 34, Laws of 2010, 1st sp. sess.) and ESSB 6444 section 206, supplemental operating budget (chapter 37, Laws of 2010, 1st sp. sess.).

Statutory Authority for Adoption: Chapter 74.46 RCW.

Statute Being Implemented: Chapter 74.46 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Patricia Hague, mailstop 45600, (360) 725-2447; Implementation and Enforcement: Ken Callaghan, mailstop 45600, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 34.05.328, the rules proposed for permanent adoption are significant legislative rules. Under RCW 34.05.328 (5)(b)(vi), the department is exempt from preparing a cost-benefit analysis (CBA). Significant legislative rules that set or adjust fees or rates pursuant to legislative standards do not require a CBA.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 19.85.025(3), the department is not required to complete a small business economic impact statement for rules that set or adjust fees or rates pursuant to legislative standards (RCW 34.05.310 (4)(f)).

September 30, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-010 Definitions. Unless the context indicates otherwise, the following definitions apply in this chapter.

"Accounting" means activities providing information, usually quantitative and often expressed in monetary units, for:

(1) Decision making;

(2) Planning;

(3) Evaluating performance;

(4) Controlling resources and operations; and

(5) External financial reporting to investors, creditors, regulatory authorities, and the public.

"Accrual method of accounting" is a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

"Administration and management" means activities used to maintain, control, and evaluate the efforts and resources of an organization for the accomplishment of the objectives and policies of that organization.

"Allowable costs" ((~~means~~)) are documented costs that are necessary, ordinary, and related to the care of medicaid recipients, and are not expressly declared nonallowable by this chapter or chapter 74.46 RCW. Costs are ordinary if they are of the nature and magnitude that prudent and cost conscious management would pay.

"Allowable depreciation costs" ((~~means~~)) are depreciation costs of tangible assets, whether owned or leased by the contractor, meeting the criteria specified in ((~~RCW 74.46.330~~)) WAC 388-96-552.

"Assignment of contract" means:

(1) A new nursing facility licensee has elected to care for medicaid residents;

(2) The department finds no good cause to object to continuing the medicaid contract at the facility; and

(3) The new licensee accepts assignment of the immediately preceding contractor's contract at the facility.

"Bad debts" are amounts considered to be uncollectible from accounts and notes receivable.

"Beneficial owner" is:

(1) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(a) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(b) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest.

(2) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose of effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(3) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(a) Through the exercise of any option, warrant, or right;

(b) Through the conversation of an ownership interest;

(c) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(d) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement; except that, any person who acquires an ownership interest or power specified in (3)(a), (3)(b), or (3)(c) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(4) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(a) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(b) The pledgee agreement, prior to default, does not grant to the pledgee:

(i) The power to vote or to direct the vote of the pledged ownership interest; or

(ii) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

"Capitalized lease" means a lease required to be recorded as an asset and associated liability in accordance with generally accepted accounting principles.

"Cash method of accounting" means a method of accounting in which revenues are recorded when cash is received, and expenditures for expense and asset items are not recorded until cash is disbursed for those expenditures and assets.

"Change of ownership" means a substitution, elimination, or withdrawal of the individual operator or operating entity contracting with the department to deliver care services to medical care recipients in a nursing facility and ultimately responsible for the daily operational decisions of the nursing facility.

(1) Events which constitute a change of ownership include, but are not limited to, the following:

(a) Changing the form of legal organization of the contractor, e.g., a sole proprietor forms a partnership or corporation;

(b) Transferring ownership of the nursing facility business enterprise to another party, regardless of whether ownership of some or all of the real property and/or personal property assets of the facility are also transferred;

(c) Dissolving of a partnership;

(d) Dissolving the corporation, merging the corporation with another corporation, which is the survivor, or consolidating with one or more other corporations to form a new corporation;

(e) Transferring, whether by a single transaction or multiple transactions within any continuous twenty-four-month period, fifty percent or more of the stock to one or more:

(i) New or former stockholders; or

(ii) Present stockholders each having held less than five percent of the stock before the initial transaction;

(f) Substituting of the individual operator or the operating entity by any other event or combination of events that results in a substitution or substitution of control of the individual operator or the operating entity contracting with the department to deliver care services; or

(g) A nursing facility ceases to operate.

(2) Ownership does not change when the following, without more, occurs:

(a) A party contracts with the contractor to manage the nursing facility enterprise as the contractor's agent, i.e., subject to the contractor's general approval of daily operating and management decisions; or

(b) The real property or personal property assets of the nursing facility change ownership or are leased, or a lease of them is terminated, without a substitution of individual operator or operating entity and without a substitution of control of the operating entity contracting with the department to deliver care services.

"Charity allowance" means a reduction in charges made by the contractor because of the indigence or medical indigence of a patient.

"Component rate allocation(s)" means the initial component rate allocation(s) of the rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "component rate allocation(s)," it means the initial component rate allocation(s) of the rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Contract" means an agreement between the department and a contractor for the delivery of nursing facility services to medical care recipients.

"Cost report" means all schedules of a nursing facility's cost report submitted according to the department's instructions.

"Courtesy allowances" ((~~means~~)) are reductions in charges in the form of an allowance to physicians, clergy, and others, for services received from the contractor. Employee fringe benefits are not considered courtesy allowances.

"Department" means department of social and health services and its employees.

"Direct care supplies (DCS)" are those supplies:

(1) Used by staff providing direct care to residents;

(2) Consumed during a single accounting period; and

(3) Expensed in that accounting period. Supplies excluded from DCS include but are not limited to the following:

(1) medical equipment (such as IV poles);

(2) Items covered by medicaid fee-for-service system; and

(3) Administrative supplies used by direct care staff (such as pencils, pens, paper, office supplies, etc).

"Donated asset" means an asset the contractor acquired without making any payment for the asset either in cash, property, or services. An asset is not a donated asset if the contractor:

(1) Made even a nominal payment in acquiring the asset; or

(2) Used donated funds to purchase the asset.

"Essential community provider" means a facility that is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

"Equity capital" means total tangible and other assets which are necessary, ordinary, and related to patient care from the most recent provider cost report minus related total long-term debt from the most recent provider cost report plus working capital ((~~as~~)) defined ((~~in this section~~)) as current assets minus current liabilities.

"Fiscal year" means the operating or business year of a contractor. All contractors report on the basis of a twelve-month fiscal year, but provision is made in this chapter for reports covering abbreviated fiscal periods. As determined by context or otherwise, **"fiscal year"** may also refer to a state fiscal year extending from July 1 through June 30 of the following year and comprising the first or second half of a state fiscal biennium.

"Gain on sale" means the actual total sales price of all tangible and intangible nursing facility assets including, but not limited to, land, building, equipment, supplies, goodwill, and beds authorized by certificate of need, minus the net book value of such assets immediately prior to the time of sale.

"Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

"Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

"Intangible asset" is an asset that lacks physical substance but possesses economic value.

"Interest" means the cost incurred for the use of borrowed funds, generally paid at fixed intervals by the user.

"Joint facility costs" are any costs that benefit more than one facility, or one facility and any other entity.

"Large nonessential community providers" are nonessential community providers with more than sixty licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.

"Multiservice facility" means a facility at which two or more types of health or related care are delivered, e.g., a hospital and nursing facility, or a boarding home and nursing facility.

"Nonadministrative wages and benefits" ((~~means~~)) are wages, benefits, and corresponding payroll taxes paid for nonadministrative personnel, not to include administrator, assistant administrator, or administrator-in-training.

"Nonallowable costs" ((~~means~~)) are the same as **"unallowable costs."**

"Nonrestricted funds" ((~~means~~)) are funds ((~~which~~)) that are not restricted to a specific use by the donor, e.g., general operating funds.

"Nursing facility occupancy percentage" is a percentage determined by multiplying the number of calendar days for the cost report period by the number of licensed beds, regardless of how many beds are set up, in use, or banked under chapter 70.38 RCW, for the same cost report period. Then, the product is divided into the nursing facility's actual resident days for the same cost report period ((~~is divided by the product~~)). ((~~When the nursing facility under chapter 70.38 RCW reinstates or reduces the number of licensed beds, then under WAC 388-96-708 or 388-96-709 the number of licensed beds after reinstatement or reduction will be used. In all determinations that require a nursing facility occupancy percentage, the department will use the greater of~~

~~either a nursing facility's occupancy percentage or eighty-five percent.~~))

"Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

"Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

"Per diem (per patient day or per resident day) costs" means total allowable costs for a fiscal period divided by total patient or resident days for the same period.

"Prospective daily payment rate" means the rate assigned by the department to a contractor for providing service to medical care recipients prior to the application of settlement principles.

"Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

"Recipient" means a medicaid recipient.

"Related care" ((~~includes~~)) means only those services that are directly related to providing direct care to nursing facility residents including but not limited to:

(1) The director of nursing services;

(2) ((~~Activities and social services programs~~)) Nursing direction and supervision;

(3) ((~~Medical and medical records specialists~~)) Activities and social services programs; ((~~and~~))

(4) ((~~Consultation provided by:~~

~~(a) Medical directors; and~~

~~(b) Pharmacists~~)) Medical and medical records specialists.

(5) Consultation provided by:

(a) Medical directors; and

(b) Pharmacists.

"Relative" includes:

(1) Spouse;

(2) Natural parent, child, or sibling;

(3) Adopted child or adoptive parent;

(4) Stepparent, stepchild, stepbrother, stepsister;

(5) Father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law;

(6) Grandparent or grandchild; and

(7) Uncle, aunt, nephew, niece, or cousin.

"Related organization" means an entity that is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity or person is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity or person has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable and exercised.

"Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

"Small nonessential community providers" are nonessential community providers with sixty or fewer licensed beds regardless of how many beds are set up or in use. Licensed beds include any beds banked under chapter 70.38 RCW.

"Start up costs" ((~~means~~)) are the one-time preopening costs incurred from the time preparation begins on a newly constructed or purchased building until the first patient is admitted. Start up costs include:

(1) Administrative and nursing salaries;

(2) Utility costs;

(3) Taxes;

(4) Insurance;

(5) Repairs and maintenance; and

(6) Training costs.

Start up costs do not include expenditures for capital assets.

"Total rate allocation" means the initial rebased rate for a rebase period effective July 1. If a month and a day, other than July 1, with a year precedes "total rate allocation," it means the initial rebased rate of the rebase period has been amended or updated effective the date that precedes it, e.g., October 1, 1999 direct care component rate allocation.

"Unallowable costs" ((~~means~~)) are costs ((~~which~~)) that do not meet every test of an allowable cost.

"Uniform chart of accounts" ((~~means a list of~~)) are account titles identified by code numbers established by the department for contractors to use in reporting costs.

"Vendor number" means a number assigned to each contractor delivering care services to medical care recipients.

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

NEW SECTION

WAC 388-96-011 Conditions of participation. In order to participate in the nursing facility medicaid payment system established by this chapter and chapter 74.46 RCW, the person or legal entity responsible for operation of a facility shall:

(1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 C.F.R. where required;

(2) Hold the appropriate current license;

(3) Hold current Title XIX certification;

(4) Hold a current contract to provide services under this chapter and chapter 74.46 RCW;

(5) Comply with all provisions of the contract and all applicable statutes and regulations, including but not limited to the provisions of this chapter and chapter 74.46 RCW; and

(6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for a portion of the facility's licensed beds.

NEW SECTION

WAC 388-96-012 Public disclosure. (1) Cost reports and final audit reports filed by the contractor shall be subject to public disclosure pursuant to chapter 42.56 RCW.

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from autho-

rizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the department pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the department, upon written request, to the legislature and to federal, state, or local agencies or law enforcement officials who have an official interest in the contents thereof.

NEW SECTION

WAC 388-96-022 Due dates for cost reports. (1) The contractor shall submit annually a complete report of costs and financial conditions of the contractor prepared and presented in a standardized manner and in accordance with this chapter and chapter 74.46 RCW.

(2) Not later than March 31st of each year, each contractor shall submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(3) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor shall submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

(4) If the cost report is not properly completed or if it is not received by the due date established in subsection (2) or (3) of this section, all or part of any payments due under the contract may be withheld by the department until such time as required cost report is properly completed and received.

(5) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date established in subsection (2) or (3) of this section.

NEW SECTION

WAC 388-96-099 Completing cost reports and maintaining records. (1) To determine reported costs, nursing facility contractors shall use generally accepted accounting principles, the provisions of this chapter, and chapter 74.46 RCW. In the event of conflict, chapter 74.46 RCW, this chapter, and instructions issued by the department take precedence over generally accepted accounting principles.

(2) A nursing facility's records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report. All revenue and expense accruals shall be reversed against the appropriate accounts unless they are received or paid, respectively, within one hundred twenty days after the accrual is made. However, if the contractor can document a good faith billing dispute with the supplier or vendor, the period may be extended, but only for those portions of billings subject to good faith dispute. Accruals for vacation, holiday, sick pay, payroll, and real estate taxes may be carried for longer periods, provided the contractor follows generally accepted accounting principles and pays this type of accrual when due.

NEW SECTION

WAC 388-96-102 Requirements for retention of records by the contractor. (1) The contractor shall specify a location in the state of Washington at which the contractor shall retain all records supporting the cost reports for a period of four years following the filing of the required cost reports. Also, at the same location, for a period of four years, for each calendar year, the contractor shall retain all records supporting trust funds established under WAC 388-96-366(2) and account receivables. For example, supporting records for 2009 trust funds and accounts receivables must be kept through 2013.

(2) When there is (are) an unresolved issue(s) on a cost report, the department may direct supporting records to be retained for a longer period. All such records shall be made available upon demand to authorized representatives of the department, the office of the state auditor, and the centers for medicare and medicaid services (CMS).

(3) When a contract is terminated or assigned, all payments due the terminating or assigning contractor will be withheld until accessibility and preservation of the records within the state of Washington are assured.

NEW SECTION

WAC 388-96-105 Retention of cost reports and resident assessment information by the department. The department will retain cost reports for one year after final settlement or reconciliation, or the period required under chapter 40.14 RCW, whichever is longer. Resident assessment information and records shall be retained as provided in statute or by department rule.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-108 Failure to submit final reports. (1) If a nursing facility's contract is terminated or assigned, and the nursing facility does not submit a final cost report as required by ((~~RCW 74.46.040~~)) WAC 388-96-022, the nursing facility shall return to the department all payments made to the terminating or assigning contractor relating to the period for which a report has not been received within sixty days after the terminating or assigning contractor receives a written demand from the department.

(2) Effective sixty days after the terminating or assigning contractor receives a written demand for payment, interest will begin to accrue payable to the department on any unpaid balance at the rate of one percent per month.

NEW SECTION

WAC 388-96-205 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions. (1) The purposes of department audits and examinations under this chapter and chapter 74.46 RCW are to ascertain that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, and costs of the building, land, land improvements, building improvements, and movable and fixed equipment are recorded in compliance with department requirements, instructions, and generally accepted accounting principles;

(d) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds; and

(e) The contractor has reported and maintained accounts receivable in compliance with this chapter and chapter 74.46 RCW.

(2) The department shall examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine whether the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and chapter 74.46 RCW. The department shall determine the scope of the examination.

(3) When the department finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care, therapy care, and support services under WAC 388-96-211 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments shall be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments shall be subject to review under WAC 388-96-901 and WAC 388-96-904.

(4) Audits of resident trust funds and receivables shall be reported separately and in accordance with the provisions of this chapter and chapter 74.46 RCW.

(5) The contractor shall:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) Prepare a reconciliation of the cost report with:

(i) Applicable federal income and federal and state payroll tax returns; and

(ii) The records for the period covered by the cost report.

(c) Make available to the department staff an individual or individuals to respond to questions and requests for information from department staff. The designated individual or individuals shall have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records shall be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department shall notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

NEW SECTION

WAC 388-96-208 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. (1) The department shall reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for each calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor shall make any payment owed the department as determined by reconciliation and/or settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations within sixty days after the department notifies the contractor of the amount owed.

(3) The department shall pay the contractor within sixty days after it notifies the contractor of an underpayment.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification of the contractor. Accrued interest shall be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department shall withhold funds from the contractor's payment for services and shall take all other actions authorized by law to recover from the contractor amounts due and payable including any accrued interest. Neither a timely filed appeal under WAC 388-96-901 and WAC 388-96-904 nor the commencement of judicial review as may be available to the contractor in law to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

NEW SECTION

WAC 388-96-211 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates. (1) Contractors shall submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department shall accept or reject the proposed settlement report, explain any adjustments, and if needed, issue a revised settlement report.

(2) Contractors shall not be required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

(3) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the examination and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed one percent of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection (4) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" shall be defined by federal survey regulations.

(4) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each rate component, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center shall be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (3) of this section, shall be calculated and applied after all shifting is completed.

(5) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and chapter 74.46 RCW shall represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-217 Civil fines. (1) ((~~When the department finds that a current or former contractor, or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent~~)) The department shall deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee has failed or refused to comply with any requirement of chapters 74.46 RCW or 388-96 WAC((~~, the department may assess monetary penalties of a civil nature not to exceed one thousand dollars per violation. Every day of noncompliance with any requirement of chapters 74.46 RCW or 388-96 WAC is a separate violation~~)).

(2) The department may fine a contractor or former contractor or any partner, officer, director, owner of five percent or more of the stock of a current or former corporate contractor, or managing agent for the following but ((~~is~~)) not limited to the following ((~~in its fine assessments~~)):

(a) Failure to file a mathematically accurate and complete cost report, including a final cost report, on or prior to the applicable due date established by this chapter or authorized by extension granted in writing by the department; ((~~or~~))

(b) Failure to permit an audit authorized by this chapter or to grant access to all records and documents deemed necessary by the department to complete such an audit;

(c) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter and/or chapter 74.46 RCW;

(d) Refused to allow representatives or agents of the department to inspect all books, records, and files required by this chapter to be maintained or any portion of the premises of the nursing home;

(e) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter and/or chapter 74.46 RCW; or

(f) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or chapter 74.46 RCW.

(3) Every day of noncompliance with any requirement of subsection (1) and/or (2) of this section is a separate violation.

((~~(3)~~)) (4) The department shall send notice of a fine assessed under subsection (1) and/or (2) of this section by certified mail return receipt requested to the current contractor, administrator, or former contractor informing the addressee of the following:

(a) The fine shall become effective the date of receipt of the notice by the addressee; and

(b) If within two weeks of the date of receipt of the notice by the addressee, ((~~an acceptable cost report is received by the department; an audit is allowed; or access to documentation is allowed, as applicable~~)) the addressee complies with the requirement(s) of subsection (1) and (2), the department may waive the fine.

(((~~(4)(a) The department may fine a current or former contractor, or any partner, officer, director, owner of a current or former corporate contractor, or managing agent for failure to comply with RCW 74.46.630.~~

(~~b) The department shall send notice of a fine assessed under (a) of this subsection by certified mail, to the current~~

~~contractor, administrator, or former contractor informing the addressee that the fine shall become effective upon receipt of notice by the addressee.~~))

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-218 Proposed, preliminary, and final settlements. (1) For each component rate, the department shall calculate a proposed, preliminary or final settlement at the lower of prospective payment rate or audited allowable costs, except as otherwise provided in this chapter ((~~[and chapter 74.46 RCW]~~)) and chapter 74.46 RCW.

(2) As part of the cost report, the proposed settlement report is due in accordance with ((~~RCW 74.46.040~~)) WAC 388-96-022. In the proposed preliminary settlement report, a contractor shall compare the contractor's payment rates during a cost report period, weighted by the number of resident days reported for the same cost report period to the contractor's allowable costs for the cost report period. ((~~[In accordance with RCW 74.46.100, 74.46.155 and 74.46.165]~~)) In accordance with WAC 388-96-205, 388-96-208 and 388-96-211 the contractor shall take into account all authorized shifting, retained savings, and upper limits to rates on a cost center basis.

(a) The department will:

(i) Review the proposed preliminary settlement report for accuracy; and

(ii) Accept or reject the proposal of the contractor. If accepted, the proposed preliminary settlement report shall become the preliminary settlement report. If rejected, the department shall issue, by component payment rate allocation, a preliminary settlement report fully substantiating disallowed costs, refunds, or underpayments due and adjustments to the proposed preliminary settlement.

(b) When the department receives the proposed preliminary settlement report:

(i) By the cost report due date specified in ((~~RCW 74.46.040~~)) WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the cost report due date; or

(ii) After the cost report due date specified in ((~~RCW 74.46.040~~)) WAC 388-96-022, it will issue the preliminary settlement report within one hundred twenty days of the date the cost report was received.

(c) In its discretion, the department may designate a date later than the dates specified in subsection (2)(b)(i) and (ii) of this section to issue preliminary settlements.

(d) A contractor shall have twenty-eight days after receipt of a preliminary settlement report to contest such report under WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department shall not review or adjust a preliminary settlement report. Any administrative review of a preliminary settlement shall be limited to calculation of the settlement, to the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(3) The department shall issue a final settlement report to the contractor after the completion of the department audit process, including exhaustion or termination of any administrative review and appeal of audit findings or determinations requested by the contractor, but not including judicial review as may be available to and commenced by the contractor.

(a) The department shall prepare a final settlement by component payment rate allocation and shall fully substantiate disallowed costs, refunds, underpayments, or adjustments to the cost report and financial statements, reports, and schedules submitted by the contractor. The department shall take into account all authorized shifting, savings, and upper limits to rates on a component payment rate allocation basis. For the final settlement report, the department shall compare:

(i) The payment rates it paid the contractor for the facility in question during the report period, weighted by the number of allowable resident days reported for the period each rate was in effect to the contractor's;

(ii) Audited allowable costs for the reporting period; or

(iii) Reported costs for the nonaudited reporting period.

(b) A contractor shall have twenty-eight days after the receipt of a final settlement report to contest such report pursuant to WAC 388-96-901 and 388-96-904. Upon expiration of the twenty-eight day period, the department shall not review a final settlement report. Any administrative review of a final settlement shall be limited to calculation of the settlement, the application of settlement principles and rules, or both, and shall not encompass rate or audit issues.

(c) The department shall reopen a final settlement if it is necessary to make adjustments based upon findings resulting from a department audit performed pursuant to ((~~RCW 74.46.100~~)) WAC 388-96-205. The department may also reopen a final settlement to recover an industrial insurance dividend or premium discount under RCW 51.16.035 in proportion to a contractor's medicaid recipient days.

(4)(a) In computing a preliminary or final settlement, a contractor must comply with the requirements of ((~~RCW 74.46.165 (2), (3), and (4)~~)) WAC 388-96-211 for retaining or refunding to the department payments made in excess of the adjusted costs of providing services corresponding to each component rate allocation.

(b) The nursing facility contractor shall refund all amounts due the department within sixty days after ((~~the date of decision or termination plus~~)) the department notifies the contractor of the overpayment and demands repayment. When notification is by postal mail, the department shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used to determine the sixty day period for repayment. After the sixty day period, interest on any unpaid balance ((~~after sixty days~~)) will accrue at one percent per month.

(c) Repayment will be without prejudice to obtain review of the settlement determination pursuant to WAC 388-96-901 and 388-96-904. After an administrative hearing and/or judicial review, if the payment obligation is reduced, then the department will rescind the difference between the accrued interest on the payment obligation and the interest that would have accrued on the reduced payment obligation from the date interest began to accrue on the original payment obligation.

(5) In determining whether a facility has forfeited unused rate funds in its direct care, therapy care and support services component rates under authority of ((~~RCW 74.46.165~~)) WAC 388-96-211, the following rules shall apply:

(a) Federal or state survey officials shall determine when a facility is not in substantial compliance or is providing substandard care, according to federal and state nursing facility survey regulations;

(b) Correspondence from state or federal survey officials notifying a facility of its compliance status shall be used to determine the beginning and ending dates of any period(s) of noncompliance; and

(c) Forfeiture shall occur if the facility was out of substantial compliance more than ninety days during the settlement period. The ninety-day period need not be continuous if the number of days of noncompliance exceed ninety days during the settlement period regardless of the length of the settlement period. Also, forfeiture shall occur if the nursing facility was determined to have provided substandard quality of care at any time during the settlement period.

(((~~(6)(a) For calendar year 1998, the department will calculate two settlements covering the following periods:~~

~~(i) January 1, 1998 through September 30, 1998; and~~

~~(ii) October 1, 1998 through December 31, 1998.~~

~~(b) The department will use medicaid rates weighted by total patient days (i.e., medicaid and non-medicaid days) to divide 1998 costs between the two settlement periods identified in subsection (6)(a) of this section.~~

~~(c) The department will net the two settlements for 1998 to determine a nursing facility's 1998 settlement~~)).

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

AMENDATORY SECTION (Amending Order 3070, filed 9/28/90, effective 10/1/90)

WAC 388-96-366 Facility records and handling of resident moneys. (1) A nursing facility may not require residents to deposit personal funds with the facility. A facility may hold a resident's personal funds only if the resident or resident's guardian provides written authorization.

(2) Once a nursing facility accepts the written authorization of the resident or resident's guardian, the facility shall hold, safeguard, and account for such personal funds under an established system in accordance with this chapter and chapter 74.46 RCW. For all resident moneys entrusted to the contractor and received by the contractor for the resident, the nursing facility shall establish and maintain ((~~as a service to the residents~~)) a bookkeeping system((~~,~~)) incorporated into the business records and adequate for audit((~~, for all resident moneys received by the facility~~)).

(3) The nursing facility shall maintain the resident's or guardian's written authorization in the resident's file. The facility shall deposit any resident's personal funds in excess of ((~~fifty~~)) one-hundred dollars in an interest-bearing resident personal fund account or accounts, separate from any of the facility's operating accounts, and credit all interest earned on an account to the account. With respect to any other personal funds, the facility shall keep such funds in a noninterest-bearing account or petty cash fund maintained for residents.

(4) The facility shall give the resident at least a quarterly reporting of all financial transactions involving personal funds held for the resident by the facility. Also, the facility shall send the representative payee, the guardian, or other designated agents of the resident a copy of the quarterly accounting report.

(5) The nursing facility shall further maintain a written record of all personal property deposited with the facility for safekeeping by or for the resident. The facility shall issue or obtain written receipts upon taking possession or disposing of such property and retain copies and/or originals of such receipts. The facility shall maintain records adequate for audit.

(6) The facility shall purchase a surety bond, or otherwise provide assurances or security satisfactory to the department, to assure the security of all personal funds of residents deposited with the facility.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-384 Liquidation or transfer of resident personal funds. (1) Upon the death of a resident, the facility shall ((~~promptly~~)) convey within thirty days the resident's personal funds held by the facility with a final accounting of such funds to the department of social and health services office of financial recovery (or successor office) or to the individual or probate jurisdiction administering the resident's estate.

(a) ((~~If~~)) When the deceased resident was a recipient of long-term care services paid for in whole or in part by the ((~~state of Washington~~)) department, then the personal funds held by the facility and the final accounting shall be sent to ((~~the state of Washington,~~)) department of social and health services((~~,~~)) office of financial recovery (or successor office).

(b) ((~~The personal funds of the deceased resident and final accounting must be conveyed to the individual or probate jurisdiction administering the resident's estate or to the state of Washington, department of social and health services, office of financial recovery (or successor office) no later than the thirtieth day after the date of the resident's death.~~

~~(i)~~)) When the personal funds of the deceased resident are to be paid to the ((~~state of Washington~~)) department, ((~~those funds shall be paid by~~)) the facility shall:

(i) Pay with a check, money order, certified check or cashiers check made payable to the secretary, department of social and health services((~~, and mailed to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.~~));

(ii) Complete a transmittal of resident personal funds form (DSHS form 18-544) for each deceased resident;

(iii) Place the name and social security number of the deceased individual from whose personal funds account the moneys are being paid on the check, money order, certified check or cashier's check ((~~or~~)) and the ((~~statement accompanying the payment shall contain the name and Social Security number of the deceased individual from whose personal~~

~~funds account the moneys are being paid~~)) transmittal of resident personal funds form (DSHS form 18-544); and

(iv) Mail the check or money order and the DSHS 18-544 to the office of financial recovery, estate recovery unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future.

(c) The department of social and health services, office of financial recovery, estate recovery unit shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident leaves the nursing home without authorization and the resident's whereabouts is unknown:

(a) The nursing facility shall make a reasonable attempt to locate the missing resident. This includes contacting:

(i) Friends,

(ii) Relatives,

(iii) Police,

(iv) The guardian, and

(v) The home and community services office in the area.

(b) If the resident cannot be located after ninety days, the nursing facility shall notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The nursing facility shall deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the sale or other transfer of ownership of the nursing facility business, the facility operator shall:

(a) Provide each resident or resident representative with a written accounting of any personal funds held by the facility;

(b) Provide the new operator with a written accounting of all resident funds being transferred; and

(c) Obtain a written receipt for those funds from the new operator.

NEW SECTION

WAC 388-96-499 Principles of allowable costs. (1) The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly unallowable under this chapter and/or chapter 74.46 RCW are to be allowable.

(3) Costs of providing therapy care are allowable, subject to any applicable limit contained in this chapter and/or chapter 74.46 RCW, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which recipients may be legally entitled, such as private insurance or medicare, were first fully utilized.

(4) The payment for property usage is to be independent of ownership structure and financing arrangements.

(5) Allowable costs shall not include costs reported by a contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the rate.

(6) Any costs deemed allowable under this chapter are subject to the provisions of RCW 74.46.421. The allowability of a cost shall not be construed as creating a legal right or entitlement to reimbursement of the cost.

NEW SECTION

WAC 388-96-528 Payments to related organizations—Limits—Documentation. (1) Costs applicable to services, facilities, and supplies furnished by a related organization to the contractor shall be allowable only to the extent they do not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(2) Documentation of costs to the related organization shall be made available to the department. Payments to or for the benefit of the related organization will be disallowed where the cost to the related organization cannot be documented.

AMENDATORY SECTION (Amending WSR 97-17-040, filed 8/14/97, effective 9/14/97)

WAC 388-96-534 Joint cost allocation disclosure (JCAD). (1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs representing allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) The contractor shall demonstrate in such disclosure:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) The contractor shall make such disclosure not later than September 30th for the following year; except, a new contractor shall submit the first year's disclosure together with the submissions required by WAC 388-96-026. Within this section, the meaning of the:

(a) "Effective date" is the date the department will recognize allocation per an approved JCAD; and

(b) "Implementation date" is the date the facility will begin or began incurring joint facility costs.

(4) The department shall ((~~determine the acceptability of~~)) approve or reject the JCAD ((~~methodology~~)) not later than December 31 of each year for all JCADs received by September 30th. The effective date of an approved JCAD received:

(a) ((~~The effective date of an acceptable JCAD that was received~~)) By September 30th is January 1st.

(b) ((~~The effective date of an acceptable JCAD that was received~~)) After September 30th shall be ninety days from the date the JCAD was received by the department.

(5) The contractor shall submit to the department for approval an amendment or revision to an approved JCAD ((~~methodology~~)) at least thirty days prior to the implementation date of the amendment or revision. For amendments or revisions received less than thirty days before the implementation date, the effective date of approval will be thirty days from the date the JCAD is received by the department.

(6) When a contractor, who is not currently incurring joint facility costs, begins to incur joint facility costs during the calendar year, the contractor shall provide the information required in subsections (1) and (2) of this section at least

ninety days prior to the implementation date. If the JCAD is not received ninety days before the implementation date, the effective date of the approval will be ninety days from the date the JCAD is received by the department.

(7) Joint facility costs not disclosed, allocated, and reported in conformity with this section are ((~~nonallowable~~)) unallowable costs. Joint facility costs incurred before the effective dates of subsections (4), (5), and (6) of this section are unallowable. Costs disclosed, allocated, and reported in conformity with a department-approved JCAD ((~~methodology~~)) must undergo review and be determined allowable costs for the purposes of rate setting and audit.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-535 Management agreements, management fees, and central office services. (1) The contractor shall disclose to the department the nature and purpose of ((~~the~~)) all management agreements, including an organizational chart showing the relationship ((~~between~~)) among the contractor, management company and all related organizations. The department may request additional information or clarification.

(2) A copy of the agreement must be received by the department at least sixty days before it is to become effective. A copy of any amendment to a management agreement must be received by the department at least thirty days in advance of the date it is to become effective. Failure to meet these deadlines will result in the unallowability of cost incurred more than sixty days prior to submitting a management agreement and more than thirty days prior to submitting an amendment.

(3) Management fees will be allowed only when:

(a) A written management agreement both creates a principal/agent relationship between the contractor and the manager, and sets forth the items, services, and activities to be provided by the manager; and

(b) Documentation demonstrates that the service contracted for were actually delivered; and

(c) The scope of services performed under a management agreement are not so extensive that the manager or managing entity is substituted for the contractor in fact, substantially relieving the contractor/licensee of responsibility for operating the facility.

(4) Acceptance of a management agreement ((~~may~~)) shall not be construed as a determination that all management fees or costs are allowable in whole or in part. Management fees or costs not disclosed or approved in conformity with chapter 74.46 RCW and this section are unallowable. When necessary for the health and safety of medical care recipients, in writing, the department may waive the sixty-day or thirty-day advance notice requirement of ((~~RCW 74.46.280 in writing~~)) subsection (2) of this section.

((~~(3)~~)) (5)(a) Management fees are allowable only for necessary, nonduplicative services that are of the nature and magnitude that prudent and cost-conscious management would pay((~~. Costs of services, facilities, supplies and employees furnished by the management company are subject to RCW 74.46.220~~)); and

(b) Management fees paid to or for the benefit of a related organization will be allowable to the extent they not exceed the lower of the:

(i) Actual cost to the related organization of providing necessary services related to patient care under the agreement; or

(ii) The cost of comparable services purchased elsewhere. Where costs to the related organization represent joint facility costs, the measurement of such costs shall comply with WAC 388-96-534.

((~~(4)~~)) (6) Allowable fees for all general management services of any kind referenced in this section, including corporate or business entity management and management fees not allocated to specific services, are subject to any applicable cost center limit established in chapter 74.46 RCW and this chapter.

((~~(5)~~)) (7) Central office costs, owner's compensation, and other fees or compensation, including joint facility costs((~~,~~)) for general administrative and management services, ((~~including~~)) and management expense not allocated to specific services((~~,~~)) shall be subject to any cost center limit established by chapter 74.46 RCW and chapter 388-96 WAC.

((~~(6)~~)) (8) Necessary travel and housing expenses of nonresident staff working at a contractor's nursing facility shall be considered allowable costs if the visit does not exceed three weeks.

((~~(7)~~)) (9) Bonuses paid to employees at a contractor's nursing facility or management company shall be considered compensation.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-536 Does the department limit the allowable compensation for an owner or relative of an owner? (1) ((~~The department shall limit~~)) Total compensation ((~~of~~)) including compensation received from a related or unrelated organization or company paid to an owner or relative of an owner shall be limited to ordinary compensation for necessary services actually performed.

(a) Compensation is ordinary if it is the amount usually paid for comparable services in a comparable facility to an unrelated employee, and does not exceed any applicable limits set out in chapter 74.46 RCW and this chapter.

(b) A service is necessary if it is related to patient care and would have had to be performed by another person if the owner or relative had not done it.

(2) If the service provided would require licensed staff, e.g., RN, then the same license standard must be met when performed by an owner, relative or other administrative personnel.

(3) The contractor, in maintaining customary time records adequate for audit, shall include such records for owners and relatives who receive compensation.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-542 Home office or central office. (1) ((~~The department shall audit the home office or central office whenever a nursing facility receiving such services is~~

~~audited~~)) When calculating the median lid on home and central office costs and determining which home and central office costs to test against the median lid, the department will include all allowable, reported home/central office costs including all costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of medical and personal care services to authorized patients.

(2)(a) Assets used in the provision of services by or to a nursing facility, but not located on the premises of the nursing facility, shall not be included in net invested funds or in the calculation of property payment for the nursing facility.

(b) The nursing facility may allocate depreciation, interest expense, and operating lease expense for the home office, central office, and other off-premises assets to the cost of the services provided to or by the nursing facility on a reasonable statistical basis approved by the department.

(c) The allocated costs of (b) of this subsection may be included in the cost of services in such cost centers where such services and related costs are appropriately reported.

(3) Home office or central office costs must be allocated and reported in conformity with the department-approved JCAD methodology as required by WAC 388-96-534.

(4) Home office or central office costs are subject to the limitation specified in ((~~RCW 74.46.410~~)) WAC 388-96-585.

NEW SECTION

WAC 388-96-552 Depreciable assets. Tangible assets of the following types in which a contractor has an interest through ownership or leasing are subject to depreciation:

(1) Building - the basic structure or shell and additions thereto;

(2) Fixed equipment - attachments to buildings, including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. The general characteristics of this equipment are:

(a) Affixed to the building and not subject to transfer; and

(b) A fairly long life, but shorter than the life of the building to which affixed.

(3) Movable equipment including, but not limited to, beds, wheelchairs, desks, and X-ray machines. The general characteristics of this equipment are:

(a) A relatively fixed location in the building;

(b) Capable of being moved as distinguished from building equipment;

(c) A unit cost sufficient to justify ledger control;

(d) Sufficient size and identity to make control feasible by means of identification tags; and

(e) A minimum life greater than one year.

(4) Movable equipment including, but not limited to, waste baskets, bed pans, syringes, catheters, silverware, mops, and buckets which are properly capitalized. No depreciation shall be taken on items which are not properly capitalized as directed in WAC 388-96-533. The general characteristics of this equipment are:

(a) In general, no fixed location and subject to use by various departments;

(b) Small in size and unit cost;

(c) Subject to inventory control;

(d) Large number in use; and

(e) Generally, a useful life of one to three years.

(5) Land improvements including, but not limited to, paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, and walls where replacement is the responsibility of the contractor; and

(6) Leasehold improvements - betterments and additions made by the lessee to the leased property, which become the property of the lesser after the expiration of the lease.

NEW SECTION

WAC 388-96-556 Initial cost of operation. (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility shall be allowable costs. These expenses shall be limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs shall include, but not be limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training; except, that they shall exclude expenditures for capital assets. These costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(4) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care and shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.

NEW SECTION

WAC 388-96-558 Depreciation expense. Depreciation expense on depreciable assets which are required in the regular course of providing patient care will be an allowable cost. It shall be computed using the depreciation base, lives, and methods specified in this chapter and chapter 74.46 RCW.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-559 Cost basis of land and depreciation base. (1) For all partial or whole rate periods ((~~after December 31, 1984~~)) unless otherwise provided or limited by this chapter ((~~or by this section, chapter 388-96 WAC~~)) or chapter

74.46 RCW, the total depreciation base of depreciable assets and the cost basis of land shall be ((~~the lowest of:~~

~~(a) The contractor's appraisal, if any;~~

~~(b) The department's appraisal obtained through the department of general administration of the state of Washington, if any; or~~

~~(c)~~)) the historical purchase cost of the contractor, or lessor if the assets are leased by the contractor, in acquiring ownership of the asset in an arm's-length transaction, and preparing the asset for use, less goodwill, and less accumulated depreciation, if applicable, incurred during periods the assets have been used in or as a facility by any and all contractors. Such accumulated depreciation is to be measured in accordance with WAC 388-96-561, 388-96-565, chapter 388-96 WAC, and chapter 74.46 RCW.

(a) Where the straight-line or sum-of-the-years digits method of depreciation is used, the contractor:

(i) May deduct salvage values from historical costs for each cloth based item, e.g., mattresses, linen, and draperies; and

(ii) Shall deduct salvage values from historical costs of at least:

(A) Excluding computers and televisions, fI've percent of the historical value for each noncloth item included in moveable equipment; and

(B) Twenty-five percent of the historical value for each vehicle.

(2) Unless otherwise provided or limited by this chapter or by chapter 74.46 RCW, the department shall, in determining the total depreciation base of a depreciable real or personal asset owned or leased by the contractor, deduct depreciation relating to all periods subsequent to the more recent of:

(a) The date such asset was first used in the medical care program; or

(b) The most recent date such asset was acquired in an arm's-length purchase transaction which the department is required to recognize for medicaid cost reimbursement purposes.

(c) No depreciation shall be deducted for periods such asset was not used in the medical care program or was not used to provide nursing care.

(3) ((~~The department may have the fair market value of the asset at the time of purchase established by appraisal through the department of general administration of the state of Washington if~~)) When:

(a) The department challenges the historical cost of an asset((~~:~~)) or

(((~~(b)~~)) the contractor cannot or will not provide the historical cost of a leased asset and the department is unable to determine such historical cost from its own records or from any other source, the department may have the fair market value of the asset at the time of purchase established by an appraisal.

((~~The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.~~))

((~~If~~)) (b) An appraisal is conducted, the depreciation base of the asset and cost basis of land will not exceed the fair market value of the asset. ((~~An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious~~)) The contractor may allocate or reallocate values among land, building, improvements, and equipment in accordance with the department's appraisal.

(4) ((~~If the land and depreciable assets of a newly constructed nursing facility were never used in or as a nursing facility before being purchased from the builder, the cost basis and the depreciation base shall be the lesser of:~~

~~(a) Documented actual cost of the builder; or~~

~~(b) The approved amount of the certificate of need issued to the builder.~~

~~When the builder is unable or unwilling to document its costs, the cost basis and the depreciation base shall be the approved amount of the certificate of need.~~

~~(5)~~)) For leased assets, the department may examine documentation in its files or otherwise obtainable from any source to determine:

(a) The lessor's purchase acquisition date; or

(b) The lessor's historical cost at the time of the last arm's-length purchase transaction.

If the department is unable to determine the lessor's acquisition date by review of its records or other records, the department, in determining fair market value as of such date, may use the construction date of the facility, as found in the state fire marshal's records or other records, as the lessor's purchase acquisition date of leased assets.

(5) If a contractor cannot or will not provide the lessor's purchase acquisition costs of assets leased by the contractor and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an appraisal has been prepared for leased assets and the assets subsequently sell in the first arms-length transaction since January 1, 1980, under subsection (9) of this section, the Marshall and Swift Valuation Guide will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshal and Swift shall be used.

(6) For all rate periods past or future, where depreciable assets or land are acquired from a related organization, the contractor's depreciation base and land cost basis shall not exceed the base and basis the related organization had or would have had under a contract with the department.

(7) ((~~If a contractor cannot or will not provide the lessor's purchase acquisition cost of assets leased by the contractor and the department is unable to determine historical purchase cost from another source, the appraised asset value of land, building, or equipment, determined by or through the department of general administration shall be adjusted, if necessary, by the department using the *Marshall and Swift Valuation Guide* to reflect the value at the lessor's acquisition date. If an~~

~~appraisal has been prepared for leased assets and the assets subsequently sell in the first arm's-length transaction since January 1, 1980, under subsection (9) of this section, the *Marshall and Swift Valuation Guide* will be used to adjust, if necessary, the asset value determined by the appraisal to the sale date. If the assets are located in a city for which the *Marshall and Swift Valuation Guide* publishes a specific index, or if the assets are located in a county containing that city, the city-specific index shall be used to adjust the appraised value of the asset. If the assets are located in a city or county for which a specific index is not calculated, the *Western District Index* calculated by Marshall and Swift shall be used~~)) If the land and depreciable assets of a newly constructed nursing facility were never used in or as a nursing facility before being purchased from the builder, the cost basis and the depreciation base shall be the lesser of:

(a) Documented actual cost of the builder; or

(b) The approved amount of the certificate of need issued to the builder. When the builder is unable or unwilling to document its cost, the cost basis and the depreciation base shall be the approved amount of the certificate of need.

(8) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs of the additional land acquired for the new or replacement construction or for substantial building additions to be the lesser of:

(a) The contractor's or lessor's actual cost per square foot; or

(b) The square foot land value as established by an appraisal that meets the latest publication of the *Uniform Standards of Professional Appraisal Practice (USPAP)* and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The department shall obtain a USPAP appraisal that meets FIRREA first from:

(i) An arms'-length lender that has accepted the ordered appraisal; or

(ii) If the department is unable to obtain from the arms'-length lender a lender-approved appraisal meeting USPAP and FIRREA standards or if the contractor or lessor is unable or unwilling to provide or cause to be provided a lender-approved appraisal meeting USPAP and FIRREA standards, then:

(A) The department shall order such an appraisal; and

(B) The contractor shall immediately reimburse the department for the costs incurred in obtaining the USPAP and FIRREA appraisal.

(9) Except as provided for in subsection (8) of this section, for all rates effective on or after January 1, 1985, if depreciable assets or land are acquired by purchase which were used in the medical care program on or after January 1, 1980, the depreciation base or cost basis of such assets shall not exceed the net book value existing at the time of such acquisition or which would have existed had the assets continued in use under the previous medicaid contract with the department; except that depreciation shall not be accumulated for periods during which such assets were not used in the medical care program or were not in use in or as a nursing care facility.

(10)(a) Subsection (9) of this section shall not apply to the most recent arm's-length purchase acquisition if it occurs ten years or more after the previous arm's-length transfer of ownership nor shall subsection (9) of this section apply to the first arm's-length purchase acquisition of assets occurring on or after January 1, 1980, for facilities participating in the medicaid program before January 1, 1980. The depreciation base or cost basis for such acquisitions shall not exceed the lesser of the fair market value as of the date of purchase of the assets determined by an appraisal conducted by or through the department of general administration or the owner's acquisition cost of each asset, land, building, or equipment. An appraisal conducted by or through the department of general administration shall be final unless the appraisal is shown to be arbitrary and capricious. Should a contractor request a revaluation of an asset, the contractor must document ten years have passed since the most recent arm's-length transfer of ownership. As mandated by Section 2314 of the Deficit Reduction Act of 1984 (P.L. 98-369) and state statutory amendments, and under RCW 74.46.840, for all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, including land and all depreciable or nondepreciable assets, occurring on or after July 18, 1984, leaving subsection (9) of this section to apply without exception to acquisitions occurring on or after July 18, 1984, except as provided in subsections (10)(b) and (11) of this section.

(b) For all rates after July 17, 1984, subsection (8)(a) shall apply, however, to transfers of ownership of assets:

(i) Occurring before January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related party lease; or

(ii) Under written and enforceable purchase and sale agreements dated before July 18, 1984, which are documented and submitted to the department before January 1, 1988.

(c) For purposes of medicaid cost reimbursement under this chapter, an otherwise enforceable agreement to purchase a nursing home dated before July 18, 1984, shall be considered enforceable even though the agreement contains:

(i) No legal description of the real property involved; or

(ii) An inaccurate legal description, notwithstanding the statute of frauds or any other provision of law.

(11)(a) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option to have the:

(i) Provisions of subsection (10) of this section apply to the purchase; or

(ii) Component rate allocations for property and financing allowance calculated under the provisions of this chapter and chapter 74.46 RCW. Component rate allocations will be based upon provisions of the lease in existence on the date of the purchase, but only if the purchase date meets the criteria of ((~~RCW 74.46.360 (6)(c)(ii)(A) through (D)~~)) this subsection.

(b) The lessee/contractor may select the option in subsection (11)(a)(ii) of this section only when the purchase date meets one of the following criteria. The purchase date is:

(i) After the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(ii) Within one year of the lease expiration or renewal date contained in the lease;

(iii) After a rate setting for the facility in which the reimbursement rate set, under this chapter and under chapter 74.46 RCW, no longer is equal to or greater than the actual cost of the lease; or

(iv) Within one year of any purchase option in existence on January 1, 1988.

(12) For purposes of establishing the property and financing allowance component rate allocations, the value of leased equipment, if unknown by the contractor, may be estimated by the department using previous department of general administration appraisals as a data base. The estimated value may be adjusted using the *Marshall and Swift Valuation Guide* to reflect the value of the asset at the lessor's purchase acquisition date.

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

NEW SECTION

WAC 388-96-560 Land, improvements—Depreciation. Land is not depreciable. The cost of land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading of a nondepreciable nature, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor.

AMENDATORY SECTION (Amending Order 2970, filed 4/17/90, effective 5/18/90)

WAC 388-96-561 Cost basis of land and depreciation base—Donated or inherited assets. (1) The historical cost ((~~basis or depreciation base of land or depreciable assets, either donated[,] or~~)) of depreciable and nondepreciable donated assets, or of depreciable and nondepreciable assets received through testate or intestate distribution, ((~~will~~)) shall be the lesser of:

(a) Fair market value at the date of donation or death((~~, less goodwill, provided the estimated salvage value shall be deducted from fair market value where the straight-line or sum-of-the-years digits method of depreciation is used~~)); or

(b) The historical cost base of the owner last contracting with the department, if any.

(2) When the donation or distribution is between related organizations, the base shall be the lesser of:

(a) Fair market value, less goodwill and, where appropriate, salvage value; or

(b) The depreciation base or cost basis the related organization had or would have had for the asset under a contract with the department.

(3) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section, for all rates after July 17, 1984, neither the depreciation base of depreciable assets nor the cost basis of land shall increase for reimbursement purposes if the asset is donated or acquired through testate or intestate distribution on or after July 18, 1984, the enactment date of the Deficit Reduction Act of 1984.

NEW SECTION

WAC 388-96-562 Depreciable assets—Disposed—Retired. (1) Where depreciable assets are disposed of through sale, trade-in, scrapping, exchange, theft, wrecking, fire, or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken.

NEW SECTION

WAC 388-96-564 Methods of depreciation. (1) Buildings, land improvements, and fixed equipment shall be depreciated using the straight-line method of depreciation. For new or replacement building construction or for major renovations, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed. Equipment shall be depreciated using either the straight-line method, the sum-of-the-years' digits method, or declining balance method not to exceed one hundred fifty percent of the straight line rate. Contractors who have elected to take either the sum-of-the-years' digits method or the declining balance method of depreciation on equipment may change to the straight-line method without permission of the department.

(2) The annual provision for depreciation shall be reduced by the portion allocable to use of the asset for purposes which are neither necessary nor related to patient care.

(3) No further depreciation shall be claimed after an asset has been fully depreciated unless a new depreciation base is established pursuant to WAC 388-96-559.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-565 Lives. (1)(a) New buildings, replacement buildings, major remodels, and major repair projects are those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW. Except for new buildings replacement buildings, major remodels and major repair projects ((~~as defined in subsection (5) of this section~~)), ((~~to~~)) the contractor will compute allowable depreciation((~~, the contractor must use~~)) using lives ((~~reflecting~~)) that reflect the estimated actual useful life of the assets (e.g., land improvements, buildings, including major remodels and major repair projects, equipment, leasehold improvements, etc.). However the lives used must not

be shorter than guidelines lives in the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc.

(b) Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arms-length acquisition of the asset, whichever is more recent. In cases where WAC 388-96-559 (9) and (10) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) For asset acquisitions and new facilities, major remodels, and major repair projects that begin operations on or after July 1, 1997, the department shall use the most current edition of estimated useful lives of depreciable hospital assets, or as it may be renamed, published by the American Hospital Publishing, Inc., an American hospital association company, for determining the useful life of new buildings, major remodels, and major repair projects, however, the shortest life that may be used for new buildings receiving certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, is forty years. New buildings, major remodels, and major repair projects include those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(a) To compute allowable depreciation for major remodels and major repair projects ((~~as defined in subsection (5) of this section that began operating:~~

~~(a)~~)) before July 1, 1997, the contractor must use the shortest lives in the most recently published lives for construction classes as defined and described in the *Marshall Valuation Service* published by the Marshall Swift Publication Company; ((~~or~~)) and

(b) ((~~After July 1, 1997, the contractor must use the shortest lives of the guideline lives in the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc~~)) To compute allowable depreciation for new buildings and replacement buildings that began operating before July 1, 1997, the contractor must use the construction classes as defined and described in Marshall Valuation Service published by the Marshall Swift Publication Company; provided that, thirty years is the shortest life that may be used.

(3) ((~~To compute allowable depreciation for new buildings and replacement buildings as defined in subsection (5) of this section that:~~

~~(a) Began operating before July 1, 1997, the contractor must use the construction classes as defined and described in *Marshall Valuation Service* published by the Marshall Swift Publication Company; provided that, thirty years is the shortest life that may be used;~~

~~(b) Began operating on or after July 1, 1997, the contractor must use the most current edition of *Estimated Useful Lives of Depreciable Hospital Assets* published by American Hospital Publishing, Inc.; provided that, thirty years is shortest life that may be used; and~~

~~(c) Received certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, the contractor must use the most current edition of *Estimated Useful Lives of Depreciable Assets* published by American Hospital Publishing, Inc.; provided that, forty years is the shortest life that may be used.~~

~~(4)~~)) To compute allowable depreciation, the contractor must:

(a) Measure lives from the most recent of either the date on which the assets were first used in the medical care program or the last date of purchase of the asset through an arm's-length acquisition; and

(b) Extend lives to reflect periods, if any, during which assets were not used in a nursing facility or as a nursing facility.

((~~(5) New buildings, replacement buildings, major remodels, and major repair projects are those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.~~

~~(6)~~)) (4) Contractors shall depreciate building improvements other than major remodels and major repairs ((~~defined in subsection (5) of this section~~)) over the remaining useful life of the building, as modified by the improvement, but not less than fifteen years.

(((~~7~~))) (5) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement in accordance with American Hospital Association guidelines.

(((~~8~~))) (6) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation.

(((~~9~~))) (7) For new or replacement building construction or for major renovations ((~~receiving~~)), either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the ((~~department will~~)) number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed.

NEW SECTION

WAC 388-96-574 New or replacement construction—Property tax increases. If a contractor experiences an increase in state or county property taxes as a result of new building construction, replacement building construction, or substantial building additions that require the acquisition of land, then the department shall adjust the contractor's prospective rates to cover the medicaid share of the tax increase. The rate adjustments shall only apply to construction and additions completed on or after July 1, 1997. The rate adjustments authorized by this section are effective on the first day of the month following the month that the increased tax payment is due. Rate adjustments made under this section are subject to all applicable cost limitations contained in this chapter and chapter 74.46 RCW.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-585 Unallowable costs. (1) ((~~The department shall not allow costs if not documented, necessary, ordinary, and related to the provision of care services to authorized patients.~~)) Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in

addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) ((~~The department shall~~)) Unallowable costs include((~~,~~)) but are not ((~~limit, unallowable costs~~)) limited to the following:

(a) ((~~Costs in excess of limits or violating principles set forth in this chapter;~~

~~(b) Costs resulting from transactions or the application of accounting methods circumventing principles set forth in this chapter;~~

~~(c) Bad debts. Beginning July 1, 1983, the department shall allow bad debts of Title XIX recipients only if:~~

~~(i) The debt is related to covered services;~~

~~(ii) It arises from the recipient's required contribution toward the cost of care;~~

~~(iii) The provider can establish reasonable collection efforts were made;~~

~~(iv) The debt was actually uncollectible when claimed as worthless; and~~

~~(v) Sound business judgment established there was no likelihood of recovery at any time in the future.~~

~~Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of non-Title XIX recipients;~~

~~(d) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits or other legal action against the department shall be unallowable;~~

~~(e) Legal and consultant fees in connection with a fair hearing against the department relating to those issues where:~~

~~(i) A final administrative decision is rendered in favor of the department or where otherwise the determination of the department stands at the termination of administrative review; or~~

~~(ii) In connection with a fair hearing, a final administrative decision has not been rendered; or~~

~~(iii) In connection with a fair hearing, related costs are not reported as unallowable and identified by fair hearing docket number in the period they are incurred if no final administrative decision has been rendered at the end of the report period; or~~

~~(iv) In connection with a fair hearing, related costs are not reported as allowable, identified by docket number, and prorated by the number of issues decided favorably to a contractor in the period a final administrative decision is rendered;~~

~~(f) All interest costs not specifically allowed in this chapter or chapter 74.46 RCW; and~~

~~(g) Increased costs resulting from a series of transactions between the same parties and involving the same assets, e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment~~)) costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of nonTitle XIX recipients. Bad debts of Title XIX recipients are allowable only when:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of nonTitle XIX recipients;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) Televisions acquired prior to July 1, 2001;

(v) Federal, state, and other income taxes;

(w) Costs of special care services except where authorized by the department;

(x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

(y) Expenses of profit-sharing plans;

(z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(aa) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

(bb) All expenses of maintaining professional licenses or membership in professional organizations;

(cc) Costs related to agreements not to compete;

(dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ff) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

(gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department;

(hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

(ii) All rental or lease costs other than those provided for in WAC 388-96-580;

(jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Outside consultation expenses required to meet department-required minimum data set completion proficiency;

(ww) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(xx) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

(yy) Tax expenses that a nursing facility has never incurred;

(zz) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

(aaa) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department shall be unallowable; and

(bbb) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment).

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-708 ((~~Reinstatement of beds previously~~)) Beds removed from service under chapter 70.38 RCW, new beds approved under chapter 70.38 RCW, and beds permanently relinquished—Effect on prospective payment rate. (1) ((~~After removing~~)) When a contractor removes beds from service (banked) under the provisions of chapter 70.38 RCW, the ((~~contractor may bring back into service beds that were previously~~)) number of licensed beds used in rate determinations under this chapter and chapter 74.46 RCW will not be reduced by the number of beds banked.

(2)(a) ((~~When the contractor returns to service beds banked under the provisions of chapter 70.38 RCW,~~)) Effective July 1, 2010, licensed beds include any beds banked under chapter 70.38 RCW and thus, the department will ((~~recalculate~~)) calculate the contractor's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the ((~~new~~)) number of licensed beds including banked beds times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times the number of calendar days in the cost report period on which the rate being ((~~recalculated~~)) calculated is based.

(b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(i) Essential community providers - eighty-five percent;

(ii) Small nonessential community providers - ninety percent;

(iii) Large nonessential community providers - ninety-two percent.

(c) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.

(3) ((~~The effective date of the recalculated prospective rate for beds returned to service shall be the first of the month~~)) For the purpose of rates determination, when a contractor:

(a) ((~~In which the banked beds returned to service when the beds are returned to service on the first of the month~~)) Permanently relinquishes banked beds or some of its licensed beds, the department will reduce the number of licensed beds by the number of beds relinquished; or

(b) ((~~Following the month in which the banked beds returned to service when the beds are returned to service after the first of the month~~)) Acquires new beds under chapter 70.38 RCW, the department will increase the number of licensed beds by the number of new beds.

(4) ((~~The recalculated~~)) Prospective payment rate shall comply with all the provisions of rate setting contained in chapter 74.46 RCW or in this chapter, including all lids and maximums unless otherwise specified in this section.

(5) ((~~The recalculated~~)) Prospective medicaid payment rate shall be subject to adjustment if required by RCW 74.46.421.

(((~~(6) After the department recalculates the contractor's prospective medicaid component rate allocations using the increased number of licensed beds, the department will use the increased number of licensed beds in all post unbanking rate settings, until under chapter 74.46 RCW and/or this chapter, the post unbanking number of licensed beds changes.~~)))

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-709 Prospective rate revisions—Reduction in licensed beds by means other than "banking" pursuant to chapter 70.38 RCW. (1) For the purpose of minimum occupancy calculation banked beds are included in the number of licensed beds. The department will recalculate a contractor's prospective medicaid payment rate when the contractor permanently reduces the number of its licensed beds and:

(a) Provides a copy of the new bed license ((~~and~~)), if issued, documentation of the number of beds sold, exchanged or otherwise placed out of service, along with the name of the contractor that received the beds, if any, and the letter from the department of health (DOH) confirming the number of beds relinquished and the date they were relinquished; and

(b) Requests a rate revision.

(2) ((~~For facilities other then essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001,~~)) The department will revise medicaid rates ((~~shall be revised upward,~~)) in accordance with ((~~department rules, in direct care, therapy care, support services, and variable return components only, by~~)) this chapter and chapter 74.46 RCW using the facility's decreased licensed bed capacity to ((~~recalculate~~)) calculate minimum occupancy for rate setting. ((~~No rate upward revision shall be made to operations, property, or financing allowance.~~))

(3) ((~~The requested revised prospective medicaid payment rate will be effective the first of the month:~~))

(a) ((~~The new license is effective~~)) When the new license is effective the first day of the month or when the DOH letter confirms the beds were relinquished the first day of the month, the revised prospective payment rate will be effective the first day of the month; or

(b) ((~~Following~~)) When the new license is effective after the first day of the month or when the DOH letter confirms the beds were relinquished after the first day of the month, the revised prospective payment rate will be effective the first day of the month following the month the new license ((~~is~~)) was effective ((~~when the new license is effective after the first day of the month it is issued~~)) or the DOH letter con-

firmed beds were relinquished after the first day of the month.

(4)(a) The department will recalculate a nursing facility's prospective medicaid payment rate allocations using the greater of actual days from the cost report period on which the rate is based or days calculated by multiplying the new number of licensed beds including banked bed times the appropriate minimum occupancy pursuant to this chapter and chapter 74.46 RCW times the number of calendar days in the cost report period on which the rate being recalculated is based.

(b) For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(i) Essential community providers - eighty-five percent.

(ii) Small nonessential community providers - ninety percent.

(iii) Large nonessential community providers - ninety-two percent.

(c) For all nursing facilities, minimum facility occupancy of licensed beds for therapy and support services component rate allocations shall be eighty-five percent. For all nursing facilities, minimum facility occupancy of licensed beds for direct care component rate allocations shall be based upon actual facility occupancy.

(5) The revised prospective medicaid payment rate will comply with all the provisions of rate setting contained in chapter 74.46 RCW and in this chapter, including all lids and maximums, unless otherwise specified in this section.

(((~~(6) After the department recalculates the contractor's prospective medicaid component rate allocations using the decreased number of licensed beds, the department will use the decreased number of licensed beds in all post banking rate settings, until under chapter 74.46 RCW and/or this chapter, the post banking number of licensed beds changes.~~))

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-747 Constructed, remodeled or expanded facilities. (1) When a facility is constructed, remodeled, or expanded after obtaining a certificate of need or exemption from the requirements for certificate of need for the replacement of existing nursing home beds pursuant to RCW 70.38.115 (13)(a), the department shall determine actual and allocated allowable land cost and building construction cost. Payment for such allowable costs, determined pursuant to the provisions of this chapter, shall not exceed the maximums set forth in this subsection ((~~and in subsections (2) and (7) of this section~~)). The department shall determine construction class and types through examination of building plans submitted to the department and/or on-site inspections. The department shall use definitions and criteria contained in the Marshall and Swift Valuation Service published by the Marshall and Swift Publication Company. Buildings of excellent quality construction shall be considered to be of good quality, without adjustment, for the purpose of applying these maximums.

(2) Construction costs shall be final labor, material, and service costs to the owner or owners and shall include:

(a) Architect's fees;

(b) Engineers' fees (including plans, plan check and building permit, and survey to establish building lines and grades);

(c) Interest on building funds during period of construction and processing fee or service charge;

(d) Sales tax on labor and materials;

(e) Site preparation (including excavation for foundation and backfill);

(f) Utilities from structure to lot line;

(g) Contractors' overhead and profit (including job supervision, workmen's compensation, fire and liability insurance, unemployment insurance, etc.);

(h) Allocations of costs which increase the net book value of the project for purposes of medicaid payment;

(i) Other items included by the Marshall and Swift Valuation Service when deriving the calculator method costs.

(3) The department shall allow such construction costs, at the lower of actual costs or the maximums derived from the sum of the basic construction cost limit plus the common use area limit which corresponds to the type, class and number of total nursing home beds for the new construction, remodel or expansion. The maximum limits shall be calculated using the most current cost criteria contained in the *Marshall and Swift Valuation Service* and shall be adjusted forward to the midpoint date between award of the construction contract and completion of construction.

(4) When some or all of a nursing facility's common-use areas are situated in a basement, the department shall exclude some or all of the per-bed allowance for common-use areas to derive the construction cost lid for the facility. The amount excluded will be equal to the ratio of basement common-use areas to all common-use areas in the facility times the common-use area limits determined in accordance with subsection (3) of this section. In lieu of the excluded amount, the department shall add an amount calculated using the calculator method guidelines for basements in nursing homes published in the *Marshall and Swift Valuation Service*.

(5) Subject to provisions regarding allowable land contained in this chapter, allowable costs for land shall be the lesser of:

(a) Actual cost per square foot, including allocations;

(b) The average per square foot land value of the ten nearest urban or rural nursing facilities at the time of purchase of the land in question. The average land value sample shall reflect either all urban or all rural facilities depending upon the classification of urban or rural for the facility in question. The values used to derive the average shall be the assessed land values which have been calculated for the purpose of county tax assessments; or

(c) Land value for new or replacement building construction or substantial building additions requiring the acquisition of land that commenced to operate on or after July 1, 1997, determined in accordance with ((~~RCW 74.46.360 (2) and (3)~~)) WAC 388-96-559 (8), (9) and (10).

(6) If allowable costs for construction or land are determined to be less than actual costs pursuant to subsections (1) and (7) of this section, the department may increase the amount if the owner or contractor is able to show unusual or unique circumstances having substantially impacted the costs of construction or land. Actual costs shall be allowed to the extent they resulted from such circumstances up to a maximum of ten percent above levels determined under subsections (3), (4), and (5) of this section for construction or land. An adjustment under this subsection shall be granted only if requested by the contractor. The contractor shall submit documentation of the unusual circumstances and an analysis of its financial impact with the request.

(7) ((~~If~~)) When a capitalized addition or retirement of an asset will result in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement, the department shall use ((~~the facility's anticipated resident occupancy level subsequent to the increase in licensed bed capacity as long as the occupancy for the increased number of beds is at or above eighty-five percent. Subject to the provisions of this chapter and chapter 74.46 RCW, in no case shall the department use less than eighty-five percent occupancy of the facility's increased licensed bed capacity~~)) minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations of:

(a) Eighty-five percent for essential community providers;

(b) Ninety percent for small nonessential community providers; or

(c) Ninety-two percent for large nonessential community providers.

If a capitalized addition, replacement, or retirement results in a decreased licensed bed capacity, WAC 388-96-709 will apply.

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-748 Financing allowance component rate allocation. (1) ((~~Beginning July 1, 1999,~~)) For each medicaid nursing facility, the department will establish a financing allowance component rate allocation. The financing allowance component rate allocation will be rebased annually, effective July 1st, in accordance with this chapter and chapter 74.46 RCW. Effective July 1, 2010, for the purpose of calculating minimum occupancy, licensed beds include the nursing facility's banked beds.

(2) The department will determine the financing allowance component rate allocation by:

(a) Multiplying the net invested funds of each nursing facility by the applicable factor identified in subsection (3) of this section; and

(b) Dividing the sum of the products by the greater of:

(i) A nursing facility's total resident days from the most recent cost report period; or

(ii) Resident days calculated on:

(A) Eighty-five percent facility occupancy for essential community providers;

(B) Ninety percent facility occupancy for small nonessential community providers; and

(C) Ninety-two percent facility occupancy for large nonessential providers.

(3)(a) The multiplication factor required by subsection (2)(a) of this section is determined by the acquisition date of the tangible fixed asset(s). For each nursing facility, the department will multiply the net invested funds for assets acquired:

(i) Before May 17, 1999 by a factor of .10; and/or

(ii) On or after May 17, 1999 by a factor of .085.

(b) The department will apply the factor of .10 to the net invested funds pertaining to new construction or major renovations:

(i) That received certificate of need approval before May 17, 1999;

(ii) That received an exemption from certificate of need requirements under chapter 70.38 RCW before May 17, 1999; or

(iii) For which the nursing facility submitted working drawings to the department of health for construction review before May 17, 1999.

(c) For a new contractor as defined under WAC 388-96-026 (1)(c), assets acquired from the former contractor will retain their initial acquisition dates when determining the new contractor's financing allowance under this section.

(4) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in WAC 388-96-555, 388-96-559, 388-96-561, 388-96-562, 388-96-564 and 388-96-565, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to WAC 388-96-559 and 388-96-561.

(5) The financing allowance rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 09-08-081, filed 3/30/09, effective 4/30/09)

WAC 388-96-758 Add-on for low-wage workers. (1) ((~~Under section 206, chapter 329, Laws of 2008, effective July 1, 2008,~~)) The department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated

a desire to receive the add-on ((~~by May 30, 2008~~)) pursuant to subsection (7) of this section. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year ((~~2006~~)) 2008, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

(i) Activities directors and assistants;

(ii) Patient choices coordinators;

(iii) Central supply/ward clerks;

(iv) Expanded community service workers; and

(v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that ((~~received effective July 1, 2008~~)) receives a low-wage add-on ((~~under chapter 329, Laws of 2008~~)) shall report to the department its expenditure of that add-on by:

(a) Completing Cost Report Schedule L 1; and

(b) Returning it to the department by January 31((~~, 2009~~)).

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) ((~~If the legislature extends the low-wage worker add-on in the state fiscal year 2010 budget, nursing home providers will have the opportunity again to elect whether they wish to receive the add-on in their July 1, 2009 rates~~)) Each May of the calendar year, the department will ask nursing home contractors whether they will want to continue to receive the add-on or begin to receive the add-on. For nursing home contractors responding by May 31st indicating a desire to receive the low wage worker add-on, the department will pay them the low wage add-on effective July 1st. For nursing home contractors that do not respond by May 31st indicating a desire to receive the low wage worker add-on, the department will cease or not begin paying them the low wage add-on effective July 1st.

AMENDATORY SECTION (Amending WSR 09-08-081, filed 3/30/09, effective 4/30/09)

WAC 388-96-759 Standards for low-wage workers add-on. (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. ((~~For the first year, that date is July 1, 2008. It~~)) The low wage add-on may be used to increase staffing levels for certified nurse aides only. ((~~The~~)) Nursing home contractors receiving the low wage add-on may not ((~~be used after July 1~~)) use it to pay for increases ((~~beginning before that date~~)) for time periods that they were not receiving the low wage worker add-on.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement, and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs per RCW 74.46.410 (2)(x).

(7) The low wage add-on payments calculated in accordance with WAC 388-96-758 and this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-766 Notification. (1)(a) The contractor must inform the department of its current electronic mail (e-mail) address at which it wants to receive rate notifications. It is the responsibility of the contractor to inform the department of any changes to the e-mail address at which it wants

to receive notice of the department's actions. The department ((~~will~~)) may notify each contractor ((~~in writing~~)) by email using the contractor's supplied email address of its prospective medicaid payment rate allocation and/or any actions that result in a change to the contractor's prospective medicaid payment rate allocation. The date of the department's notification e-mail will be used to determine whether the notification and the contractor's response met any legal requirements, irrespective of when the contractor read the e-mail.

(b) When the contractor seeks to appeal or take exception to a department action taken under authority of this chapter or chapter 74.46 RCW and eligible for administrative review under WAC 388-96-901, it shall comply with WAC 388-96-904 when requesting an administrative review conference.

(2)(a) Unless otherwise specified at the time it is issued, the medicaid payment rate allocation and/or component rate allocation(s) will be effective from the first day of the month in which it (they) is (are) issued. When the department amends a medicaid payment rate allocation and/or component rate allocation(s) as the result of an appeal in accordance with WAC 388-96-904, the amended rate will have the same effective date as the appealed rate.

((~~(2) If~~)) (b) When a total medicaid component payment rate allocation and/or rate allocation(s) is (are) adjusted, updated or amended after the calendar year in which the adjustment or update was effective, then the department will account for any amounts owed through the settlement process.

(3)(a) When the department has sent written notice by post, it shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used. Proof of date of receipt of department's notification must be from an independent source that has no stake in the outcome.

(b) When the department has sent notice by certified letter, the department shall deem the contractor to have received the department's notice five calendar days after the date the U.S. Post Office first attempts to deliver the certified letter containing the notice of the department's action(s).

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-776 Add-ons to the property and financing allowance payment rate—Capital improvements. (1) For new or replacement building construction or major renovation projects begun after July 1, 2001, the contractor must have a certificate of capital authorization (CCA) issued pursuant to WAC 388-96-783 and chapter 74.46 RCW.

(2)(a) Beginning July 1, 2001, the department shall grant an add-on to a prospective payment rate for capitalized improvements done under RCW 74.46.431(12) for all new or replacement building construction or major renovation projects; provided, the department granted the contractor a certificate of capital authorization (CCA) pursuant to WAC 388-96-783 for the fiscal year in which the contractor will complete the project and the net rate effect is ten cents per patient day or greater.

(b) Rate add-on requests filed with the department or approved by the certificate of need unit of the department of health for projects commencing before July 1, 2001 and finishing after July 1, 2001, are not subject to CCA requirements set forth in this chapter and chapter 74.46 RCW.

(3) The department may grant a rate add-on to a payment rate for capital improvements not requiring a CON and a CCA per subsections (1) and (2) of this section. However, the capital improvement must have a net rate effect of ten cents per patient day or greater. For fiscal year 2011, the department shall grant no rate add-ons to payment rates for capital improvements not requiring a CON and a CCA.

(4) Rate add-ons for all construction and renovation projects granted pursuant to subsection (1) or (2) of this section shall be limited to the total legislative authorization for capital construction and renovation projects for the fiscal year (FY) of the biennium in which the construction or renovation project will be completed. Rate add-ons are subject to the provisions of RCW 74.46.421.

(5) When physical plant improvements made under subsection (1) or (2) of this section are completed in phases, the department shall:

(a) Grant a rate add-on in accordance with subsection (6) of this section for any addition, replacement or improvement when each phase is completed and certified for occupancy for the purpose for which it was intended;

(b) Limit the rate add-on to the actual cost of the depreciable tangible assets meeting the criteria of ((~~RCW 74.46.330~~)) WAC 388-96-552;

(c) Add-on construction fees as defined in WAC 388-96-747 and other capitalized allowable fees and costs for the completed phase of the project; and

(d) Make the effective date for the rate add-on for the completed phase the quarterly rate change immediately following the completion and certification for occupancy of the phase. When the date of the written request for a phase add-on rate falls after the first quarter immediately following the completion and certification for occupancy of the phase, the department will issue the rate add-on retroactive to the first of the quarter in which the department received a complete written request.

(6) When the construction class of any portion of a newly constructed building will improve as the result of any addition, replacement or improvement occurring in a later, but not yet completed and fully utilized phase of the project, the most appropriate construction class, as applicable to that completed and fully utilized phase, will be assigned for purposes of calculating the rate add-on. The department shall not revise the rate add-on retroactively after completion of the portion of the project that provides the improved construction class. Rather, the department shall calculate a new rate add-on when the improved construction class phase is completed and fully utilized and the rate add-on will be effective in accordance with subsection (7) of this section using the date the class was improved.

(7) The contractor requesting a rate add-on under subsection (1), (2) or (3) of this section shall submit a written request to the department separate from all other requests and

inquiries of the department, e.g., WAC 388-96-904 (1) and (5). A complete written request shall include the following:

(a) A copy of documentation requiring completion of the addition or replacements to maintain licensure or certification for adjustments requested under subsection (1) of this section;

(b) A copy of the new bed license, whether the number of licensed beds increases or decreases, if applicable;

(c) All documentation, e.g., copies of paid invoices showing actual final cost of assets and/or service, e.g., labor purchased as part of the capitalized addition or replacements;

(d) Certification showing the completion date of the capitalized additions or replacements and the date the assets were placed in service per ((~~RCW 74.46.360~~)) WAC 388-96-559;

(e) A properly completed depreciation schedule for the capitalized additions or replacement as provided in this chapter; and

(f) When the rate increase is requested pursuant to subsection (3) of this section, a written justification for granting the rate increase.

(8) For rate add-on requests for projects not completed in phases that are approved pursuant to subsection (7) of this section and the written request is received:

(a) Within sixty calendar days following the completion and certification of occupancy of the new or replacement construction, major renovation, or the acquisition and installation (if applicable) of a capital improvement made under subsection (3) of this section, the effective date of the rate add-on will be the first of the month following the month in which the project was completed and certified for occupancy or acquired and installed; or

(b) More than sixty days following the completion and certification for occupancy of the new or replacement construction, major renovation project, or the acquisition and installation (if applicable) of a capital improvement made under subsection (3) of this section, the effective date of the rate add-on will be the first of the month following the month in which the written request was received.

(9) If the initial written request is incomplete, the department will notify the contractor of the documentation and information required. The contractor shall submit the requested information within fifteen calendar days from the date the contractor receives the notice to provide the information. If the contractor fails to complete the add-on request by providing all the requested documentation and information within the fifteen calendar days from the date of receipt of notification, the department shall deny the request for failure to complete.

(10) If, after the denial for failure to complete, the contractor submits another written request for a rate add-on for the same project the date of receipt for the purpose of applying subsection (8) of this section will depend upon whether the subsequent request for the same project is complete, i.e., the department does not have to request additional documentation and information in order to make a determination. If a subsequent request for funding of the same project is:

(a) Complete, then the date of the first request may be used when applying subsection (8) of this section; or

(b) Incomplete, then the date of the subsequent request must be used when applying subsection (8) of this section even though the physical plant improvements may be completed and fully utilized prior to that date.

(11) The department shall respond, in writing, not later than sixty calendar days after receipt of a complete request.

(12) If the contractor does not use the funds for the purpose for which they were granted, the department immediately shall have the right to recoup the misspent or unused funds.

(13) When any physical plant improvements made under subsection (1) or (2) of this section result in a change in licensed beds, any rate add-on granted will be subject to the provisions regarding the number of licensed beds, patient days, occupancy, etc., included in this chapter and chapter 74.46 RCW.

(14) ((~~Effective July 1, 2002, except for essential community providers,~~)) The medicaid share of nursing facility new construction or refurbishing projects shall be based upon a minimum facility occupancy ((~~of ninety percent for the operations, property, and financing allowance component rate allocations. For essential community providers, the medicaid share of nursing facility new construction or refurbishing project will be based upon a minimum facility occupancy of eighty-five percent for operations, property, and financing allowance component rate allocations~~)). For all nursing facilities, occupancy is based on licensed beds, regardless of how many are set up or in use. For purposes of calculating minimum occupancy, licensed beds include any beds banked under chapter 70.38 RCW. For all nursing facilities, minimum facility occupancy of licensed beds for operations, property, and financing allowance component rate allocations shall be:

(a) Essential community providers - eighty-five percent.

(b) Small nonessential community providers - ninety percent.

(c) Large nonessential community providers - ninety-two percent.

(15) When a capitalized addition or replacement results in an increased licensed bed capacity during the calendar year following the capitalized addition or replacement:

(a) The department shall determine a nursing facility's prospective medicaid:

(i) Property payment rate allocation by dividing the property costs using the greater of actual days from the cost report period on which the rate being recalculated is based or days calculated by multiplying the new number of licensed beds times ninety percent for small nonessential community providers and ninety-two percent for large nonessential community providers times the number of calendar days in the cost report period on which the rate being recalculated is based. For essential community providers, the department shall use eighty-five percent to calculate days to compare with actual days; and

(ii) Financing allowance payment rate allocation by multiplying the net invested funds by the applicable factor in WAC 388-96-748(3) and dividing by the greater of the facility's actual days from the cost report period on which the rate being recalculated is based or on days calculated by multiplying the new number of licensed beds times ninety percent

occupancy percent for small nonessential community providers and ninety-two percent for large nonessential community providers times the calendar days in the cost report period on which the rate being recalculated is based. For essential community providers, the department shall use eighty-five percent occupancy to calculate days to compare to actual days.

AMENDATORY SECTION (Amending WSR 00-12-098, filed 6/7/00, effective 7/8/00)

WAC 388-96-781 Exceptional ((~~direct~~)) care ((~~component~~)) rate ((~~allocation~~)) add-on—Covered medicaid residents. A nursing facility (NF) may receive an increase in its direct care and/or therapy component rate allocations for providing exceptional care to a medicaid resident who:

(1) Receives specialized services to meet chronic complex medical conditions and neurodevelopment needs of medically fragile children((~~; and~~

~~(2)~~)) and resides in a NF where all residents are under age twenty-one with at least fifty percent of the residents entering the facility before the age of fourteen;

(2) Receives expanded community services (ECS);

(3) Is admitted to the NF as an extraordinary medical placement (EMP) and the department of corrections (DOC) has approved the exceptional direct care and/or therapy payment;

(4) Is ventilator or tracheotomy (VT) dependent and resides in a NF that the department has designated as active ventilator-weaning center;

(5) Has a traumatic brain injury (TBI) established by a comprehensive assessment reporting evaluation (CARE) assessment administered by department staff and resides in a NF that the department has designated as capable for TBI patients;

(6) Has a TBI and currently resides in nursing facility specializing in the care of TBI residents where more than fifty percent of residents are classified with TBIs based on the federal minimum data set assessment (MDS 2 or its successor); or

(7) Is admitted to a NF from a hospital with an exceptional care need and medicaid purchasing administration (MPA) or a successor administration has approved the exceptional direct care and/or therapy payment.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-782 Exceptional therapy care and exceptional direct care—Payment. (1) For WAC 388-96-781(1) residents, the department will pay the ((~~resident's total rate in effect on December 31, 1999, inflated by the industry weighted average economic trends and conditions adjustment factor~~)) Oregon medicaid rate.

(2) For WAC 388-96-781 (4), (5) and (6) residents, the department may establish a rate add-on that when added to the nursing facility's per diem medicaid rate does not exceed the cost of caring for the client in a hospital.

(3)(a) Costs related to payments resulting from increases in direct care component rates under subsection (2) of this section shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care shall be for rate setting, settlement, and other purposes deemed appropriate by the department; or

(b) Costs related to payments resulting from increases in therapy care component rates under subsection (2) of this section shall not be offset against the facility's examined, allowable therapy care costs, for each report year or partial period such increases are paid.

NEW SECTION

WAC 388-96-784 Expense for construction interest. Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to WAC 388-96-559. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care but shall not exceed the project certificate of need time period pursuant to RCW 70.38.125.

NEW SECTION

WAC 388-96-785 Supplemental payments. To the extent the federal government approves such payments under the state's plan for medical assistance, and only to the extent that funds are specifically appropriated for this purpose in the biennial appropriations act, the department shall make supplemental payments to nursing facilities operated by public hospital districts. The payments shall be calculated and distributed in accordance with the terms and conditions specified in the biennial appropriations act. The payments shall be supplemental to the component rate allocations calculated in accordance with Part E of chapter 74.46 RCW and the related sections of this chapter neither the provisions of Part E of chapter 74.46 RCW nor the settlement provisions of this chapter apply to these supplemental payments.

NEW SECTION

WAC 388-96-786 Pay for performance add-on. (1) When based on the cost report for the calendar year immediately preceding July 1, the nursing facility has more than seventy-five percent direct staff turnover, the department will reduce a nursing facility's total rate by one percent.

(2) When based on the cost report for the calendar year immediately preceding July 1, the nursing facility has seventy-five percent or less direct staff turnover, the department will pay an add-on to a nursing facility's total rate and not to any component rate allocation.

(3) When there have been no reductions under subsection (1), there will be no pay for performance add-ons.

(4) The department will not settle the pay for performance add-on.

(5) The pay for performance add-ons calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-802 ((~~May the nursing facility (NF) contractor bill the department for a medicaid resident's day of death, discharge, or transfer from the NF?~~)) Billing/payment. ((~~No, the NF contractor may bill the department~~)) (1) The department will pay nursing facility (NF) contractors for the first day of a medicaid resident's stay but not the last day.

(2) The department will pay a contractor for service rendered under the facility contract and billed in accordance with the department's billing procedure. The amount paid will be computed using the appropriate rates assigned to the contractor. For each recipient, the department will pay an amount equal to the appropriate rates, multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth by WAC 388-96-803.

(3) A NF contractor shall not bill the department for service provided to a medicaid recipient until an award letter of eligibility for the recipient under rules established under the authority of chapter 74.09 RCW has been received by the facility. However a facility may bill and shall be reimbursed for all medical care recipients referred to the facility by the department prior to the receipt of the award letter of eligibility or the denial of such eligibility.

AMENDATORY SECTION (Amending WSR 01-12-037, filed 5/29/01, effective 6/29/01)

WAC 388-96-803 ((~~When a nursing facility (NF) contractor becomes aware of a change in the medicaid resident's income and/or resources, must he or she report it?~~)) Notification of participation—Responsibility to collect—Reporting medicaid recipient's changes in income/resources—Rate payment in full for services. ((~~Yes,~~)) (1) The department will notify a contractor of the amount each medical recipient is required to participate in the cost of his or her care and the effective date of the required participation. The contractor must collect the participation from the patient and to account for any authorized reductions from the participation.

(2) Within seventy-two hours of becoming aware of a change in the medicaid resident's income and/or resources, the NF contractor will report the change in writing to the home and community services office serving the area in which the NF is located. When reporting the change, the NF contractor will include copies of any available documentation of the change in the medicaid resident's income and/or resources.

(3) For each medicaid resident, the contractor shall accept the payment rates established by the department multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth in WAC 388-96-803(1) as full compensation for all services provided under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services.

NEW SECTION

WAC 388-96-805 Suspension of payments. (1) The department may withhold payments to a contractor in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter;

(d) Payment for the final sixty days of service prior to termination or assignment of a contract will be held in the absence of adequate alternate security acceptable to the department pending settlement of all periods when the contract is terminated or assigned; and

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, when a contractor's net medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by settlement, civil fines imposed by the department, third-party liabilities or other source, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason for the withholding. Neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish by rule nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment.

NEW SECTION

WAC 388-96-808 Change of ownership—Assignment of department's contract. (1) On the effective date of a change of ownership the department's contract with the old owner shall be automatically assigned to the new owner, unless:

(a) The new owner does not desire to participate in medicaid as a nursing facility provider;

(b) The department elects not to continue the contract with the new owner; or

(c) The new owner elects not to accept assignment and requests certification and a new contract. The old owner shall give the department sixty days' written notice of such intent to change ownership and assign. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 C.F.R., for the new

owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of intent to change ownership and assign.

(2) If the new owner desires to participate in the nursing facility medicaid payment system, it shall meet the conditions specified in WAC 388-96-011. The facility contract with the new owner shall be effective as of the date of the change of ownership.

NEW SECTION

WAC 388-96-809 Change of ownership—Final reports—Settlement securities. (1) When there is a change of ownership for any reason, final reports shall be submitted as required by WAC 388-96-022.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

(a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;

(b) An assignment of funds to the department;

(c) The new contractor's assumption of liability for the prior contractor's debt or potential debt;

(d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;

(e) A promissory note secured by a deed of trust; or

(f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

(a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and

(b) Provide that an amount equal to any recovery the department determines is due from the contractor from any source of debt to the department, but not exceeding the amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with WAC 388-96-022, which shall be examined by the department in accordance with WAC 388-96-205.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(11) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

(12) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-901 Disputes. (1) ((If)) When a contractor wishes to contest the way in which the department applied a statute or department rule to the contractor's circumstances, the contractor shall pursue the administrative review process prescribed in WAC 388-96-904.

(a) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW subject to administrative review under WAC 388-96-904 include but are not limited to the following:

(i) Determining a nursing facility payment rate;

(ii) Calculating a nursing facility settlement;

(iii) Imposing a civil fine on the nursing facility;

(iv) Suspending payment to a nursing facility; or

(v) ((Refusing to contract with a nursing facility)) Conducting trust fund and accounts receivable audits.

(b) Adverse actions taken under the authority of this chapter or chapter 74.46 RCW not subject to administrative review under WAC 388-96-904 include but are not limited to:

(i) Actions taken under the authority of RCW 74.46.421 and sections of this chapter implementing RCW 74.46.421;

(ii) Case mix accuracy review of minimum data set (MDS) nursing facility resident assessments, which shall be limited to separate administrative review under the provisions of WAC 388-96-905;

(iii) Quarterly and semiannual rate updates to reflect changes in a facility's resident case mix including contractor errors made in the MDSs used to update the facility's resident case mix;

(iv) Actions taken under exceptional direct and therapy care program codified at WAC 388-96-781 and 388-96-782; ((and))

(v) Actions taken under WAC 388-96-218 (2)(c); and

(vi) Actions taken under WAC 388-96-786.

(2) The administrative review process prescribed in WAC 388-96-904 shall not be used to contest or review unrelated or ancillary department actions, whether review is sought to obtain a ruling on the merits of a claim or to make a record for subsequent judicial review or other purpose. If an issue is raised that is not subject to review under WAC 388-96-904, the presiding officer shall dismiss such issue with prejudice to further review under the provisions of WAC 388-96-904, but without prejudice to other administrative or judicial review as may be provided by law. Unrelated or ancillary actions not eligible for administrative review under WAC 388-96-904 include but are not limited to:

(a) Challenges to the adequacy or validity of the public process followed by department in proposing or making a change to the nursing facility medicaid payment rate methodology, as required by 42 U.S.C. 1396a (a)(13)(A) and WAC 388-96-718;

(b) Challenges to the nursing facility medicaid payment system that are based in whole or in part on federal laws, regulations, or policies;

(c) Challenges to a contractor's rate that are based in whole or in part on federal laws, regulations, or policies;

(d) Challenges to the legal validity of a statute or regulation; and

(e) Actions of the department affecting a medicaid beneficiary or provider that were not commenced by the office of rates management, aging and disability services administration, for example, entitlement to or payment for durable medical equipment or other services.

(3) If a contractor wishes to challenge the legal validity of a statute ((or regulation)), rule, or contract provision relating to the nursing facility medicaid payment system((,)) or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. The contractor may not use this section or WAC 388-96-904 for such purposes. This prohibition shall apply irrespective of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

AMENDATORY SECTION (Amending WSR 04-21-027, filed 10/13/04, effective 11/13/04)

WAC 388-96-904 Administrative review—Adjudicative proceeding. (1)(a) A contractor((s)) seeking ((to appeal or take exception to)) an administrative review of an adverse action or determination of the department((,)) taken under authority of this chapter or chapter 74.46 RCW((, relating to the contractor's payment rate, audit or settlement, or otherwise affecting the level of payment to the contractor, or seeking to appeal or take exception to any other adverse action taken under authority of this chapter or chapter 74.46 RCW)) and eligible for administrative review under ((this section)) WAC 388-96-901, shall file a written request for an administrative review conference ((in writing)) with the office of rates management within twenty-eight calendar days after receiving notice of the department's action or determination.

(b) When the department has sent written notice by United States mail, it shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's request for an administrative review conference. When the department has electronically mailed (e-mail) written notice, the date of the department's notification e-mail will be the date of receipt by the contractor irrespective of when the contractor reads the e-mail.

(c) The contractor's request for administrative review shall:

(((a))) (i) Be signed by the contractor or by a partner, officer, or authorized employee of the contractor;

(((b))) (ii) State the particular issues raised; and

(((c))) (iii) Include all necessary supporting documentation or other information.

(2) After receiving a request for administrative review conference that meets the criteria in subsection (1) of this section, the department shall schedule an administrative review conference. The conference may be conducted by telephone.

(3) At least fourteen calendar days prior to the scheduled date of the administrative review conference, the contractor must supply any additional or supporting documentation or information upon which the contractor intends to rely in presenting its case. In addition, the department may request at any time prior to issuing a determination any documentation or information needed to decide the issues raised, and the contractor must comply with such a request within fourteen calendar days after it is received. The department may extend this period up to fourteen additional calendar days for good cause shown if the contractor requests an extension in writing received by the department before expiration of the initial fourteen-day period. The department shall dismiss issues that cannot be decided or resolved due to a contractor's failure to provide requested documentation or information within the required period.

(4) The department shall, within sixty calendar days after conclusion of the conference, render a determination in writing addressing the issues raised. If the department is waiting for additional documentation or information promised by or requested from the contractor pursuant to subsection (3) of this section, the sixty-day period shall not commence until the department's receipt of such documentation or information or until expiration of the time allowed to provide it. The determination letter shall include a notice of dismissal of all issues which cannot be decided due to a contractor's failure to provide documentation or information promised or requested.

(5)(a) A contractor seeking further review of a determination issued pursuant to subsection (4) of this section shall ((~~apply~~)) within twenty-eight calendar days after receiving the department's administrative review conference (ARC) determination letter file a written application for an adjudicative proceeding((~~, in writing,~~)) signed by one of the individuals authorized by subsection (1) of this section((~~, within twenty-eight calendar days after receiving the department's administrative review conference determination letter. A review judge or other presiding officer employed by the department's board of appeals shall conduct the adjudicative proceeding~~)) with the department's board of appeals.

(b) When the department has sent the ARC determination letter by United States mail, the department shall deem the contractor to have received the department's determination five calendar days after the date of the administrative review determination letter, unless proof of the date of receipt of the letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's application for an adjudicative proceeding. When the department has electronically mailed (e-mail) the ARC determination letter, the date of the department's e-mail containing the ARC determination letter or to which the ARC determination letter is attached will be the date of receipt by the contractor irrespective of when the contractor reads the e-mail.

(c) The contractor shall attach to its application for an adjudicative proceeding the department's administrative review conference determination letter. When the department delivered the ARC determination letter by e-mail either in the body of the e-mail or as an attachment to the e-mail, the contractor must include a copy of the e-mail with the contractor's application for an adjudicative proceeding. A contractor's application for an adjudicative proceeding shall be addressed to the department's board of appeals. The board of appeals date stamp on the application for an administrative proceeding shall be used to determine whether the application is timely. When the application for adjudicative proceeding is filed by fax, the date stamped on the application received by fax will only be used to determine timeliness when the application is postmarked the same date as the faxed application.

(6) A review judge or other presiding officer employed by the department's board of appeals shall conduct the adjudicative proceeding. Except as authorized by subsection (7) of this section, the scope of an adjudicative proceeding shall be limited to the issues specifically raised by the contractor at the administrative review conference and addressed on the merits in the department's administrative review conference determination letter. The contractor shall be deemed to have waived all issues or claims that could have been raised by the contractor relating to the challenged determination or action, but which were not pursued at the conference and not addressed in the department's administrative review conference determination letter. In its request for an adjudicative proceeding or as soon as practicable, the contractor must specify its issues.

(7) If the contractor wishes to have further review of any issue not addressed on its merits, but instead dismissed in the department's administrative review conference determination letter, for failure to supply needed, promised, or requested additional information or documentation, or because the department has concluded the request was untimely or otherwise procedurally defective, the issue shall be considered by the presiding officer for the purpose of upholding the department's dismissal, reinstating the issue and remanding for further agency staff action, or reinstating the issue and rendering a decision on the merits.

(8) An adjudicative proceeding shall be conducted in accordance with this chapter, chapter 388-02 WAC and chapter 34.05 RCW. In the event of a conflict between hearing requirements in chapter 74.46 RCW and chapter 388-96 WAC specific to the nursing facility medicaid payment system and general hearing requirements in chapter 34.05 RCW and chapter 388-02 WAC, the specific requirements of chapter 74.46 RCW and chapter 388-96 WAC shall prevail. The presiding officer assigned by the department's board of appeals to conduct an adjudicative proceeding and who conducts the proceeding shall render the final agency decision.

(9) At the time an adjudicative proceeding is being scheduled for a future time and date certain, or at any appropriate stage of the prehearing process, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to compel either party to identify specific issues remaining to be litigated.

(10) If the presiding officer determines there is no material issue(s) of fact to be resolved in a case, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to decide the issue(s) pre-

sented without convening or conducting an in-person evidentiary hearing. In such a case, the decision may be reached on documentation admitted to the record, party admissions, written or oral stipulation(s) of facts, and written or oral argument.

(11) The board of appeals shall issue an order dismissing an adjudicative proceeding requested under subsection (5) of this section, unless within two hundred seventy calendar days after the board of appeals receives the application for an adjudicative proceeding:

(a) All issues have been resolved by a written settlement agreement between the contractor and the department signed by both and filed with the board of appeals; or

(b) An adjudicative proceeding has been held for all issues not resolved and the evidentiary record, including all rebuttal evidence and post-hearing or other briefing, is closed.

This time limit may be extended one time thirty additional calendar days for good cause shown upon the motion of either party made prior to the expiration of the initial two hundred seventy day period. It shall be the responsibility of the contractor to request that hearings be scheduled and ensure that settlement agreements are signed and filed with the board of appeals in order to comply with the time limit set forth in this subsection.

(12) Any party dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for reconsideration within ten calendar days after the decision or order of dismissal is served on such party. The petition shall state the specific grounds upon which relief is sought. The time for seeking reconsideration may be extended by the presiding officer for good cause upon motion of either party. The presiding officer shall rule on a petition for reconsideration and may seek additional argument, briefing, testimony, or other evidence if deemed necessary. Filing a petition for reconsideration shall not be a requisite for seeking judicial review; however, if a petition is filed by either party, the agency decision shall not be deemed final until a ruling is made by the presiding officer.

(13) A contractor dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for judicial review pursuant to RCW 34.05.570(3) or other applicable authority.

NEW SECTION

WAC 388-96-906 Section captions. Section captions as used in this chapter do not constitute any part of the rule.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-96-202	Scope of audit or department audit.
WAC 388-96-740	Medicaid case mix index—When a facility does not meet the ninety percent minimum data set (MDS) threshold as identified in RCW 74.46.501.
WAC 388-96-741	When the nursing facility does not have facility average case mix indexes for the four quarters specified in RCW 74.46.501 (7)(b) for determining the cost per case mix unit, what will the department use to determine the nursing facility's cost per case mix unit?
WAC 388-96-742	Licensed beds to compute the ninety percent minimum data set (MDS) threshold rather than a nursing facility's quarterly average census.
WAC 388-96-749	Variable return—Quartiles and percentages.

WSR 10-22-017
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 09-04—Filed October 22, 2010, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-127.

Title of Rule and Other Identifying Information: Chapter 173-334 WAC, Children's safe products—Reporting rule.

As signed into law, the Children's Safe Product Act (CSPA) manufacturers of children's products to report the presence of chemicals of high concern to children (CHCCs) to the department. The purpose of the rule is to clarify the following: The process to be used to update the reporting list for CHCCs, definitions of several key terms, and the reporting process.

Hearing Location(s): Ecology Headquarters Building, 300 Desmond Drive S.E., Lacey, WA 98503, on December 9, 2010, at 7:00 p.m.

Date of Intended Adoption: March 15, 2011.

Submit Written Comments to: John R. Williams, Jr., P.O. Box 47600, Olympia, WA 98504-7600, e-mail john.williams@ecy.wa.gov, fax (360) 407-6102, by December 31, 2010.

Assistance for Persons with Disabilities: Contact Michelle Payne, (360) 407-6129, by November 10, 2010, TTY 711 or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As signed into law, the CSPA requires manufacturers of children's products to report the presence of CHCCs to the department. The purpose of the rule is to clarify the following: The process to be used to update the reporting list for CHCCs, definitions of several key terms, and the reporting process.

Reasons Supporting Proposal: The rule will make it easier for the regulated community to comply with the reporting requirements established by chapter 70.240 RCW.

Statutory Authority for Adoption: Children's Safe Product Act (CSPA), RCW 70.240.040.

Statute Being Implemented: Children's Safe Product Act (CSPA), chapter 70.240 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John R. Williams, Jr., Waste 2 Resources, Headquarters, (360) 407-6940.

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

Small Business Economic Impact Statement

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement does not contain the appendices that further explain Washington state department of ecology's (ecology) analysis. Additionally, it does not contain the raw data used in this analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request. A full analysis of compliance costs is available in the associated cost-benefit analysis for this rule.

Executive Summary: Ecology is proposing to adopt a new chapter called the children's safe products reporting rule (chapter 173-334 WAC). The CSPA law requires ecology to identify high priority chemicals that are of high concern for children. This includes chemicals that have been:

Found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids.

Found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment.

Added to or is present in a consumer product used or present in the home.

Ecology estimated the direct compliance costs of the proposed rule, over twenty years, and assuming product testing (the most expensive option) is used, to be between $44.7 million and $69.5 million.

Ecology analyzed the degree of disproportionate impact of the proposed rule on small businesses (those with fifty or fewer employees; versus the largest ten percent of businesses in likely impacted industries), and has concluded that a disproportionate impact is likely. But it should be emphasized that only business [businesses] falling within the definition of a manufacture [manufacturer] as define [defined] in the law would be required to report. And that would apply to retailers only if they are the importer in the United States and no other party reports on their behalf.

- Based on the statutory authority created by the law, ecology could have done the following: Required reporting for hundreds of CHHCs [CHCCs], based the reporting trigger on detection limit, implemented the reporting requirement for all products and all manufactures [manufacturers] six months from the date the rule was adopted, required the reporting to be done at the individual SKU number. Instead ecology chose options, within the scope of the authorizing statute, to reduce this disproportionate burden.
- Phasing in timelines for first reporting based, in-part, on business size. The first date for any reporting for those manufactures [manufacturers] with gross sales in the less than one hundred thousand dollars is five years from the date the rule is adopted. And these initial reports are only for those products intended to be stuck in the child's mouth, rubbed on the child's skin, and all products for children three and under.
- Requiring reporting at the product category level based on the GS1 global product classification (GPC) standard. As a result the reporting burden is reduced to one report per product category, so a reporting entity which sales [sells] only two categories of products would only have to make two reports, one for the chemicals in each category.
- Providing multiple examples of how a manufacture [manufacturer] can determine what if any CHHCs [CHCCs] are in there [their] products. Testing is not required by the law or the rule.
- Requiring reporting at the "brick" or "class" level of the GS1 GPC standard.
- Allowing multiple courses of determining CHCC content, rather than requiring only testing.

Ecology estimated that the costs and payments created by the proposed rule will likely reduce employment in the state by up to 0.5 positions over twenty years, across the state economy, for all sizes of business. This accounts for the flow of compliance expenditures through the economy as earnings, wages, and further spending.

Section 1 - Background: Ecology is proposing the Children's safe products—Reporting rule (chapter 173-334 WAC) as part of the rule making it is allowed to perform by law in chapter 70.240 RCW (Children's Safe Products Act; CSPA). This law was passed in 2008, and specifically allows ecology to, "adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter."

Based on research and analysis required by the Regulatory Fairness Act, RCW 19.85.070, ecology has determined the proposed rule has a disproportionate impact on small business (those employing fifty or fewer employees). Therefore, ecology included cost-minimizing features in the rule where it is legal and feasible to do so.

The CSPA law requires ecology to identify high priority chemicals that are of high concern for children. This includes chemicals that have been:

- Found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, human breast milk, human urine, or other bodily tissues or fluids.
- Found through sampling and analysis to be present in household dust, indoor air, drinking water, or elsewhere in the home environment.
- Added to or is present in a consumer product used or present in the home.

In July 2009, ecology published a report (ecology publication number 09-07-014) describing the work done by ecology and the state department of health (DOH) to comply with CSPA requirements, address concerns raised by stakeholders, and implement direction from the governor.[1] This included discussion of the process the agencies used to determine chemicals of concern that are being proposed as part of this rule making.

The majority of the CSPA law delineates requirements for manufacturers and sellers of children's products, including:

- Prohibition on the manufacturing and sale of children's products containing lead, cadmium, or phthalates above the limits established in the law. At this time the agency feels federal programs have substantially preempted our agency for the enforcement of these limits. So this rule only addresses the reporting requirement.
- Notification to ecology that a children's product contains a high priority chemical.
- Actions that must be taken by - and penalties for - manufacturers in violation of the law.

Ecology conducted a stakeholder process and pilot rule phase to determine the content of the proposed rule. Both the pilot phase and the stakeholder process helped ecology identify possible compliance difficulties for the regulated community without diminishing the effectiveness of the rule. These processes were also used to get other input from the public, business, environmental interests, and health interests might have toward rule making.

Baseline: As there is no current state-level CSPA or similar rule, there is technically no baseline rule for comparison. There are no existing federal or Washington state requirements intended explicitly for children's products as under this rule. There are, however, a number of partially overlapping requirements and mitigating factors, including:

- Washington's toxics in packaging law (chapter 70.95G RCW, Toxics in packaging) requires manufacturers to have practices that may include contract specifications, quality control mechanisms, and/or testing protocols to determine the amount of a chemical in product materials.
- Manufacturers must have procedures in place to test for lead under the federal Consumer Product Safety Improvement Act of 2008 (CPSIA). Some chemicals are restricted in cosmetic products under FDA regulations.
- Interstate toxics rules allowing manufacturers to employ economies of scale in producing a homogeneous product across multiple markets.
- Manufacturers who sell children's products in Maine are subject to similar reporting requirements for priority chemicals (Me. Rev. Stat. Ann. tit. 38, §§ 1691-1699-B). The state of California has several reporting requirements applicable to manufacturers of children's products, including required reporting on use of specific ingredients in cosmetics (Cal. Health & Safety Code §§ 111791-111793.5).
- Manufacturers who do business in California are also required to label products if exposure to certain chemicals from those products exceeds levels known to cause cancer or reproductive harm (California Proposition 65).
- The European Union, for instance, enforces chemical limits in children's products through its Toy Directive (88/378/EEC) and Cosmetics Directive (76/768/EEC). Many companies have preexisting restricted substance lists (RSLs) to describe and codify procedures to meet chemical limits in a variety of product lines for sale in various countries.

These factors will likely mitigate some of the compliance costs for a subset of businesses covered by the proposed rule.

The baseline also includes the explicit provisions of the authorizing statute. These are excepted from this analysis. For further discussion, see analytic exceptions, below in this chapter.

Changes under Ecology's Proposed Rule: The proposed rule sets out requirements for:

- Annual notification of ecology by manufacturers of children's products containing CHCCs, with pertinent firm, product, and CHCC quantity information as established by statute.
- Timing of first reporting is phased in according to the product tier and size of manufacturer. Product tiers (1 - 4) represent the level of contact with a child intended for types of products, based on levels of the GS1 GPC standard. It is an industry standard for product classification.
- Enforcement priorities and penalties.

Analytic Exemptions: Ecology excluded from analysis the following elements, explicitly dictated or defined in the children's safe products statute (chapter 70.240 RCW):

- Definitions, including:
  - Children's cosmetics
  - Children's jewelry
  - Children's product
  - Cosmetics
  - High priority chemical
  - Manufacturer
  - Phthalates
  - Toy
  - Trade association
  - Very bioaccumulative
  - Very persistent
- Prohibition of the manufacturing and sale of children's products containing lead, cadmium, or phthalates.
- Explicit reporting requirements, including:
- The name of the chemical used or produced and its chemical abstracts service registry number.
- A brief description of the product or the product component containing the substance.
- A description of the function of the chemical in the product.
- The amount of the chemical used in each unit of the product or product component. The amount may be reported in ranges, rather than the exact amount.

- The name and address of the manufacturer and the name, address, and phone number of a contact person for the manufacturer.
- Any other information the manufacturer deems relevant to the appropriate use of the product.
- Notification of sellers and distributors.
- Civil penalty.

Section 2 - Analysis of Compliance Costs for Washington Businesses:

Analytic Approach: Ecology analyzed the costs and benefits of the proposed rule qualitatively, and quantified the impacts where possible. Ecology only analyzed those aspects of the proposed rule that were left to ecology's discretion in the rule-making process. In the case of the proposed rule, many of its elements were dictated explicitly by law, as is the general idea of manufacturer reporting.

One must keep in mind, however, that ecology only had particular discretion on reporting ranges, and the phasing-in of first reporting time. Every chemical on the reporting list meets the standards set by the authorizing law. Ecology chose fifty-nine chemicals from an initial list of two thousand prospective chemicals. Ecology believes the content of the list of CHCCs is sufficiently dictated by statute, so that the chemicals on the final list were not entirely left to ecology's discretion. However, ecology also believes it is to the public and state's advantage to present the estimated costs of testing and reporting, to provide additional information to manufacturers and the public regarding compliance with the authorizing statute.

Section 3 - Quantification of Costs and Ratios:

Quantified Costs of Ecology's Proposed Rule: Ecology estimated the quantitative costs of complying with the proposed rule, including those elements dictated by the authorizing law, based on:

- The number of businesses expected to comply.
- The number of chemicals that require testing or business practice or business chain knowledge.
- The estimated costs of testing or business practices and reporting.

These estimates are conservatively high, and do not account for economies of scale, nonreporters, or interstate/international regulatory consistency. Moreover, as a means of estimating CHCC content and reporting into a range, testing is not specifically required by the proposed rule or the law. Other options for gauging CHCC content include supply-chain knowledge and knowledge of the manufacturing process.

Ecology assumed that known businesses operating in Washington state manufacturing or importing toys and games, children's clothing, and baby supplies and accessories may have to comply with the law. These businesses fall into multiple NAICS[2] categories, including:

- 3399 (Other Miscellaneous Manufacturing; includes toys, games, baby products).
- 4243 (Apparel, Piece Goods, and Notions Merchant Wholesalers; includes children's clothing).
- 3256 (Soap, Cleaning Compound, and Toilet Preparation Manufacturing; includes baby care).
- 3371 (Household and Institutional Furniture and Kitchen Cabinet Manufacturing; includes baby furniture).

Based on Washington employment security department information, there are currently about two hundred seventy-six such businesses in the state. Ecology was also able to categorize most of these businesses roughly into size categories by employment and, to a lesser degree, annual earnings. Ecology believes these businesses represent the majority of the businesses that will need to comply with the proposed rule. Some retailers who act as importers or distributors for products made by companies with no presence in the United States may also need to report, but ecology assumes this number will be minimal.

Ecology assumed that any given business would maintain at least existing business practices and standards, but ecology assumed conservatively (attempting to overestimated [overestimate] costs, as to calculate a conservative net benefit of the proposed rule) that a business might choose to test for a maximum of ten CHCCs.

Based on surveys of current testing costs, ecology estimated that this cost of knowing the level of CHCC content in children's products for some manufacturers would be in the range of approximately $1 thousand - $10 thousand per year for all the CHCCs in their products. This value was based on a range of existing, approved analytical methods. It is possible that new test methods could need to be developed. Ecology multiplied these values to calculate a total conservatively high[3] testing cost of the proposed rule and CSPA law of $2.8 million - $27.6 million the first year, followed by $2.8 million annually in subsequent years, when testing has been established.

The above calculations generated at total likely present value[4] cost of compliance, over twenty years, with the combined CSPA rule and CSPA law, of $44.7 million to $69.5 million. Requirements set forward in the latter of these, the CSPA law, are exempt from inclusion in this analysis, but ecology included this total cost in this analysis because the contribution of ecology reducing the possible list of CHCCs (to only those meeting the requirements set forth in the authorizing law) was not separable from the overall impacts of the law.

The costs estimated by ecology work under the assumption that costs are for a typical business, and are constant across them, on average. Obviously, the costs per-business range of $10 thousand to $100 thousand divided by smaller numbers of employees will be larger, as it will [be] divided by each $100 of sales recorded (for which records are much more sparse). For fifty employees or fewer, this is at least $200 - $2 thousand per employee. For the largest ten percent of likely affected businesses, this is at most nine - ninety cents per employee.

Section 4 - Actions Taken to Reduce the Impact of the Rule on Small Business:

- Based on the statutory authority created by the law, ecology could of [have] done the following: Required reporting for hundreds of CHHCs [CHCCs], based the reporting trigger on detection limit, implemented the reporting requirement for all products and all manufac-

tures [manufacturers] six months from the date the rule was adopted, required the reporting to be done at the individual SKU number. Instead ecology chose options, within the scope of the authorizing statute, to reduce this disproportionate burden.

- Phasing in timelines for first reporting based, in-part, on business size. The first date for any reporting for those manufactures [manufacturers] with gross sales in the less than one hundred thousand dollars is five years from the date the rule is adopted. And these initial reports are only for those products intended to be stuck in the child's mouth, rubbed on the child's skin, and all products for children three and under.
- Requiring reporting at the product category level based on the GS1 GPC standard. As a result the reporting burden is reduced to one report per product category, so a reporting entity which sales [sells] only two categories of products would only have to make two reports, one for the chemicals in each category.

Providing multiple examples of how a manufacture [manufacturer] can determine what if any CHHCs [CHCCs] are in there [their] products. Testing is not required by the law or the rule.

Section 5 - The Involvement of Small Business in the Development of the Proposed Rule:

Amendments: While multiple attempts were made to get small business involvement during both the pilot and advisory group phases, the actual input provided by them was little to none. One Washington small businesses [business] (Find it Games) said they were willing to participate on the advisory group but even after multiple efforts to get their input none was provided. Also another small business joined the pilot phase (Four Seasons) but they also did not provide any input. We assume that this was due to the need for small business to attend to the daily requirements of running their business. Hopefully their membership in trade organizations, for example TIA, JPMA, AAFA, and others resulted in their concerns being represented. It should be noted that Grant Nelson (AWB) was copied of multiple e-mails which were sent to the participants of pilot and that some of these even outline topics that agency was seeking input on.

In addition, a listserv provided the public and small businesses, among others, with up-to-date information on the proposed rule. Also a press release and focus sheet were release [released] at the start of the pilot phase.

Section 6 - The SIC Codes of Impacted Industries:

Ecology assumed that known businesses operating in Washington state manufacturing or importing toys and games, children's clothing, and baby supplies and accessories may have to comply with the law. These businesses fall into multiple NAICS[5] categories, including:

- 3399 (Other Miscellaneous Manufacturing; includes toys, games, baby products),
- 4243 (Apparel, Piece Goods, and Notions Merchant Wholesalers; includes children's clothing),
- 3256 (Soap, Cleaning Compound, and Toilet Preparation Manufacturing; includes baby care), and
- 3371 (Household and Institutional Furniture and Kitchen Cabinet Manufacturing; includes baby furniture).

Based on Washington employment security department information, there are currently about two hundred seventy-six such businesses in the state. Ecology was also able to categorize most of these businesses roughly into size categories by employment and, to a lesser degree, annual earnings. Ecology believes these businesses represent the majority of the businesses that will need to comply with the proposed rule. Some retailers who act as importers or distributors for products made by companies with no presence in the United States may also need to report, but ecology assumes this number will be minimal.

Section 7 - Impacts on Jobs:

Ecology used the Washington state office of financial management's 2002 Washington input-output model (OFM-IO) to estimate the proposed rule's first-round impact on jobs across the state. This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry, or industries, are entered in the OFM-IO model as decreases in spending and investment.

Ecology calculated that between approximately zero and 0.5 jobs are likely to be permanently lost under the proposed rule. Ecology was not able to estimate the second-round impacts of the proposed rule, which include the earned income of secondary parties and reduce overall job impacts. This result does, however, account for the labor income earned during efforts to research and report CHCC content.

[1] The governor expressed that ecology and DOH should rely on safety testing conducted in the European Union and California, to the extent they provide a reasonable assurance of safety, in order to help establish a degree of consistency for the industry.

[2] North American Industry Classification System (see http://www.census.gov/eos/www/naics/index.html) .

[3] Assuming all covered businesses must test to determine whether and what to report.

[4] Accounting for expected inflation, using US Treasury I-Bonds (see http://www.treasurydirect.gov/indiv/research/indepth/ibonds/res_ibonds_iratesandterms.htm).

[5] North American Industry Classification System (see http://www.census.gov/eos/www/naics/index.html).

A copy of the statement may be obtained by contacting John R. Williams, Jr., P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6940, fax (360) 407-6102, e-mail john.williams@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting John R. Williams, Jr., P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6940, fax (360) 407-6102, e-mail john.williams@ecy.wa.gov.

October 22, 2010

Polly Zehm

Deputy Director

Chapter 173-334 WAC

CHILDREN'S SAFE PRODUCTS - REPORTING RULE

NEW SECTION

WAC 173-334-010 Introduction. Under the Children's Safe Product Act (CSPA), chapter 70.240 RCW, manufacturers of children's products are required to notify the department of ecology when a chemical of high concern to children (CHCC) is present in their products or, if the product contains more than one component, each product component.

Reporting the presence of a CHCC does not establish that the product is harmful to human health. The reported information will help fill a data gap that exists for both consumers and agencies.

The CSPA requires the department of ecology in consultation with the department of health to identify a list of chemicals for which manufacturers of children's products are required to provide notice. The CSPA specifies both the characteristics of these chemicals and the notice requirements.

NEW SECTION

WAC 173-334-020 What is the purpose of this chapter? The purpose of this chapter is to:

(1) Establish the list of chemicals for which manufacturer notice is required;

(2) Establish what manufacturers of children's products must do to comply with the notice requirements created by the CSPA; and

(3) Clarify the enforcement processes the department of ecology will use if manufacturers fail to provide notice as required.

NEW SECTION

WAC 173-334-030 To whom does this chapter apply? This chapter applies to manufacturers of children's products.

NEW SECTION

WAC 173-334-040 What definitions apply to terms used in this chapter? "Chemical Abstracts Service number" means the number assigned for identification of a particular chemical by the Chemical Abstracts Service, a service of the American Chemical Society that indexes and compiles abstracts of worldwide chemical literature called *Chemical Abstracts*.

"CHCC list" means the reporting list of chemicals that the department has identified as high priority chemicals of high concern for children.

"Child" means an individual under twelve.

"Department of health" means the Washington state department of health.

"Product category." For those products intended for children three years of age and under, product category means the "brick" level of the GS1 Global Product Classification (GPC) standard, which identifies products that serve a common purpose, are of a similar form and material, and share the same set of category attributes. For all other children's products, product category means the "class" level within the hierarchy of GS1 Global Product Classification (GPC) standard.

"Product component" means a uniquely identifiable piece, substrate, or coating (including ink or dye) that is intended to be included as a part of a finished children's product.

NEW SECTION

WAC 173-334-050 What is the purpose of the CHCC list? The CHCC list identifies the chemicals to which the CSPA notice requirements apply. A manufacturer must notify the department in accordance with this rule if a chemical on the CHCC list is present in a children's product component. The current CHCC list is set forth in WAC 173-334-140.

NEW SECTION

WAC 173-334-060 What schedule will the department follow to revise the CHCC list? (1) The department will add chemicals to, or remove chemicals from, the CHCC list by amending this rule in accordance with the requirements of the Administrative Procedure Act, chapter 34.05 RCW.

(2) The department intends to revise the CHCC list on a regular basis. The department will routinely revise the CHCC list no more frequently than once every two years, and no less frequently than once every five years.

(3) If the directors of the department of ecology and the department of health both agree that a given chemical should be added to, or removed from, the CHCC list outside of the routine revision schedule described above, the CHCC list may be revised on a schedule the directors determine to be appropriate, in accordance with the requirements of the Administrative Procedure Act.

NEW SECTION

WAC 173-334-070 How will the department identify chemicals for inclusion in the CHCC list? (1) The department will consult with the department of health during the modification of the CHCC list.

(2) A chemical that the department determines to meet all of the following criteria may be included on the CHCC list:

(a) Meets the toxicity, persistence, or bioaccumulativity criteria of the CSPA, as specified in RCW 70.240.010(6); and

(b) Meets the exposure criteria of the CSPA, as specified in RCW 70.240.030(1).

(3) The department will consider both the parent chemical and its degradation products when deciding whether a chemical meets the criteria of this section. If a parent chemical does not meet the criteria in this section but degrades into chemicals that do, the parent chemical may be included on the CHCC list.

(4) A person may submit a petition for consideration by the department to add a chemical to the CHCC list. The petition must provide the following information:

(a) Chemical Abstracts Service registry number;

(b) Chemical prime name; and

(c) Credible peer-reviewed scientific information documenting why the chemical meets the criteria required for inclusion on the list.

NEW SECTION

WAC 173-334-080 How will the department decide to remove a chemical from the reporting list? (1) The department will remove a chemical from the CHCC list if the department determines that credible peer-reviewed scientific information demonstrates that the chemical does not meet the required criteria for being on the CHCC list.

(2) A person may submit a petition to remove a chemical from the CHCC list. For consideration by the department the petition must contain peer-reviewed credible scientific information documenting why the chemical does not meet the criteria required for inclusion on the list.

NEW SECTION

WAC 173-334-090 What must the manufacturer include in its notice to the department? (1) The notice required by RCW 70.240.040 must be filed annually with the department for each CHCC by-product category and component. The notice must include all of the following information:

(a) The name of the CHCC and its Chemical Abstracts Service registry number.

(b) The product category or categories in which it occurs.

(c) The product component or components within each product category in which it occurs.

(d) A brief description of the function, if any, of the CHCC in each product component within each product category.

(e) The total amount of the CHCC by weight contained in each product component within each product category. The amount may be reported in ranges, rather than the exact amount. If there are multiple CHCC values for a given component in a particular product category, the manufacturer must use the largest value for reporting.

For the purpose of this rule, the reporting ranges are as follows:

(i) Equal to or more than 40 ppm (0.004%) but less than 200 ppm (0.02%);

(ii) Equal to or more than 200 ppm (0.02%) but less than 1000 ppm (0.1%);

(iii) Equal to or more than 1000 ppm (0.1%) but less than 10,000 ppm (1.0%);

(iv) Equal to or more than 10,000 ppm (1.0%) but less than 100,000 ppm (10%); or

(v) Equal to or more than 100,000 ppm (10%).

(f) The name and address of the reporting manufacturer or trade organization and the name, address and phone number of the contact person for the reporting manufacturer or trade organization. When a trade organization is the reporting party, the report must include a list of the manufacturers on whose behalf the trade organization is reporting, and all of the information that would otherwise be required of the individual manufacturers.

(g) Any other information the manufacturer deems relevant to the appropriate use of the product.

(2) Reporting parties are not required to include either:

(a) Any specific formula information; or

(b) The specific name and address of the facility which is responsible for the introduction of a CHCC into a children's product or product component.

(3) If a reporting party believes the information being provided is confidential business information (CBI), in whole or in part, it can request that the department treat the information as confidential business information as provided in RCW 43.21A.160. The department will use its established procedures to determine how it will handle the information.

(4) The department will make available the current version of the web form to be used for reporting on CHCCs. This same form can be used by the reporting manufacturer or trade organization to flag the submitted information they think should be treated as CBI. The web form must be used when providing notification.

NEW SECTION

WAC 173-334-100 Who is required to provide notice to the department? (1) The manufacturer of a children's product as defined in RCW 70.240.010, or a trade organization on behalf of its member manufacturers, must provide notice to the department that the manufacturer's children's product component contains a chemical on the CHCC list.

(2) The definition of manufacturer in RCW 70.240.010 includes any person or entity that produces a children's product, any importer that assumes ownership of a children's product, and any domestic distributor of a children's product. However, it is only necessary for one person or entity to provide notice with respect to a particular children's product.

Absent an agreement to the contrary among multiple persons or entities meeting the definition of manufacturer of a particular children's product, the following hierarchy will determine which person or entity is responsible for providing notice for the children's product:

(a) The person or entity that had the children's product designed or manufactured, unless it has no presence in the United States.

(b) The person or entity that marketed the children's product under its name or trademark, unless it has no presence in the United States.

(c) The first person or entity, whether an importer or a distributor, that owned the children's product in the United States.

In no event may entities meeting the definition of manufacturer with respect to a particular children's product delegate notice responsibility to a person or entity with no presence in the United States.

NEW SECTION

WAC 173-334-110 How often must notice be given? Manufacturers must provide notice on an annual basis for children's products that have been manufactured for sale in

Washington during the twelve-month period that precedes the applicable due date for first notices set out in WAC 173-334-120(2). If the reporting party determines that there has been no change in the information required to be reported since the prior annual notice, the party may submit a written statement indicating that the previous reported data is still valid, in lieu of a new duplicate complete notice.

If a CHCC is subsequently removed from the children's product component for which notice was given, the manufacturer may provide notice to ecology. Such updated notices will be documented in the department's records.

NEW SECTION

WAC 173-334-120 When must manufacturers begin to provide notice? (1) This section establishes when manufacturers must first provide notice to the department if a children's product contains a chemical on the CHCC list. The CSPA notice requirement will be phased in as provided in the schedule set out in subsection (2) of this section based on the manufacturer categories and children's product tiers established in subsections (3) and (4) of this section. Manufacturers conducting safer alternative assessments for CHCCs may obtain an extension of the first notice date as provided in subsection (5) of this section. After the first notice date, notice must be provided annually on the anniversary of the first notice.

(2) The following table specifies when the first annual notice must be provided to the department in compliance with RCW 70.240.040. The due date will be determined by counting the number of months specified in the table, beginning with the first calendar month following the calendar month in which this rule is adopted. The notice will be considered delinquent if not received by the department by the first day of the month indicated.

Notice due dates from adoption date of rule, values are in months.

Manufacturer categories	Product Tier 1	Product Tier 2	Product Tier 3	Product Tier 4
Largest	12	18	24	case-by-case
Larger	18	24	36	case-by-case
Medium	24	36	48	case-by-case
Small	36	48	60	case-by-case
Smaller	48	60	72	case-by-case
Tiny	60	72	84	case-by-case

(3) For the purpose of this rule the department recognizes six categories of manufacturers. The categories of manufacturers are as follows:

(a) "Largest manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one billion dollars, based on the manufacturer's most recent tax year filing.

(b) "Larger manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than two hundred fifty million but less than or equal to one billion dollars, based on the manufacturer's most recent tax year filing.

(c) "Medium size manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one hundred million but less than or equal to two hundred fifty million dollars, based on the manufacturer's most recent tax year filing.

(d) "Small manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than five million but less than or equal to one hundred million dollars, based on the manufacturer's most recent tax year filing.

(e) "Smaller manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of more than one hundred thousand but less than or equal to five million dollars, based on the manufacturer's most recent tax year filing.

(f) "Tiny manufacturer" means any manufacturer of children's products with annual aggregate gross sales, both within and outside of Washington, of less than one hundred thousand dollars, based on the manufacturer's most recent tax year filing.

(4) For the purpose of this rule the department recognizes four tiers of products. The tiers or products are as follows:

(a) Tier 1 - children's products intended to be put into a child's mouth (e.g., children's products used for feeding, sucking, some toys) or applied to the child's body (e.g., children's products used as lotions, shampoos, creams), or any children's product intended for children who are age three or under.

(b) Tier 2 - children's products intended to be in prolonged (more than one hour) direct contact with a child's skin (e.g., clothes, jewelry, bedding, car seats).

(c) Tier 3 - children's products intended for short (less than one hour) periods of direct contact with child's skin (e.g., many toys).

(d) Tier 4 - children's product components not intended for direct contact with the child's skin or mouth (e.g., inaccessible internal components for all children's products). Any reporting requirements for internal components will be based on a case-by-case evaluation by the department and may be required by amendment of these rules.

(5) If a manufacturer presents documentation to show that it is conducting safer alternative assessments for CHCCs contained in its children's products and that these assessments are intended to result in the elimination or significant reduction of CHCCs from the manufacturer's products, the department may extend by twelve months the reporting requirement for that manufacturer.

NEW SECTION

WAC 173-334-130 How will this chapter be enforced? (1) A manufacturer of children's products is responsible for knowing the amount of CHCCs in its children's products and their components. To control the amount of any chemical present in its final children's product the manufacturer has a duty to establish and conduct a reasonable manufacturing control program. At a minimum, a reasonable manufacturing control program would include those methods

and procedures established in federal regulations for children's products and recognized industry best manufacturing practices, e.g., compliance with relevant International Standards Organization (ISO) requirements, American Society for Testing and Materials (ASTM) standards, or other widely established certification or standards programs.

(2) In deciding whether to impose penalties for failure to provide appropriate notice as described in WAC 173-334-090 through 173-334-120, the department may consider whether the manufacturer responsible for providing notice has exercised due diligence to ensure it knows the amount of the CHCCs in its children's product components. Actions demonstrating diligence may include the use and enforcement of contract specifications, procedures to ensure the quality/purity of feedstock (whether raw or recycled), the use and enforcement of contract specifications for manufacturing process parameters (e.g., drying and curing times when relevant to the presence of high priority chemicals in the finished children's product components), periodic testing for the presence and amount of CHCCs, auditing of contractor or supplier manufacturing processes, and other practices reasonably designed to ensure the manufacturer's knowledge of the presence, use, and amount of CHCCs in its children's product components.

(3) A manufacturer of children's products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070.

(4) The department may collect children's products subject to possible reporting, and analyze their components for the presence of CHCCs. If the department finds that a children's product component contains a chemical on the CHCC list in an amount above the amount reported by the manufacturer or that the manufacturer has otherwise failed to provide appropriate notice as described in WAC 173-334-090 through 173-334-120, the department will inform the manufacturer in writing. The manufacturer shall have forty-five days from receipt of the department's notification of potential violation to further analyze the components in question for presence of CHCCs or to provide an explanation for the omission.

(5) A single violation consists of a manufacturer failing to provide the required notice for the presence of each CHCC, in each applicable product category, in each applicable product component. Unless otherwise warranted by egregious circumstances, the department's investigation prior to taking an enforcement action will include a request to the suspected violator for information regarding the suspected violation.

NEW SECTION

WAC 173-334-140 The reporting list of chemicals of high concern to children (CHCC list).

CAS	Chemical
50-00-0	Formaldehyde
62-53-3	Aniline
62-75-9	N-Nitrosodimethylamine
71-36-3	n-Butanol
71-43-2	Benzene
75-01-4	Vinyl chloride
75-07-0	Acetaldehyde
75-09-2	Methylene chloride
75-15-0	Carbon disulfide
78-93-3	Methyl ethyl ketone
79-34-5	1,1,2,2-Tetrachloroethane
79-94-7	Tetrabromobisphenol A
80-05-7	Bisphenol A
84-75-3	Di-n-Hexyl Phthalate
86-30-6	N-Nitrosodiphenylamine
87-68-3	Hexachlorobutadiene
94-13-3	Propyl paraben
94-26-8	Butyl paraben
95-53-4	2-Aminotoluene
95-80-7	2,4-Diaminotoluene
99-76-3	Methyl paraben
99-96-7	p-Hydroxybenzoic acid
100-41-4	Ethylbenzene
100-42-5	Styrene
104-40-5	4-Nonylphenol; 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3
106-47-8	para-Chloroaniline
107-13-1	Acrylonitrile
107-21-1	Ethylene glycol
108-88-3	Toluene
108-95-2	Phenol
109-86-4	2-Methoxyethanol
110-80-5	Ethylene glycol monoethyl ester
115-96-8	Tris(2-chloroethyl) phosphate
118-74-1	Hexachlorobenzene
119-93-7	3,3'-Dimethylbenzidine and Dyes Metabolized to 3,3'-Dimethylbenzidine
120-47-8	Ethyl paraben
123-91-1	1,4-Dioxane
127-18-4	Perchloroethylene
131-55-5	Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone

CAS	Chemical
140-66-9	4-tert-Octylphenol; 1,1,3,3-Tetramethyl-4-butylphenol
140-67-0	Estragole
149-57-5	2-Ethylhexanoic Acid
556-67-2	Octamethylcyclotetrasiloxane
608-93-5	Benzene, pentachloro
842-07-9	C.I. Solvent Yellow 14
872-50-4	N-Methylpyrrolidone
1163-19-5	2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209
1763-23-1	Perfluorooctanyl sulphonic acid and its salts; PFOS
1806-26-4	Phenol, 4-octyl-
5466-77-3	2-Ethyl-hexyl-4-methoxycinnamate
7439-97-6	Mercury & mercury compounds including methyl mercury (22967-92-6)
7439-98-7	Molybdenum & molybdenum compounds
7440-36-0	Antimony & Antimony compounds
7440-38-2	Arsenic & Arsenic compounds including arsenic trioxide (1327-53-3) & dimethyl arsenic (75-60-5)
7440-43-9	Cadmium & cadmium compounds
7440-48-4	Cobalt & cobalt compounds
25013-16-5	Butylated hydroxyanisole; BHA
25154-52-3	Nonylphenol
25637-99-4	Hexabromocyclododecane

WSR 10-22-031
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed October 26, 2010, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-16-010.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 Washington Street S.E., Olympia, WA 98504, on December 8, 2010, at 10:00 a.m.

Date of Intended Adoption: January 14, 2011.

Submit Written Comments to: Allan J. Jones, Director, P.O. Box 47200, Olympia, WA 98504, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by December 3, 2010.

Assistance for Persons with Disabilities: Contact Wanda Griffin by December 3, 2010, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A complete revision of chapter 392-141 WAC is required in order to implement the new student transportation funding system implemented through EHB 2261 (2009).

The 2010 legislature through EHB 2776 modified the implementation date to September 1, 2011, and required OSPI to report on the language of the rule by December 1, 2010.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: See Purpose above.

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Catherine Slagle, OSPI, (360) 725-6136; Implementation: Shawn Lewis, OSPI, (360) 725-6292; and Enforcement: Allan J. Jones, OSPI, (360) 725-6120.

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

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

October 26, 2010
Randy Dorn
State Superintendent

NEW SECTION

WAC 392-141-300 Authority and purpose. The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of chapter 28A.150 RCW, which includes student transportation programs, RCW 28A.160.030, which includes individual and in lieu transportation arrangements, RCW 28A.160.160 which includes hazardous walking conditions, and RCW 28A.160.1921 which includes the transportation reporting requirements. The purpose of this chapter is to establish the method for the allocation of funding for the operation of public school district student transportation programs.

NEW SECTION

WAC 392-141-310 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) The definition of "school" includes learning centers or other agencies where educational services are provided.

(4) "Eligible student" means any student served by a district transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable

of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

(5) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition includes, but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

(6) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

(7) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are qualified for gifted programs or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary Secondary Education Act.

(8) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act; or

(e) Students who require special transportation to a district operated head start, early childhood education assistance program, or other early education program.

(9) "Kindergarten route" means a school bus providing home to school transportation for basic education kindergarten students operated between the beginning and end of the school day.

(10) "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

(11) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

(12) "Count period" is the three-day window used for establishing the reported student count on home to school routes.

(13) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports.

(14) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student count for the determination of funding consists of the prorated counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student count is prorated based on the number of months in the respective report period.

(15) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

(16) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating. The average distance is prorated based on the number of months in the respective report period.

(17) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

(18) "District car route" means home to school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school transportation in a district car is required to be driven by an authorized school bus driver.

(19) "District car allocation" is calculated by multiplying the total annual district car route mileage by the rate of reimbursement per mile that is authorized for state employees for the use of private motor vehicles in connection with state business in effect on September 1st of each year.

(20) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school districts, nonhigh school districts, school districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

(21) "Local characteristics factor" means a percentage increase added to the calculated student transportation alloca-

tion to account for site characteristics not identified in the regression analysis defined in WAC 392-141-360.

(22) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation including the local characteristics factor.

(23) "Adjusted allocation" means the expected allocation plus any adjustments.

(24) "Actual allocation" means the lesser of the previous year's actual reported transportation expenditures plus indirects or the adjusted allocation.

(25) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a district's transportation operation using linear programming of the data required by the funding formula and the number of buses used on home-to-school routes. Each district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

NEW SECTION

WAC 392-141-320 District reporting requirements. (1) Reports shall be submitted by each district to the superintendent prior to the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

(a) School bus route information;

(b) Student count information; and

(c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost; and

(c) An annual report of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act for the previous school year, and the total mileage and cost of such transportation.

NEW SECTION

WAC 392-141-330 School bus driver daily logs. Districts shall require drivers to maintain a daily route log that includes the school bus driver's name, bus number, route number, destinations and student counts by destination, pretrip and post-trip verification, with the date and school bus driver's signature. These daily route logs shall be completed in ink and shall be maintained in the school district files in accordance with the school district record retention schedule. Electronic data collection systems or files may be used for any of this information.

NEW SECTION

WAC 392-141-340 Determination of the walk area. (1) Each district shall determine the walk area for each school building or learning center where students are enrolled and attend class. The district is required to use a process to determine the walk area that involves as many of the following groups as possible: Parents, school administrators, law enforcement representatives, traffic engineers, public health or walking advocates and other interested parties. Hazardous conditions requiring transportation service will be documented and will include all roadways, environmental and social conditions included in the evaluation process.

(2) The process will identify preferred walking routes from each neighborhood to each elementary school as required by WAC 392-151-025. Walk areas and walking routes will be reviewed as conditions change or every two years.

(3) School districts are allowed to provide transportation service within the walk area, but basic program students who are provided transportation from school bus stops within the walk area are not eligible for funding. It is the responsibility of each school district to ensure that noneligible students who are provided with transportation service within the walk area are correctly reported during the count period.

NEW SECTION

WAC 392-141-350 Authorization and limitation on district payments for individual and in lieu transportation arrangements. Districts may commit to individual transportation or in lieu arrangements subject to approval by the educational service district superintendent or his or her designee. The following arrangements and limitations apply:

(1) A district shall contract with the custodial parent, parents, guardian(s), person(s) in loco parentis, or adult student(s) to pay the lesser of the following in lieu of transportation by the district:

(a) Mileage and tolls for home to school transportation (in whole or part) for not more than two necessary round trips per school day; or

(b) Mileage and tolls for home to school transportation for not more than five round trips per school year, plus room and board.

(2) The in lieu of transportation mileage, tolls and board and room rates of reimbursement which a district is hereby authorized to pay shall be computed as follows:

(a) Mileage reimbursement shall be computed by multiplying the actual road distance from home to school (or other location specified in the contract) with any type of transportation vehicle that is operated for the purpose of carrying one or more students by the maximum rate of reimbursement per mile that is authorized by law for state employees for the use of private motor vehicles in connection with state business;

(b) Toll reimbursement shall be computed by adding the actual fees paid as a condition to the passage of a transportation vehicle and its student passengers or its operator, or both, across a bridge or upon a ferry, and similar fees imposed as a condition to the passage, ingress, or egress of such vehicle and its student passengers or its operator, or both, while traveling to and from school; and

(c) Board and room reimbursement shall be computed at the rates established by the department of social and health services (inclusive of the basic rates and, in the case of disabled students, the additional amounts for students with special needs, but exclusive of any rates or amounts for clothing and supplies).

NEW SECTION

WAC 392-141-360 Operation allocation computation. (1) The operation allocation shall be calculated using the following factors:

(a) The combined student count of basic program students;

(b) The combined student count of special program students;

(c) The district's prorated average distance;

(d) The district's total land area;

(e) The district's total number of roadway miles;

(f) The district's number of destinations served by home to school routes;

(g) The district's number of kindergarten routes operated during ten consecutive school days that include the count period and are all within the report period; and

(h) If the school district is a nonhigh district, the answer to the following question: Does the district provide transportation service for the high school students residing in the district?

For each district, an expected allocation is determined using the coefficients resulting from a regression analysis of (a) through (h) of this subsection, evaluated statewide against the prior school year's total to and from transportation expenditures and including the local characteristics factor.

(2) The adjusted allocation is the result of modifying the expected allocation by adding any district car mileage reimbursement, adding any adjustment resulting from the alternate funding systems identified in WAC 392-141-380, and making any adjustment resulting from an alternate school year calendar approved by the state board of education under the provisions of RCW 28A.305.141.

(3) Each district's actual allocation for student transportation operations is the lesser of the prior school year's total allowable student transportation expenditures or the adjusted allocation.

(4) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12) school transportation services are provided by the district five days per week, to and from school, before and after the regular school day and operating one hundred eighty days per school year. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

NEW SECTION

WAC 392-141-370 Transition and hold harmless provisions. (1) For the 2011-12 through the 2013-14 school years, the transition process will prorate each district's transportation allocation to the extent funds are available based on the difference between the district's prior year's allocation and the district's allocation determined through the process described in WAC 392-141-360.

(2) For the 2011-12 through the 2013-14 school years, each district's student transportation operations allocation shall be no less than the previous year's transportation operations allocation but not more than the total of allowable transportation expenditures plus district indirect expenses using the process identified in WAC 392-141-410.

NEW SECTION

WAC 392-141-380 Alternate funding systems for low enrollment districts, nonhigh districts, districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services. The superintendent shall adjust the amount of the transportation operation allocation for low enrollment, nonhigh, districts in interdistrict transportation cooperatives, and educational service districts operating special transportation services in the following manner:

(1) The allocation calculated under WAC 392-141-360 is compared with the prior year's total approved transportation expenditures for each school district;

(2) The average percentage increase for all districts above the previous year's allocation is calculated; and

(3) The district's allocation shall be either the calculated allocation or the previous year's allocation increased by the average determined in subsection (2) of this section, whichever is greater, but not more than the prior year's transportation expenditures.

No later than the first business day of June of each year, the superintendent will specify the adjustment process to be used in the coming school year.

NEW SECTION

WAC 392-141-390 Allocation schedule for state payments. The superintendent shall apportion the transportation operation allocation according to the schedule in RCW 28A.510.250. Such allocation may be based on estimated amounts for payments made in September, October, November, December, and January. Prior to the 15th of January of each year the superintendent shall notify school districts of adjustments to the regression analysis coefficients and the impact on the district's allocation. The superintendent shall notify each school district before February 15th of adjustments to the district's student transportation operation allocation resulting from the winter student counts.

NEW SECTION

WAC 392-141-400 Efficiency evaluation review. (1) Each district's efficiency evaluation will be reviewed annually by the regional transportation coordinators. If a school

district's efficiency rating is less than ninety percent, the regional transportation coordinator shall review the district's transportation operation to identify the factors impacting the ability of the district to operate an efficient student transportation system. Such factors will include those within the district's controls and those factors that are beyond the district's control.

(2) Completed regional transportation coordinator reports will be provided to the legislature prior to December 1st of each year. Districts will be provided an opportunity to respond to the conclusions of the regional coordinator evaluation and such comments will be included in the report to the legislature. Also included in the report are any actions identified by a district in response to the regional transportation coordinator evaluation.

NEW SECTION

WAC 392-141-410 Recovery of transportation funds. The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the student transportation program costs that are allowable under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to expenditures calculated pursuant to (a)(i) of this subsection times the percentage calculated pursuant to subsection (4) of this section;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

(4) Allowable indirect charges for student transportation are nine percent for educational service districts and for school districts the percentage calculated from the district's annual financial statement (Report F-196) for two school years prior as follows:

(a) Divide direct expenditures for program 97 districtwide support by total general fund direct expenditures for all programs minus direct expenditures for program 97 districtwide support; and

(b) Round to three decimal places.

Funds may not be transferred from program 99 into the transportation vehicle fund.

NEW SECTION

WAC 392-141-420 District recordkeeping requirements. All data and forms necessary to develop the district's student transportation report shall be maintained in accordance with the district record retention schedule and shall include the following:

(1) All school bus route logs and school bus driver daily logs including those required in WAC 392-141-330. If student lists are maintained for each school bus route, a copy (electronic or paper) of the list in effect for each count period;

(2) All documentation used to verify the number of students boarding the bus at bus stops within the walk area of their school of enrollment;

(3) All documentation used to report and verify the location of school bus stops used in home to school transportation, including school destinations and transfer points;

(4) All documentation used to develop the annual school bus mileage report;

(5) All documentation used to develop the annual fuel report;

(6) All documentation used to develop the annual report of McKinney-Vento Homeless Act transportation;

(7) All documentation used to develop the district car mileage report;

(8) Copies of any and all correspondence, publications, news articles, or campaign materials which encourage ridership during count period that is beyond the normal activity experienced during the school year. Districts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts; and

(9) Other operational data and descriptions, as required by the superintendent to determine the operation allocation requirements for each district.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-141-105	Authority.
WAC 392-141-110	Purpose.
WAC 392-141-115	Definition—Eligible student.
WAC 392-141-120	Definition—To and from school.
WAC 392-141-130	Definition—Standard student mile allocation rate.
WAC 392-141-135	Definition—Prorated bus.
WAC 392-141-140	Definition—Radius mile.
WAC 392-141-146	Definition—Basic transportation.
WAC 392-141-147	Definition—Basic shuttle transportation.
WAC 392-141-148	Definition—Special transportation.
WAC 392-141-150	Definition—Midday transportation.
WAC 392-141-152	Definition—Combined transportation route.

WAC 392-141-155	Definition—Weighted student unit.
WAC 392-141-156	Definition—District car allocation rate.
WAC 392-141-157	Definition—District.
WAC 392-141-158	Definition—Minimum load factor.
WAC 392-141-159	Definition—Choice program transportation.
WAC 392-141-160	District reporting and recordkeeping requirements.
WAC 392-141-165	Adjustment of state allocation during year.
WAC 392-141-170	Factors used to determine allocation.
WAC 392-141-180	Limitations on the allocation for transportation between schools and learning centers.
WAC 392-141-185	Operation allocation computation.
WAC 392-141-190	Authorization and limitation on district payments for individual and in-lieu transportation arrangements.
WAC 392-141-195	Allocation schedule for state payments.
WAC 392-141-200	Recovery of transportation funds.

WSR 10-22-063
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 29, 2010, 11:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-18-070.

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

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on December 7, 2010, at 10:00 a.m.

Date of Intended Adoption: December 17, 2010.

Submit Written Comments to: Mark Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by December 7, 2010.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed WAC 458-40-660 will apply to the first half of 2011.

Further, RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The department proposes to amend the forest land values rule (WAC 458-40-540) to adjust the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2011.

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

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

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

Statute Being Implemented: RCW 84.33.091 and 84.33.140.

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

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

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

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

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

October 29, 2010

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-02-031, filed 12/29/09, effective 1/1/10)

WAC 458-40-540 Forest land values—2010. The forest land values, per acre, for each grade of forest land for the ((~~2010~~)) 2011 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((~~2010~~)) 2011 VALUES ROUNDED
1	1	$((~~209~~)) 204
	2	((~~207~~)) 202
	3	((~~194~~)) 190
	4	((~~140~~)) 137
2	1	((~~175~~)) 171
	2	((~~170~~)) 166
	3	((~~163~~)) 159
	4	((~~117~~)) 114
3	1	((~~137~~)) 134
	2	((~~133~~)) 130
	3	((~~132~~)) 129
	4	((~~101~~)) 99
4	1	((~~105~~)) 103
	2	((~~102~~)) 100
	3	((~~101~~)) 99
	4	((~~77~~)) 75
5	1	((~~76~~)) 74
	2	((~~69~~)) 67
	3	((~~68~~)) 67
	4	((~~47~~)) 46
6	1	((~~39~~)) 38
	2	((~~36~~)) 35
	3	((~~36~~)) 35
	4	((~~34~~)) 33
7	1	17
	2	17
	3	16
	4	16
8	1	1

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

AMENDATORY SECTION (Amending WSR 10-14-095, filed 7/6/10, effective 7/6/10)

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 ((~~July~~)) January 1 through ((~~December 31, 2010~~)) June 30, 2011:

((~~**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

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
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

~~**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~~
~~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.~~))

TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1
January 1 through June 30, 2011

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	$312	$305	$298	$291	$284
		2	312	305	298	291	284
		3	312	305	298	291	284
		4	312	305	298	291	284

TABLE 1—Proposed Stumpage Value Table
Stumpage Value Area 1
January 1 through June 30, 2011

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
Western Redcedar(2)	RC	1	567	560	553	546	539
Western Hemlock(3)	WH	1	286	279	272	265	258
		2	286	279	272	265	258
		3	286	279	272	265	258
		4	286	279	272	265	258
Red Alder	RA	1	339	332	325	318	311
		2	300	293	286	279	272
Black Cottonwood	BC	1	65	58	51	44	37
Other Hardwood	OH	1	196	189	182	175	168
Douglas-Fir Poles & Piles	DFL	1	624	617	610	603	596
Western Redcedar Poles	RCL	1	1215	1208	1201	1194	1187
Chipwood(4)	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks(5)	RCS	1	164	157	150	143	136
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, 2011

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	$327	$320	$313	$306	$299
		2	327	320	313	306	299
		3	327	320	313	306	299
		4	302	295	288	281	274
Western Redcedar(2)	RC	1	567	560	553	546	539

TABLE 2—Proposed Stumpage Value Table
Stumpage Value Area 2
January 1 through June 30, 2011

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
Western Hemlock[3]	WH	1	313	306	299	292	285
		2	313	306	299	292	285
		3	313	306	299	292	285
		4	313	306	299	292	285
Red Alder	RA	1	339	332	325	318	311
		2	300	293	286	279	272
Black Cottonwood	BC	1	65	58	51	44	37
Other Hardwood	OH	1	196	189	182	175	168
Douglas-Fir Poles & Piles	DFL	1	624	617	610	603	596
Western Redcedar Poles	RCL	1	1215	1208	1201	1194	1187
Chipwood[4]	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks[5]	RCS	1	164	157	150	143	136
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, 2011

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	$345	$338	$331	$324	$317
		2	345	338	331	324	317
		3	345	338	331	324	317
		4	315	308	301	294	287
Western Redcedar[3]	RC	1	567	560	553	546	539

TABLE 3—Proposed Stumpage Value Table
Stumpage Value Area 3
January 1 through June 30, 2011

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
Western Hemlock[4]	WH	1	293	286	279	272	265
		2	293	286	279	272	265
		3	293	286	279	272	265
		4	293	286	279	272	265
Red Alder	RA	1	339	332	325	318	311
		2	300	293	286	279	272
Black Cottonwood	BC	1	65	58	51	44	37
Other Hardwood	OH	1	196	189	182	175	168
Douglas-Fir Poles & Piles	DFL	1	624	617	610	603	596
Western Redcedar Poles	RCL	1	1215	1208	1201	1194	1187
Chipwood[5]	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks[6]	RCS	1	164	157	150	143	136
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, 2011

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	$341	$334	$327	$320	$313
		2	341	334	327	320	313
		3	341	334	327	320	313
		4	327	320	313	306	299

TABLE 4—Proposed Stumpage Value Table
Stumpage Value Area 4
January 1 through June 30, 2011

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
Lodgepole Pine	LP	1	114	107	100	93	86
Ponderosa Pine	PP	1	141	134	127	120	113
		2	120	113	106	99	92
Western Redcedar[3]	RC	1	567	560	553	546	539
Western Hemlock[4]	WH	1	293	286	279	272	265
		2	293	286	279	272	265
		3	293	286	279	272	265
		4	293	286	279	272	265
Red Alder	RA	1	339	332	325	318	311
		2	300	293	286	279	272
Black Cottonwood	BC	1	65	58	51	44	37
Other Hardwood	OH	1	196	189	182	175	168
Douglas-Fir Poles & Piles	DFL	1	624	617	610	603	596
Western Redcedar Poles	RCL	1	1215	1208	1201	1194	1187
Chipwood[5]	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks[6]	RCS	1	164	157	150	143	136
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, 2011

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	$339	$332	$325	$318	$311
		2	339	332	325	318	311
		3	339	332	325	318	311
		4	328	321	314	307	300
Lodgepole Pine	LP	1	114	107	100	93	86
Ponderosa Pine	PP	1	141	134	127	120	113
		2	120	113	106	99	92
Western Redcedar[3]	RC	1	567	560	553	546	539
Western Hemlock[4]	WH	1	275	268	261	254	247
		2	275	268	261	254	247
		3	275	268	261	254	247
		4	275	268	261	254	247
Red Alder	RA	1	339	332	325	318	311
		2	300	293	286	279	272
Black Cottonwood	BC	1	65	58	51	44	37
Other Hardwood	OH	1	196	189	182	175	168
Douglas-Fir Poles & Piles	DFL	1	624	617	610	603	596
Western Redcedar Poles	RCL	1	1215	1208	1201	1194	1187
Chipwood[5]	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks[6]	RCS	1	164	157	150	143	136
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, 2011

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	$127	$120	$113	$106	$99
Lodgepole Pine	LP	1	114	107	100	93	86
Ponderosa Pine	PP	1	141	134	127	120	113
		2	120	113	106	99	92
Western Redcedar[3]	RC	1	377	370	363	356	349
True Firs and Spruce[4]	WH	1	117	110	103	96	89
Western White Pine	WP	1	94	87	80	73	66
Hardwoods	OH	1	23	16	9	2	1
Western Redcedar Poles	RCL	1	377	370	363	356	349
Small Logs[5]	SML	1	17	16	15	14	13
Chipwood[5]	CHW	1	2	1	1	1	1
RC Shake & Shingle Blocks[6]	RCS	1	164	157	150	143	136
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, 2011

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	$127	$120	$113	$106	$99
Lodgepole Pine	LP	1	114	107	100	93	86

TABLE 7—Proposed Stumpage Value Table
Stumpage Value Area 7
January 1 through June 30, 2011

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
Ponderosa Pine	PP	1	141	134	127	120	113
		2	120	113	106	99	92
Western Redcedar[3]	RC	1	377	370	363	356	349
True Firs and Spruce[4]	WH	1	117	110	103	96	89
Western White Pine	WP	1	94	87	80	73	66
Hardwoods	OH	1	23	16	9	2	1
Western Redcedar Poles	RCL	1	377	370	363	356	349
Small Logs[5]	SML	1	17	16	15	14	13
Chipwood[5]	CHW	1	2	1	1	1	1
RC Shake & Shingle Blocks[6]	RCS	1	164	157	150	143	136
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, 2011

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	$327	$320	$313	$306	$299
		2	327	320	313	306	299
		3	327	320	313	306	299
		4	313	306	299	292	285
Lodgepole Pine	LP	1	114	107	100	93	86

TABLE 8—Proposed Stumpage Value Table
Stumpage Value Area 10
January 1 through June 30, 2011

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
Ponderosa Pine	PP	1	141	134	127	120	113
		2	120	113	106	99	92
Western Redcedar[3]	RC	1	553	546	539	532	525
Western Hemlock[4]	WH	1	279	272	265	258	251
		2	279	272	265	258	251
		3	279	272	265	258	251
		4	279	272	265	258	251
Red Alder	RA	1	325	318	311	304	297
		2	286	279	272	265	258
Black Cottonwood	BC	1	51	44	37	30	23
Other Hardwood	OH	1	182	175	168	161	154
Douglas-Fir Poles & Piles	DFL	1	610	603	596	589	582
Western Redcedar Poles	RCL	1	1201	1194	1187	1180	1173
Chipwood[5]	CHW	1	5	4	3	2	1
RC Shake & Shingle Blocks[6]	RCS	1	164	157	150	143	136
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 ((~~July~~)) January 1 through ((~~December 31, 2010~~)) June 30, 2011:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
((~~July~~)) January 1 through ((~~December 31, 2010~~)) June 30, 2011

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
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

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-$145.00
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
((~~July~~)) January 1 through ((~~December 31, 2010~~)) June 30, 2011

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.

WSR 10-22-064
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 29, 2010, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-082.

Title of Rule and Other Identifying Information: WAC 458-20-10001 (Rule 10001) Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation, this rule explains the department's adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act.

Hearing Location(s): Department of Revenue, Capital Plaza Building, Fourth Floor L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on December 8, 2010, at 10:00 a.m.

Date of Intended Adoption: December 15, 2010.

Submit Written Comments to: Bridget N. McBryde, P.O. Box 47453, Olympia, WA 98504-7453, e-mail BridgetM@dor.wa.gov, by December 8, 2010.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend Rule 10001 to eliminate the discussion of proceedings regarding wholesale and retail cigarette license revocation or suspension. Chapter 154, Laws of 2009 (SHB 1435), provides the Washington state liquor control board with the authority to approve, deny, suspend, or revoke retailer and wholesaler cigarette licenses. The department also proposes updating the information in the rule regarding adjudicative procedures for certificate of registration revocations.

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

Reasons Supporting Proposal: To recognize 2009 legislation and update information in the current rule.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: RCW 34.05.482 through 34.05.494, except RCW 34.05.491(5), for actions involving revocation of a certificate of registration (tax registration endorsement) pursuant to RCW 82.32.215.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Bridget N. McBryde, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1579; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

October 29, 2010
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-07-070, filed 3/14/95, effective 4/14/95)

WAC 458-20-10001 Adjudicative proceedings—Brief adjudicative proceedings((~~—Wholesale and retail cigarette license revocation or suspension~~))—Certificate of registration (tax registration endorsement) revocation. ((~~(1) **Introduction.** The department conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). These adjudicative proceedings include, but are not limited to, wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. The department adopts in this section the brief adjudicative procedures as provided in the APA for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215. This section explains the procedure and process pertaining to the adopted brief adjudicative proceedings. This section does not apply to log export enforcement actions pursuant to chapter 240-15 WAC, orders to county officials issued pursuant to RCW 84.08.120 and 84.41.120, brief adjudicative proceedings converted to formal adjudicative proceeding under subsection (5) of this section, and other formal adjudicative proceedings which are explained in WAC 458-20-10002. This section also does not apply to the nonadjudicative proceedings as provided in RCW 82.32.160, 82.32.170 and WAC 458-20-100.~~

~~(2) **Adoption of brief adjudicative proceedings.** As provided in RCW 34.05.482 (1)(c), this section adopts RCW 34.05.482 through 34.05.494 and the brief adjudicative procedure for APA adjudicative proceedings which the department of revenue conducts for wholesale and retail cigarette license revocation or suspension of RCW 82.24.550, and certificate of registration (tax registration endorsement) revocation of RCW 82.32.215.~~

~~(3) **Brief adjudicative proceedings - procedure.** The following procedure shall apply to the department's brief adjudicative proceeding.~~

~~(a) **Notice of hearing.** The department shall set the time and place of the hearing. The date of the hearing may not be not less than seven days after written notice is served upon the person(s) to whom the proceedings apply. With the concurrence of the presiding officer and all persons involved in the proceedings, the hearing may be conducted by telephone and the recorded conversation shall be made a part of the record of the hearing. The notice shall include:~~

~~(i) The names and addresses of each person to whom the proceedings apply and, if known, the names and addresses of their representative(s);~~

~~(ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;~~

~~(iii) The official file or other reference number and the name of the proceeding;~~

~~(iv) The name, official title, mailing address and telephone number of the presiding officer, if known;~~

~~(v) A statement of the time, place and nature of the proceeding;~~

~~(vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;~~

~~(vii) A reference to the particular sections of the statutes and/or rules involved;~~

~~(viii) A short and plain statement of the matters asserted by the department; and~~

~~(ix) A statement that if a person to whom the proceedings apply fails to attend or participate in a hearing, the hearing may/will proceed and that adverse action may be taken against such person.~~

~~(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to~~

whom the proceedings apply, all notices, including the notice of hearing, continuance and dismissal, shall either be in the primary language of such person or shall include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice shall state that if a limited-English-speaking or hearing impaired party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the person to whom the proceedings apply or witness. The notice shall include a form to be returned to the department for a person to whom the proceedings apply to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

(b) **Presiding officer.**

(i) When the proceeding is a certificate of registration (tax registration endorsement) revocation pursuant to RCW 82.32.215, the presiding officer shall be the assistant director of the department's compliance division or designee, or such other person as the director of the department of revenue may designate.

(ii) When the proceeding is a wholesale and retail cigarette license revocation or suspension pursuant to RCW 82.24.550, the presiding officer shall be the assistant director of the department's special program's division or designee, or such other person as the director of the department of revenue may designate.

(iii) The presiding officer conducts the hearing and before taking action, the presiding officer shall give each person to whom the proceedings apply an opportunity to be informed of the department's view of the matter, and to explain the person's view of the matter.

(iv) The presiding officer shall have the authority granted by chapter 34.05 RCW including but not limited to:

(A) Determine the order of the hearing including the presentation of evidence; administer oaths and affirmations; issue subpoenas;

(B) Rule on procedural matters, objections and motions; rule on offers of proof and receive relevant evidence;

(C) Ask questions of the person to whom the proceedings apply or the person representing the department, or of the witnesses called by either, in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(D) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by both the person to whom the proceedings apply and the department;

(E) Take any appropriate action to maintain order during the hearing; permit or require oral argument, briefs, or discovery and determine the time limits for their submission;

(F) Take any other action necessary and authorized by applicable statute or rule;

(G) Waive any requirement of this section not specifically required by law unless either the person to whom the proceedings apply or the department shows that it would be prejudiced by such a waiver;

(H) Convert the proceedings, at any time in the proceeding, from a brief adjudicative proceeding to a formal proceeding pursuant to RCW 34.05.413 through 34.05.479 and WAC 458-20-10002.

(c) **Appearance and practice at a brief adjudicative proceeding.**

(i) The right to practice before the department in a brief adjudicative proceeding is limited to:

(A) Persons who are natural persons representing themselves;

(B) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(C) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(D) Public officials in their official capacity;

(E) Certified public accountants entitled to practice in the state of Washington;

(F) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership or corporation;

(G) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(H) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

(ii) In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(d) **Rules of evidence - discovery - record of the proceeding - filing and service of papers.**

(i) All testimony of a person to whom the proceedings apply, the department and witnesses shall be made under oath or affirmation. Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the presiding officer in the English language, to the best of the interpreter's skill and judgment.

(ii) Evidence, including hearsay, is admissible if in the judgment of the presiding officer, it is the kind of evidence on which reasonably prudent persons are accustomed to rely in conduct of their affairs. The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious and shall be guided in evidentiary rulings, where not inconsistent with this section, by RCW 34.05.452, WAC 10-08-140, and by the Washington Rules of Evidence.

(iii) Discovery (depositions, interrogatories, etc.,) may be conducted only by order of the presiding officer and if ordered, RCW 34.05.446 applies to the proceeding.

(iv) All hearings shall be recorded by manual, electronic, or other type of recording device. The agency record shall consist of the documents regarding the matter that were considered or prepared by the presiding officer, or by the review-

ing officer in any review, and the recording of the hearing. These records shall be maintained by the department as its official record.

(v) All notices and other pleadings or papers filed with the presiding officer or reviewing officer shall be served on each person to whom the proceeding apply, the department or their representatives/agents of record. Service shall be made personally; by first-class, registered or certified mail; by telegraph; or electronic telefacsimile (fax) and same-day mailing of copies; or by commercial parcel delivery company. Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. Service by telegraph shall be regarded as completed when deposited with a telegraph company with the charges prepaid. Service by electronic telefacsimile (fax) shall be regarded as completed upon the production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as being completed upon delivery to the parcel delivery company charges prepaid. Service to a person to whom the proceedings apply and/or representative/agent, and, the department and/or presiding officer shall be to the address shown on the notice of subsection (2)(a) of this section. Service to the reviewing officer shall be to interpretation and appeals division at the address shown in subsection (4) of this section. Where proof of service is required, the proofs of service include:

(A) An acknowledgment of service;

(B) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names).

(C) A certificate that the person signing the certificate did on the date of the certificate serve the papers upon all or one or more of parties of record by a method of service as provided in this subsection (d)(v) of this section.

(e) **Impaired persons – interpreters.** When an impaired person is a person to whom the proceedings apply, or a witness, the presiding officer shall, in absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceeding.

(i) An "impaired person" is any person involved in an adjudicative proceeding who is a hearing impaired person or a limited-English-speaking person.

(ii) A "hearing impaired person" is a person who, because of a hearing impairment or speech defects, cannot readily understand or communicate in spoken language; and includes persons who are deaf, deaf and blind, or hard of hearing.

(iii) A "limited-English-speaking person" is a person who because of a non-English-speaking cultural background cannot readily speak or understand the English language.

(iv) A "qualified interpreter" is one who is readily able to interpret spoken and translate written English to and for impaired persons into spoken English and who meets the requirements of (e)(ix) of this subsection: Provided, That for hearing impaired persons a qualified interpreter must be certified by the registry of interpreters for the deaf with a specialist certificate-legal, master's comprehensive skills certificate, or comprehensive skills certificate.

(v) An "intermediary interpreter" is one who is readily able to interpret spoken and translate written English and who meets the requirements of (e)(ix) of this subsection, and who is able to assist in providing an accurate interpretation between spoken and sign language or between variants of sign language by acting as an intermediary between a hearing impaired person and a qualified interpreter for the hearing impaired.

(vi) When an impaired person is a person to whom the proceedings apply, or a witness in such adjudicative proceeding, the presiding officer shall, in the absence of a written waiver signed by the impaired person, appoint a qualified interpreter to assist the impaired person throughout the proceedings. The right to a qualified interpreter may not be waived except when:

(A) The impaired person requests a waiver through the use of a qualified interpreter;

(B) The representative, if any, of the impaired person consents; and

(C) The presiding officer determines that the waiver has been made knowingly, voluntarily, and intelligently.

(vii) Waiver of a qualified interpreter shall not preclude the impaired person from claiming his or her right to a qualified interpreter at a later time during the proceeding.

(viii) Relatives of any participant in a proceeding and employees of the department shall not be appointed as interpreters in the proceeding without the consent of the presiding officer and the person(s) to whom the proceedings apply, in the case of an employee of the department, or the department in the case of a relative of the person(s) to whom the proceedings apply or of a witness for such person(s).

(ix) The presiding officer shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired person. This determination shall be based upon the testimony or stated needs of the impaired person, the interpreter's education, certifications, and experience, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. A person to whom the proceedings apply or their representative(s), or the department may question the interpreter as to his or her qualifications or impartiality.

(x) If at any time during the proceeding, in the opinion of the impaired person, the presiding officer or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired person, the presiding officer shall appoint another qualified interpreter.

(xi) If the communication mode or language or a hearing impaired person is not readily interpretable, the interpreter or hearing impaired person shall notify the presiding officer who shall appoint and pay an intermediary interpreter to assist the qualified interpreter.

(xii) Mode of interpretation.

(A) Interpreters for limited-English-speaking persons shall use simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(B) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the qualified interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(C) When an impaired person is the person to whom the proceedings apply, the interpreter shall translate all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit translation and the presiding officer shall ensure that the interpreter translates the entire proceeding to the person to whom the proceedings apply to the extent that the person has the same opportunity to understand all statements made during the proceedings as a nonimpaired party listening to uninterpreted statements would have.

(xiii) A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. A qualified interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(xiv) The presiding officer shall explain to the impaired party that a written decision or order will be issued in English, and that the party may contact the interpreter for a translation of the decision at no cost to the party. The presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(xv) At the hearing, the interpreter for a limited-English-speaking party shall provide to the presiding officer the interpreter's telephone number written in the primary language of the impaired party. A copy of such telephone number shall be attached to the decision or order mailed to the impaired party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.

(xvi) In any proceeding involving a hearing impaired person, the presiding officer may order that the testimony of the hearing impaired person and the interpretation of the proceeding by the qualified interpreter be visually recorded for use as the official transcript of the proceeding. Where simultaneous translation is used for interpreting statements of limited-English-speaking persons, the foreign language statements shall be recorded simultaneously with the English language statements by means of a separate tape recorder.

(xvii) A qualified interpreter appointed under this section is entitled to a reasonable fee for services, including waiting time and reimbursement for actual necessary travel expenses. The department shall pay such interpreter fee and expenses. The fee for services for interpreters for hearing impaired persons shall be in accordance with standards established by the department of social and health services, office of deaf services.

(xviii) This subsection (e) shall apply to a review of the decision under subsection (4) of this section.

(f) **Informal settlements.**

(i) The department encourages informal settlement of issues which have resulted in a proceeding being commenced. At any time in the proceeding the person(s) to whom the proceeding applies and the department are encouraged to reach agreement. Settlement of a proceeding shall be concluded by:

(A) Stipulation of the person(s) to whom the proceedings apply and the department signed by each or their representative(s), and/or recited into the record of the proceedings. In the event the stipulation provides for a payment agreement, the order of the presiding officer may be a continuance of these proceedings and dismissal when all payments have been made, but in no case, may the order provide for the reconvening of the proceedings if the payment agreement is breached unless seven days notice of the reconvening is provided. Except as provided in this section, the presiding officer shall enter an order in conformity with the terms of the stipulation; or

(B) Withdrawal by the department in which case the presiding officer shall enter an order dismissing the proceedings.

(ii) In the case of revocation of certificate of registration (tax registration endorsement) under RCW 82.32.215, the presiding officer, or the reviewing officer, shall not hear or rule upon (other than the entry of an order as provided in (f)(i)(A) and (B) of this subsection) arguments, or motions, etc., for the settlement of the matter. Settlement of the controversy is totally between the person(s) to whom the proceedings apply and the department through its representative at the proceeding. Nothing in this section shall prevent a presiding officer or a reviewing officer from granting a continuance of a hearing, or such other motion as the presiding officer or reviewing officer deems appropriate for the purpose of settlement of the matter between the parties.

(g) **Entry of orders.**

(i) At the time any unfavorable action is taken, the presiding officer shall serve upon each person to whom the proceeding apply and the department a brief statement of the reasons for the decision. Within ten days of a decision, the presiding officer shall serve upon each person to whom the proceedings apply and the department a brief written statement of the reasons for the decision and the availability of the departmental review procedure as provided in this section.

(ii) The brief written statement provided the parties, which may include an order where a person to whom the proceedings apply fails to attend or participate in the hearing or other stage of the proceeding, is an initial order and if no review is requested as provided in subsection (4) of this section, the initial order shall become a final order.

(4) **Review of initial orders from brief adjudicative proceeding.** If a person to whom the proceedings apply wishes a review of the initial order, the brief written statement of the decision as provided in subsection (3)(g)(i) of this section, the person may request a review by the department by the filing of a petition for review, or the making of an oral request for review, with the department's interpretation and appeals division, within twenty-one days after the service of the initial order on the person to whom the proceedings apply. A request for review should state the reasons the review is sought. The address and telephone number of the interpretation and appeals division is:

Interpretation and Appeals Division
Department of Revenue
P.O. Box 47460

~~Olympia, Washington 98504-7460~~
~~Telephone Number - (360) 753-2310~~
~~Fax - (360) 664-2729~~

~~(a) The interpretation and appeals division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall give each person to whom the proceedings apply and the department an opportunity to explain each person's view of the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the interpretation and appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or subsection (5) of this section in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100.~~

~~(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer shall have the authority of a presiding officer as provided in this section.~~

~~(c) The order of the reviewing officer shall be in writing and shall include a brief statement of the reasons for the decision and must be entered within twenty days of the initial order or the petition for review, whichever is later. The order shall include a description of any further administrative review available, or if none, a notice that judicial review may be available.~~

~~(d) Unless otherwise provided in the order of the reviewing officer, the order of the reviewing officer represents the final position of the department. A reconsideration of the order of a reviewing officer may be sought only if the right to a reconsideration is contained in the final order.~~

~~(5) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer, or reviewing officer, may at any time, on motion of a person to whom the proceedings apply, or the department, or his/her own motion, convert the brief adjudicative proceeding to a formal proceeding.~~

~~(a) The presiding/reviewing officer shall 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 of the department of revenue, upon notice to the person(s) to whom the proceedings apply and the department, may become the presiding officer, or may designate a replacement presiding officer to conduct the formal proceedings.~~

~~(c) In the conduct of the formal proceedings, WAC 458-20-10002 shall apply to the proceedings. The converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).~~

~~(6) **Court appeal.** Court appeal from the final order of the department is available under 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) **Posting of a final order of revoking a certificate of registration (tax registration endorsement) - revocation not a substitute for other collection methods or processes available to the department.** When an order revoking a certificate of registration (tax registration endorsement) is a final order of the department, the department shall post a copy of the order in a conspicuous place at the main entrance to the taxpayer's place of business and it shall remain posted until such time as the warrant amount has been paid.~~

~~(a) It is unlawful to engage in business after the revocation of a certificate of registration (tax registration endorsement). A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290(2) provides that a person violating the prohibition against such engaging in business is guilty of a Class C felony in accordance with chapter 9A.20 RCW.~~

~~(b) Any certificate of registration (tax registration endorsement) revoked shall not be reinstated, nor a new certificate of registration issued until:~~

~~(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and~~

~~(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual liability of the taxpayer.~~

~~(c) The revocation of a certificate of registration (tax registration endorsement), including any time during the revocation process, shall not be a substitute for, or in any way curtail, other collection methods or processes available to the department.~~

~~(8) **Computation of time.** In computing any period of time prescribed by this regulation 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 shall be excluded in the computation.~~))

(1) **Introduction.** The department of revenue (department) has adopted the procedure for brief adjudicative proceedings provided in RCW 34.05.482 through 34.05.494, except for 34.05.491(5), for actions involving revocation of a certificate of registration (tax registration endorsement) pursuant to RCW 82.32.215. This section explains the procedure for these brief adjudicative proceedings. This section does not apply to the following:

• Adjudicative proceedings under WAC 458-20-10002, which addresses converted brief adjudicative proceedings and formal adjudicative proceedings relating to log export enforcements;

• Nonadjudicative proceedings under RCW 82.32.160 and 82.32.170, and WAC 458-20-100;

• Enforcement proceedings under RCW 82.24.550 and 82.26.220; and

• Brief adjudicative proceedings for matters relating to the revocation of reseller permits under WAC 458-20-102.

The department has not adopted RCW 34.05.491(5), which provides that a request for administrative review is deemed to have been denied if the agency does not make a disposition of the matter within twenty days after the request is submitted.

(2) **Brief adjudicative proceedings - procedure.** The following procedure applies to the department's brief adjudicative proceedings for actions involving revocation of a certificate of registration, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) **Notice.** The department will set the time and place of the hearing. Written notice shall be served upon the taxpayer(s) at least seven days before the date of the hearing. Service is to be made pursuant to subsection (5)(a) of this section. The notice must include:

(i) The names and addresses of each taxpayer to whom the proceedings apply and, if known, the names and addresses of the taxpayer's representative(s), if any;

(ii) The mailing address and the telephone number of the person or office designated to represent the department in the proceeding;

(iii) The official file or other reference number and the name of the proceeding;

(iv) The name, official title, mailing address and telephone number of the presiding officer, if known;

(v) A statement of the time, place and nature of the proceeding;

(vi) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(vii) A reference to the particular sections of the statutes and/or rules involved;

(viii) A short and plain statement of the matters asserted by the department against the taxpayer and the potential action to be taken; and

(ix) A statement that if the taxpayer fails to attend or participate in a hearing, the hearing can proceed and that adverse action may be taken against the taxpayer.

(x) When the department is notified or otherwise made aware that a limited-English-speaking person is a person to whom the proceedings apply, all notices, including the notice of hearing, continuance and dismissal, must either be in the primary language of that person or must include a notice in the primary language of the person which describes the significance of the notice and how the person may receive assistance in understanding and responding to the notice. In addition, the notice must state that if a party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice must include a form to be returned to the department to indicate whether such person, or a witness, needs an interpreter and to identify the primary language or hearing impaired status of the person.

(b) **Appearance and practice at a brief adjudicative proceeding.** The right to practice before the department in a brief adjudicative proceeding is limited to:

(i) Persons who are natural persons representing themselves;

(ii) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

(iii) Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;

(iv) Public officials in their official capacity;

(v) Certified public accountants entitled to practice in the state of Washington;

(vi) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

(vii) Partners, joint venturers or trustees representing their respective partnerships, joint ventures, or trusts; and

(viii) Other persons designated by a person to whom the proceedings apply with the approval of the presiding officer.

In the event a proceeding is converted from a brief adjudicative proceeding to a formal proceeding, representation is limited to the provisions of law and RCW 34.05.428.

(c) **Hearings by telephone.** With the concurrence of the presiding officer and all persons involved in the proceedings, a hearing may be conducted telephonically. The conversation will be recorded and will be made a part of the record of the hearing.

(d) **Presiding officer.**

(i) The presiding officer must be an assistant director of the department's compliance division, or such other person as the director of the department may designate.

(ii) The presiding officer shall conduct the proceeding in a just and fair manner and before taking action, the presiding officer shall provide the taxpayer an opportunity to be informed of the department's position on the pending matter.

(iii) The presiding officer has all authority granted under chapter 34.05 RCW.

(e) **Entry of orders.**

(i) When the presiding officer issues a decision, the presiding officer shall briefly state the basis and legal authority for the decision. Within ten days of issuing the decision, the presiding officer shall serve upon the parties, the initial order and information regarding any departmental administrative review that may be available.

(ii) The decision and the brief written statement of the basis and legal authority for it is an initial order. The initial order will become a final order if no review is requested as provided in subsection (3) of this section.

(3) **Review of initial orders from brief adjudicative proceeding.** The following procedure applies to the department's review of a brief adjudicative proceeding conducted pursuant to subsection (2) of this section, unless the matter is converted to a formal proceeding as provided in subsection (8) of this section.

(a) **Request for review of the initial order.** A party to a brief adjudicative proceeding under subsection (2) of this section may request review of the initial order by filing a written petition for review, or making an oral request for review, with the department's appeals division within twenty-one days after service of the initial order is received or deemed to be received by the party. The address and telephone number of the appeals division is:

Appeals Division
Department of Revenue
P.O. Box 47460
Olympia, Washington 98504-7460
Telephone Number - 360-570-6140
Fax - 360-664-2729

(i) When a petition of review of the initial order is made, the taxpayer must submit to the appeals division at the time the petition is filed any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider. If the petition for review is made by oral request, the taxpayer must also submit any evidence or written material to the appeals division on the same day that the oral request is made.

(ii) The department may, on its own motion, conduct an administrative review of the initial order as provided for in RCW 34.05.491.

(b) **Reviewing officer.** The appeals division shall appoint a reviewing officer who shall make such determination as may appear to be just and lawful. The reviewing officer shall provide the taxpayer and the department an opportunity to explain their positions on the matter and shall make any inquiries necessary to ascertain whether the proceeding should be converted to a formal adjudicative proceeding. The review by the appeals division shall be governed by the brief adjudicative procedures of chapter 34.05 RCW and this section; or WAC 458-20-10002 in the event a brief adjudicative hearing is converted to a formal adjudicative proceeding, and not by the processes and procedures of WAC 458-20-100. The reviewing officer shall have the authority of a presiding officer as provided in this section.

(c) **Record review.** Review of an initial order is limited to the evidence considered by the presiding officer, the initial order, the recording of the initial proceeding, and any records and written evidence submitted by the parties to the reviewing officer. However, the agency record need not constitute the exclusive basis for the reviewing officer's decision.

(i) The reviewing officer may request additional evidence from either party at any time during its review of the initial order. Once the reviewing officer requests evidence from a party, that party has seven days after service of the request to supply the evidence to the reviewing officer, unless the reviewing officer, in his or her discretion, allows additional time to submit the evidence.

(ii) In addition to requesting additional evidence, the reviewing officer may review any records of the department necessary to confirm that the tax warrant upon which the initial order of revocation was based remains unpaid. In the event that the tax warrant has been satisfied subsequent to the entry of the initial order, but before the issuance of the final order, the reviewing officer shall reinstate the taxpayer's certificate of registration.

(iii) If the reviewing officer determines that oral testimony is needed, he/she may schedule a time for both parties to present oral testimony. Notice of the oral testimony must be given to the parties in the same manner as the notice provided in subsection (2)(a) of this section. Oral statements before the reviewing officer shall be by telephone, unless specifically scheduled by the reviewing officer in his or her discretion to be in person.

(iv) The department will have an opportunity to respond to the taxpayer's request for review and may also submit any other relevant evidence and written material to the reviewing officer. The department must submit its material within seven days of service of the material submitted by the party requesting review of the initial order. The department must also serve a copy of all evidence and written material provided to the reviewing officer to the taxpayer requesting review according to subsection (5) of this section. Proof of service is required under subsection (5)(h) of this section when the department submits material to the taxpayer under this subsection.

(d) **Failure to participate.** If a party requesting review of an initial order under this subsection fails to participate in the proceeding or fails to provide documentation to the reviewing officer upon his or her request, the reviewing officer may uphold the initial order based upon the record.

(e) **The final orders.**

(i) The reviewing officer may issue two final orders. The first final order (the "final order") must include the decision of the reviewing officer and a brief statement of the basis and legal authority for the decision. This order may contain confidential taxpayer information under RCW 82.32.330, and, therefore, cannot be disclosed by the department, except to the taxpayer.

(ii) The reviewing officer may issue a second final order (the "posting order"). The posting order will be issued when the reviewing officer has ordered the revocation of the tax registration certificate. The posting order will state what certificate of registration is being revoked, the listing of the tax warrants involved, and what jurisdictions the tax warrants were filed in.

(iii) Unless specifically indicated otherwise, the term "final order" as used throughout this section shall refer to both the final order and the posting order.

(iv) The parties can expect that, absent continuances, the final order and posting order will be entered within twenty days of the petition for review.

(f) **Reconsideration.** Unless otherwise provided in the reviewing officer's order, the reviewing officer's order represents the final position of the department. A reconsideration of the reviewing officer's order may be sought only if the right to a reconsideration is contained in the final order.

(g) **Judicial review.** Judicial review of the final order of the department is available under Part V, chapter 34.05 RCW. However, judicial review may be available only if a review of the initial decision has been requested under this subsection and all other administrative remedies have been exhausted. See RCW 34.05.534.

(4) **Rules of evidence - record of the proceeding.**

(a) Evidence is admissible if in the judgment of the presiding or reviewing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely on in conducting their affairs. The presiding and reviewing officer should apply RCW 34.05.452 when ruling on evidentiary issues in the proceeding.

(b) All oral testimony must be recorded manually, electronically, or by another type of recording device. The agency record must consist of the documents regarding the matters that were considered or prepared by the presiding

officer, or by the reviewing officer in any review, and the recording of the hearing. These records must be maintained by the department as its official record.

(5) **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:

• In person;

• By first-class, registered, or certified mail;

• By fax and same-day mailing of copies;

• By commercial parcel delivery company; or

• 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 (3) of this section.

(h) Where proof of service is required, the proof of service must include:

• An acknowledgment of service;

• A certification, 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.

(6) **Interpreters.** When a party or witness requires an interpreter, chapters 2.42 and 2.43 RCW will apply. When those statutes are silent on an issue before the presiding or reviewing officer, the provisions regarding interpreters in WAC 10-08-150 apply.

(7) **Informal settlements.** The department encourages informal settlement of issues in proceedings under its jurisdiction. The presiding or reviewing officer may not order settlement of the proceedings. Settlement is at the discretion of the parties. Settlement of a proceeding may be concluded by:

(a) A stipulation signed by the taxpayer and the department, or their respective representatives, and/or recited into the record of the proceedings. If the stipulation provides for a payment agreement, the presiding or reviewing officer may order a continuance of the proceedings during the period of repayment and dismissal when all payments have been made. An order providing for the reconvening of the proceedings if the payment agreement is breached is allowed so long as the proceeding is not held less than seven days after notice of the reconvening is provided. Except as provided in this subsection, the presiding or reviewing officer must enter an order in conformity with the terms of the stipulation; or

(b) The entry of an order dismissing the proceedings if the department withdraws the revocation of the certificate of registration.

(8) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding or reviewing officer may at any time, on motion of the taxpayer, the department, or the officer's own motion, convert the brief adjudicative proceeding to a formal proceeding.

(a) The presiding or reviewing officer may convert the proceeding if the officer finds that use of the brief adjudicative proceeding:

• Violates any provision of law,

• The protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, or

• The issues and interests involved warrant the use of procedures governed by RCW 34.05.413 through 34.05.476 or 34.05.479.

(b) WAC 458-20-10002 applies to formal proceedings. In proceedings to revoke a taxpayer's certificate of registration, the converted proceeding is itself the independent administrative review by the department of revenue as provided in RCW 82.32A.020(6).

(9) **Computation of time.** In computing any period of time prescribed by this section, the day of the act or event after which the designated period is to run is not included. The last day of the period is included, unless it is a Saturday, Sunday, or a state legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or state legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and holidays will be excluded in the computation.

(10) **Posting of a final order of revoking a tax registration endorsement - revocation not a substitute for other collection methods or processes available to the department.** When an order revoking a tax registration endorsement is a final order of the department, the department shall post a copy of the posting order in a conspicuous place at the main entrance to the taxpayer's place of business and it must remain posted until such time as the warrant amount has been paid.

(a) It is unlawful to engage in business after the revocation of a tax registration endorsement. A person engaging in the business after a revocation may be subject to criminal sanctions as provided in RCW 82.32.290. RCW 82.32.290 (2) provides that a person violating the prohibition against such engaging in business is guilty of a Class C felony in accordance with chapter 9A.20 RCW.

(b) Any certificate of registration revoked shall not be reinstated, nor a new certificate of registration issued until:

(i) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered; and

(ii) The taxpayer has deposited with the department of revenue as security for taxes, increases and penalties due or

which may become due under such terms and conditions as the department of revenue may require, but the amount of the security may not be greater than one-half the estimated average annual tax liability of the taxpayer.

(c) Revocation proceedings will not substitute for, or in any way curtail, other collection methods or processes available to the department.

WSR 10-22-082
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-06—Filed November 1, 2010, 10:07 a.m.]

Supplemental Notice to WSR 10-18-083.

Preproposal statement of inquiry was filed as WSR 10-14-097.

Title of Rule and Other Identifying Information: Insurers use of legal name when transacting insurance business.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, http://www.insurance.wa.gov/about/directions.shtml, on December 8, 2010, at 10:00 a.m.

Date of Intended Adoption: December 13, 2010.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail kacys@oic.wa.gov, fax (360) 586-3109, by December 3, 2010.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by December 3, 2010, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to modify a recently adopted rule to ensure that insurers and the entities they contract with use their "legal name" when conducting insurance so that consumers and the office [of] the insurance commissioner will be able to identify which insurer is involved in any insurance transaction while not creating an operational burden for insurers.

Reasons Supporting Proposal: A draft was sent to insurers with comments solicited to ensure that the amended rule provides necessary consumer protection, supports the commissioner's market conduct oversight, and minimizes the operation burden on insurers.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.05.190.

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

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

Name of Agency Personnel Responsible for Drafting: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7041; Implementation and Enforcement: Carol Sureau, P.O. Box 40254, Olympia, WA 98504-0254, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule modifies a recently adopted rule on legal name to more tightly define the instances in which a legal name is required to be used by an insurer and to provide guidance to them for developing internal standards and guidelines to ensure legal name communication to consumers. The end result is a likely reduction of the regulatory burden on insurers, which is projected to result in a reduction of associated costs. Because no additional restrictions or costs are imposed no small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

November 1, 2010
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2008-11, filed 6/2/10, effective 7/3/10)

WAC 284-30-670 Insurers must transact business in their legal name. (1) Purpose and Scope. The purpose of this regulation is to adopt a long standing bulletin and a technical assistance advisory regarding the use of trade names, group names, logos or trademarks. The purpose of this regulation is also to set forth requirements to help ensure that a consumer knows the legal name of the insurer they are doing business with.

(2) Pursuant to RCW 48.30.010, the commissioner ((~~is adopting this regulation as an unfair practice for the following reasons:~~

~~(a) Many insurers fail or periodically fail to comply with the legal name requirement of RCW 48.05.190(1) when transacting insurance business.~~

~~(b) When a consumer seeks assistance from the commissioner, the legal name of the company must be determined. When the consumer is unable to provide the information, the commissioner's staff must research it, which unnecessarily wastes the commissioner's resources and delays the inquiry and resolution, posing a risk of harm to the consumer.~~

~~(c) Insurers will not accept a lawsuit from their insured if the paperwork does not identify the insurer correctly.~~

~~(2) The following definitions apply to this section:~~

~~(a)~~)) has found and hereby defines it to be an unfair practice for an insurer to conduct its business in any name other than its own legal name as required by RCW 48.05.190. Unless consumers are aware of the insurer's legal name, a consumer's policy rights and legal rights may be compromised. In addition, when consumers seek the commissioner's assistance and are not aware of the insurer's legal name, the commissioner's staff must research it, which unnecessarily wastes the commissioner's resources and delays the inquiry and resolution, posing a risk of harm to the consumer.

(3) When used in this regulation, "legal name" of the insurer means the name displayed on the Washington state certificate of authority issued by the commissioner.

(((~~(b) "Contracted entity" means an entity with which an insurer contracts to transact any aspect of the business of insurance, such as adjudicating claims, determining eligibility, or underwriting or marketing products on behalf of an~~

~~insurer, and includes such entities as insurance producers, claims administrators, and managing general agents as defined in RCW 48.98.005(3).~~

~~(c) "Transacting business" includes insurance transaction, as defined in RCW 48.01.060.~~

~~(3) An insurer must identify itself by its legal name when:~~

~~(a) Transacting business with a consumer, insured, potential insured or claimant as defined in WAC 284-30-320(2); and~~

~~(b) Communicating orally, electronically, or in writing with the commissioner regarding an investigation, inquiry, enforcement matter or examination.~~)) (4) Each insurer must have standards and procedures to ensure that each consumer with whom they conduct an insurance transaction is informed of and can consistently identify the legal name of the insurer. Each insurer must provide the insurance commissioner with its standards and procedures and proof of its compliance upon request. Existence of standards and procedures is not prima facie evidence of compliance. The insurer must be able to show the legal name was provided when issuing policy documents, billing statements, and other written communications regarding policy services, underwriting, and claims and at the point during policy sales transactions when the company is determined.

(5) To assist the commissioner in identifying the legal name of the insurer, insurers' written communications ((~~with~~)) to the commissioner in response to any investigation, inquiry, enforcement matter or examination must ((~~also~~)) include the insurer's NAIC code.

(((~~(4) Advertisements directed to insureds or potential insureds must clearly display the insurer's legal name and the location of its home office or principal office, as required by RCW 48.30.050.~~

~~(a) An advertisement by an insurance producer, licensee, or other marketing entity advertising an insurance product common to multiple insurers does not need to include the legal name of the insurer. The advertisement must include the insurance producer, licensee, or other marketing entity's name and address.~~

~~(b) Advertisements directed solely to insurance producers, providers, or other marketing entities, but not directed to insureds or potential insureds, are exempt from this subsection.~~

~~(5) Each single violation of this section by an insurer or its contracted entity may subject the insurer to all applicable provisions of Title 48 RCW, including, but not limited to, RCW 48.05.140 and 48.05.185.~~))

(6) This regulation does not bar the use of trade names, ((~~group names,~~)) logos ((~~or~~)), trademarks((~~. To be in compliance with RCW 48.05.190(1), when an insurer uses a trade name, group name, logo or trademark when conducting its business, the insurer must also identify itself by its legal name as required by this section.~~)) or group names that identify companies collectively, for brand identification or for general purposes, but an insurer must also provide its legal name in the following:

(a) In negotiations preliminary to the execution of an insurance contract;

(b) In the execution of an insurance contract; and

(c) In the transaction of matters subsequent to the execution of an insurance contract and arising out of it.

(7) Violation of this regulation is not a violation for purposes of RCW 48.30.015(5).

WSR 10-22-092
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF ECOLOGY
(By the Code Reviser's Office)
[Filed November 2, 2010, 8:33 a.m.]

WAC 173-525-010, 173-525-020, 173-525-030, 173-525-040, 173-525-050, 173-525-060, 173-525-070, 173-525-080, 173-525-090, 173-525-100, 173-525-110 and 173-525-120, proposed by the department of ecology in WSR 10-09-071 appearing in issue 10-09 of the State Register, which was distributed on May 5, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 10-22-093
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF ECOLOGY
(By the Code Reviser's Office)
[Filed November 2, 2010, 8:33 a.m.]

WAC 173-526-010, 173-526-020, 173-526-030, 173-526-040, 173-526-050, 173-526-060, 173-526-070, 173-526-080, 173-526-090, 173-526-100, 173-526-110 and 173-526-120, proposed by the department of ecology in WSR 10-09-072 appearing in issue 10-09 of the State Register, which was distributed on May 5, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 10-22-094
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
(By the Code Reviser's Office)
[Filed November 2, 2010, 8:34 a.m.]

WAC 232-12-064 and 232-12-066, proposed by the department of fish and wildlife in WSR 10-09-104 appearing in issue 10-09 of the State Register, which was distributed on May 5, 2010, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted

within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 10-22-101
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 2, 2010, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-090.

Title of Rule and Other Identifying Information: Chapter 308-14 WAC, Court reporters.

Hearing Location(s): Department of Licensing, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on December 10, at 9:30 a.m.

Date of Intended Adoption: December 13, 2010.

Submit Written Comments to: Cameron Dalmas, Court Reporter Program, Department of Licensing, P.O. Box 9026, Olympia, WA 98502, e-mail ndalmas@dol.wa.gov, fax (360) 664-2550, by December 3, 2010.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by December 3, 2010, TTY (360) 664-0116 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends WAC 308-14-010 by defining a "continuing education unit" as sixty minutes of education in a program approved by the department. Units will be recognized in not less that [than] half hour increments of time.

Amends WAC 308-14-100 by adding continuing education units upon license renewal:

1. Adds, effective July 1, 2011, documentation of five continuing education units completed in the past year for reinstatement.

2. Adds annual certification of five continuing education units at time of renewal. Excess credits shall not be carried over.

3. Identifies activities eligible for continuing education units.

4. Adds courses or activities approved by national or state recognized associations for continuing education units.

5. Adds approved courses offered at an accredited college or university with a documented grade of C or better for continuing education units.

6. Identifies activities not acceptable for continuing education units.

7. Adds the requirement for the individual to maintain documentation of continuing education units for at least three years.

Statutory Authority for Adoption: Chapter 18.145 RCW, RCW 43.24.023.

Statute Being Implemented: Chapter 18.145 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed implementation date is July 1, 2011.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.328.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule revision. Washington state department of licensing is not a named agency, therefore exempt from the provision.

November 2, 2010
Walt Fahrer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-17-072, filed 8/13/04, effective 9/13/04)

WAC 308-14-010 Definitions. "Character" is a letter, numeral, punctuation mark, control character, blank, or other such symbol.

"Continuing education unit" is defined as sixty minutes of education in a program approved by the department. Units will be recognized in not less than thirty minute increments of time.

"Standard line" is a line that can be determined by looking at a full line of text and counting from the first letter, including punctuation and spaces, to the last letter of that line. The standard line does not include a "Q" or "A," or the numbers on the left side of the page.

AMENDATORY SECTION (Amending WSR 90-10-009, filed 4/20/90, effective 5/21/90)

WAC 308-14-100 License renewal—Continuing education—Penalties. (1) Certification must be renewed on or before the expiration date shown on the certificate. The expiration date is the certificate holder's ((~~birthdate~~)) birth date. Effective July 1, 2010, each certified court reporter shall verify they have completed a minimum of five continuing education units annually at renewal in a manner defined by the director. Excess continuing education units from the previous reporting year shall not be carried over. Failure to renew the certificate by the expiration date will result in a penalty fee in an amount determined by the director. Certification may be reinstated for up to three years by payment of all renewal fees and a penalty fee for the period for which the certification had lapsed and documentation of five continuing education units completed in the past year.

(2) Continuing education units shall have direct relevance to the professional development of the certified court reporter. The program must be led by an instructor, be interactive, and involve assessment or evaluation. Approved programs include, but are not limited to, the following:

(a) Language skills:

(i) English or a foreign language;
(ii) American Sign Language;
(iii) Grammar;
(iv) Punctuation;
(v) Proofreading;
(vi) Spelling;
(vii) Vocabulary;
(viii) Linguistics, including regional dialects or colloquialisms;
(ix) Etymology;
(x) Word usage.
(b) Academics:
(i) Medical terminology and abbreviations related to any medical or medically related discipline (e.g., anatomy, psychiatry, psychology, dentistry, chiropractic, podiatry);
(ii) Pharmacology;
(iii) Surgical procedures and instruments, with emphasis on terminology and concepts encountered in litigation;
(iv) Pathology and forensic pathology, including DNA and other terminology encountered in litigation;
(v) Legal terminology and etymology;
(vi) Legal research techniques;
(vii) Presentations on various legal specialty areas (e.g., torts, family law, environmental law, admiralty, corporate law, patent law);
(viii) History of legal systems;
(ix) Technical subjects, with emphasis on terminology and concepts encountered during litigation (e.g., construction, accident reconstruction, insurance, statistics, product testing and liability, various engineering fields).
(c) Case law, federal and state statutes, and regulations:
(i) Federal and state rules of civil and criminal procedure and rules of evidence;
(ii) Codes of federal and/or state regulations;
(iii) Presentations on legal proceedings (depositions, trials, federal and state appellate procedure, administrative proceedings, bankruptcy proceedings, workers' compensation proceedings);
(iv) Any changes to (a), (b), and (c) of this subsection as they affect the certified court reporter.
(d) Technology and business practices:
(i) Computer skills;
(ii) Voice recognition technology;
(iii) Videotaping, video conferencing;
(iv) Reporting skills and practices (e.g., readbacks, marking exhibits, administering oaths);
(v) Transcript production, formats, indexing, document management;
(vi) Technological developments related to court reporting, real-time reporting, CART, or captioning;
(vii) Office practices, office management, marketing, accounting, personnel practices, public relations;
(viii) Financial management, retirement planning, estate planning;
(ix) Partnerships, corporations, taxation, insurance.
(e) Professionalism and ethics:
(i) Standards of court reporting practice applicable to individual states or governmental entities;
(ii) Professional comportment and demeanor as it relates to judges, attorneys, fellow reporters, witnesses, litigants and court and law office personnel.
(f) CPR/first-aid classes.
(g) In-house courses offered by court reporting firms.
(h) Vendor sponsored training, with the exception of sales presentations.
(i) Community based programs.
(j) Meetings that include educational or professional development presentations that otherwise meet Washington state criteria for award of continuing education units;
(k) Documented pro bono services on an hour-for-hour basis including, but not limited to:
(i) Presence at a court hearing or deposition;
(ii) Transcription;
(iii) Editing;
(iv) Proofreading.
(l) Documented teaching, research or writing for a planned, directly supervised continuing education experience that fulfills continuing education criteria where no payment is received. Continuing education units will be awarded only once for each separate item.
(3) Any course or activity previously approved by any nationally or state recognized association for court reporting professions shall be approved for continuing education units.
(4) Courses offered with a documented grade of C or better at an accredited college or university will be awarded continuing education units at the following rates:
(a) Semester course: 6 continuing education units.
(b) Trimester course: 5 continuing education units.
(c) Quarter course: 4 continuing education units.
(5) Activities that are not acceptable for continuing education units include, but are not limited to, the following:
(a) Attendance at professional or association business meetings or similar meetings convened for the purpose of election of officers, policymaking, or orientation;
(b) Leadership activities in national, state, or community associations and board or committee service;
(c) Attendance at entertainment, recreational, or cultural presentations;
(d) Recreation, aerobics, massage, or physical therapy courses or practice or teaching of same;
(e) Classes in the performing arts, studio arts, or crafts or teaching of same;
(f) Tours of museums or historical sites;
(g) Social events at meetings, conventions, and exhibits;
(h) Visiting vendor exhibits or attending vendor sales demonstrations;
(i) Jury duty;
(j) Any event for which the attendee receives payment for attendance;
(k) Any event which is part of the attendee's regular employment or is attended for the purpose of gaining employment;
(l) On-the-job training or other work experience, life experience, previous work experience.
(6) Individuals shall maintain documentation of continuing education units for at least three years and provide them to the department on request.

(7) An individual who fails to renew their certification by the expiration date forfeits all rights to represent themselves as a "shorthand reporter," "court reporter," "certified shorthand reporter," or "certified court reporter" until the certificate has been reinstated.

(((~~(3)~~))) (8) An individual who has allowed the certification to expire for three years or more is required to file a new complete application and fee and must pass the state-approved examination. Upon passage of the exam a certificate will be issued.

WSR 10-22-102
PROPOSED RULES
UNIVERSITY OF WASHINGTON

[Filed November 2, 2010, 11:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-014.

Title of Rule and Other Identifying Information: Chapter 478-116 WAC, Parking and traffic rules of the University of Washington, Seattle.

Hearing Location(s): Room 231, Mary Gates Hall, UW Seattle Campus, on December 13, 2010, at 12:30 p.m.

Date of Intended Adoption: January 20, 2011.

Submit Written Comments to: Rebecca Goodwin Deardorff, University of Washington, Rules Coordination Office, Box 351210, Seattle, Washington 98195-1210, e-mail rules@uw.edu, fax (206) 685-3825, by December 13, 2010.

Assistance for Persons with Disabilities: Contact disability services office by November 29, 2010, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revisions move the administrative oversight of parking enforcement from the university police department to the commuter services unit within the UW transportation services department. These changes would consolidate and improve the administration of all parking-related matters within one campus department including: Providing more cost effective management of limited parking resources, streamlining the citation and appeal adjudication processes, providing greater alignment of enforcement regulations with the current transportation environment, and making housekeeping changes to update unit names.

Reasons Supporting Proposal: The proposed rules have been reviewed and approved by the university transportation committee.

Statutory Authority for Adoption: RCW 28B.10.560 and 28B.20.130.

Statute Being Implemented: RCW 28B.10.560.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: V'Ella Warren, Senior Vice-President for Finance and Facilities, 4311 11th Avenue N.E., Suite 600, Seattle, WA 98105, (206) 543-8765; and Enforcement: John Vinson, Chief of UWPD, 1117 N.E. Boat Street, Seattle, WA 98105, (206) 543-0521, and Josh Kavanagh, Director of Transportation Services, 3745 15th Avenue N.E., Seattle, WA 98105, (206) 685-1567.

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

A cost-benefit analysis is not required under RCW 34.05.328. This chapter is not considered a significant legislative rule by the University of Washington.

November 2, 2010

Rebecca Goodwin Deardorff

Director of Rules Coordination

PART I
PREAMBLE, GENERAL INFORMATION, AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 01-20-030, filed 9/26/01, effective 10/27/01)

WAC 478-116-010 Preamble. Pursuant to the authority granted by RCW 28B.10.560 and 28B.20.130, the board of regents of the University of Washington establishes the following rules to govern motorized and nonmotorized vehicle traffic and parking upon ((~~public~~)) lands and facilities of the University of Washington in Seattle, Washington.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

WAC 478-116-020 Objectives of parking and traffic rules. (((~~(1)~~))) The objectives of these rules are:

(((~~(a)~~))) (1) To protect and control pedestrian and vehicular traffic ((~~and parking~~)) on the campus((~~.~~

~~(b)~~))) of the university;

(2) To assure access at all times for emergency vehicles and equipment((~~.~~

~~(c)~~));

(3) To minimize traffic disturbances ((~~during class hours.~~

~~(d)~~));

(4) To facilitate the ((~~work~~)) operations of the university by assuring access to its vehicles ((~~and by assigning the limited parking space and hours of operation for the most efficient use.~~

~~(e)~~));

(5) To allocated limited parking space in order to promote its most efficient use;

(6) To protect state property; and

(7) To encourage and support travel to the ((~~university~~)) campus by means other than single occupancy vehicle (SOV).

(((~~(2) Permission to park or operate a vehicle at the University of Washington is a privilege granted by the board of regents of the University of Washington.~~)))

NEW SECTION

WAC 478-116-022 Knowledge of parking and traffic rules. It is the responsibility of all individuals parking or operating a vehicle on the campus to comply with these rules. Lack of knowledge of these rules shall not be grounds for the dismissal of any citation for a violation of the parking or traffic rules.

NEW SECTION

WAC 478-116-024 Definitions. (1) **Authorized agent.** An entity or individual authorized by the director of transportation services to facilitate services provided by the department.

(2) **Bicycle.** Any device defined as a bicycle in chapter 46.04 RCW.

(3) **Campus.** The University of Washington, Seattle, and those lands and leased facilities of the university within UWPD jurisdiction and where parking is managed by transportation services.

(4) **Fee.** A charge for the use of services provided and facilities managed by transportation services.

(5) **Impoundment.** The removal of the vehicle to a storage facility either by an authorized agent of transportation services or UWPD.

(6) **Immobilization.** The attachment of a metal device to a wheel of a parked car so that the vehicle cannot be moved.

(7) **Meter.** A single fixed device that registers and collects payment for the length of time a vehicle occupies a single parking space. A meter does not produce a receipt, physical permit, or virtual permit. A meter is not a permit-issuance machine.

(8) **Motorcycles and scooters.** Motor vehicles designed to travel with not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and which is designed to be steered with a handle bar. For the purposes of these rules, motorcycles, motorized bicycles excluding pedal assisted electric bicycles, and scooters are considered motor vehicles and are subject to all traffic and parking rules controlling other motor vehicles.

(9) **Motor vehicle.** An automobile, truck, motorcycle, scooter, or bicycle that is assisted by an engine or other mechanism, or vehicle without motor power designed to be drawn or used in conjunction with the aforementioned vehicles including, but not limited to, trailers, travel trailers, and campers. In addition, any bicycle with an electric motor that is disengaged will be considered a bicycle and not a motor vehicle under this chapter.

(10) **Nonmotorized vehicle.** A device other than a motor vehicle used to transport persons, including, but not limited to, bicycles, skateboards, in-line skates, and roller skates.

(11) **Operator or driver.** Every person who drives or is in actual physical control of a motor vehicle or nonmotorized vehicle.

(12) **Overtime parking.** The occupation by a vehicle of a time-limited space beyond the posted time limit or time provided on a permit, meter, or permit-issuance machine.

(13) **Parking product.** A product issued by transportation services to manage motorized and nonmotorized access to the university. Parking products include, but are not limited to, permits, access to bicycle lockers and other bicycle parking facilities, and parking access cards.

(14) **Parking space.** A space for parking one motor vehicle designated by lines painted on either side of the space, a wheel stop positioned in the front of the space, a sign or signs, or other markings.

(15) **Permit.** A document approved by and/or issued by transportation services that when properly displayed authorizes a person to park.

(16) **Permit-issuance machine.** A transportation services deployed and managed machine that issues physical or virtual permits for designated spaces. A permit-issuance machine is not a meter.

(17) **Registered owner.** The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.

(18) **Roller skate/in-line skate.** A device used to attach wheels to the foot or feet of a person.

(19) **Skateboard.** Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

(20) **Traffic.** The movement of motorized vehicles, nonmotorized vehicles and pedestrians in an area or along a street as is defined in chapter 46.04 RCW.

(21) **Transportation services.** The university department that manages and maintains parking facilities, issues parking products, issues citations, processes citation appeals, and collects fees and fines.

(22) **University.** The University of Washington, Seattle, and collectively those responsible for its control and operation.

(23) **UWPD.** University of Washington police department.

(24) **Vehicle.** Any motorized or nonmotorized vehicle.

(25) **Visitor.** A person who is neither an employee nor a student of the university.

(26) **Virtual permit.** A permit stored within a permit-issuance machine that authorizes a person to park in a designated space. Virtual permits are valid for a space through the date or time stored in the machine.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

WAC 478-116-030 Applicable parking and traffic rules. The following laws and rules apply upon ((~~state lands devoted mainly to the activities of the University of Washington~~)) campus:

(1) Vehicle and other traffic laws of the state of Washington, Title 46 RCW.

(2) University ((~~of Washington~~)) parking and traffic rules.

NEW SECTION

WAC 478-116-035 Enforcement of parking and traffic rules. The university has full control of parking and traffic management on campus. Authorized agents of transportation

services enforce parking rules and may conduct traffic control on campus. UWPD officers are authorized to enforce traffic and parking rules on campus. The university may impose additional traffic and parking restrictions to achieve the specified objectives of this chapter during special events and during emergencies.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

WAC 478-116-061 Liability of the university. Except for vehicles that the university owns and operates, the university assumes no liability under any circumstance for vehicles ((~~parked on university properties~~)) on the campus. No bailment, but only a license, is created by the purchase and/or issuance of a permit.

PART II
PARKING ((~~SERVICES~~)) RULES

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

WAC 478-116-111 ((~~Valid~~)) Permit required for all motorized vehicles parked on campus. Except as provided in WAC 478-116-112 and 478-116-155, no person shall park or leave any motorized vehicle, whether attended or unattended, upon the campus unless the person first purchases a valid permit from transportation services or a transportation services permit-issuance machine. Permission to park on campus will be shown by display of a valid permit in accordance with WAC 478-116-122.

(1) A valid permit is ((~~one of the following~~)):

(((~~(1) An unexpired and unrecalled vehicle permit with an area designator that is properly registered and displayed on a vehicle in accordance with WAC 478-116-223.~~

~~(2)~~)) (a) A current, physical vehicle permit issued by an authorized agent or permit-issuance machine designated by transportation services and displayed in accordance with WAC 478-116-122;

(b) A temporary physical permit ((~~authorized~~)) issued by ((~~parking services and displayed in accordance with instructions on the permit.~~

~~(3) A parking permit issued by a gate attendant which is displayed face up on the vehicle dashboard and is fully visible from the exterior of the motor vehicle~~)) an authorized agent or permit-issuance machine designated by transportation services. Temporary permits are valid through the date or time of the permit; or

(c) A virtual permit that is stored within a permit-issuance machine for designated spaces. Virtual permits are valid for a specific space through the date or time stored in the machine and, if applicable, listed on the customer receipt.

(2) Parking permits are not transferable, except as provided in WAC 478-116-114.

(3) Transportation services reserves the right to refuse to issue parking permits.

(4) The university may allow persons without permits to drive through the campus without parking.

NEW SECTION

WAC 478-116-112 Visitor parking for motorized vehicles. (1) No permit or payment shall be required for public safety and emergency vehicles while performing emergency services.

(2) Permits and payment of fees are required for all visitors parking on campus, unless exempted by transportation services' policy or state and local law.

(3) University departments may pay for all or part of the permit fee for their official visitors and guests.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

WAC 478-116-114 ((~~Transferable~~)) Transfer of permits limited. (1) Permits ((~~holders~~)) may ((~~transfer one valid permit~~)) be transferred between motor vehicles((~~. Improper transfer of a permit shall include, but not be limited by, the wrongful sale, lending, or bad faith transfer of a parking permit~~)) registered with transportation services for that individual permit, but may not be transferred to a third party to be used in an unregistered vehicle. The transfer of a permit by any unauthorized means including, but not limited to, resale or lending is prohibited.

(2) Permits ((~~displaying license plate numbers shall only be valid in the vehicles whose license number matches the number written on the permit~~)) are not transferrable between parking areas, unless authorized by transportation services.

NEW SECTION

WAC 478-116-118 Responsibility of person to whom the permit is issued. (1) The person(s) to whom a permit is issued is responsible for paying for the permit until the permit expires or is returned to transportation services, unless stated otherwise in these rules. All associated outstanding fees must be satisfactorily settled before a parking permit may be issued, reissued, or renewed.

(2) Permit holders shall provide transportation services with the license plate numbers of any vehicles they intend to use with a permit.

(3) The person(s) to whom a permit is issued is responsible for any violations of this chapter associated with a vehicle to which the permit is affixed and/or registered pursuant to WAC 478-116-341 up to the date and time the permit expires or is reported lost or stolen.

NEW SECTION

WAC 478-116-122 Display of permits. (1) Permits shall be prominently displayed and be fully visible from the exterior of the vehicle or recorded in a permit-issuance machine as required by transportation services.

(2) Instructions on how to properly display permits will be provided by transportation services at the time of sale and on the transportation services' web site.

NEW SECTION

WAC 478-116-124 Parking fees. (1) The schedule for parking fees shall be set by transportation services and approved by the president of the university or the president's designee, provided that such process includes consultation with affected students, faculty, and staff.

(2) The approved fee schedule shall be made available at transportation services and on the transportation services' web site.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

WAC 478-116-131 ((~~Parking for~~)) Special events ((~~and other university functions~~)) parking and lot closures. (((~~(1) Parking for attendees to events that may displace regular parking customers or that may require added parking services staffing shall be accommodated only if parking services can find suitable alternatives for regular parking customers. Parking fees will be charged as follows:~~

~~(a) Parking for attendees at freshman convocation will be complimentary. Parking services will charge the cost of staff and services used expressly for the event to the sponsoring department;~~

~~(b) An event rate will be charged to attendees of events that require staffing to collect fees; and~~

~~(c) The cost of prepurchased parking and alternative transportation for Husky football games shall be negotiated with the department of intercollegiate athletics.~~

~~(2) Parking services may rent available parking facilities to sponsors of events or to university departments that require parking areas to conduct their business who shall pay in advance and be charged at a per space fee for the particular rented facility.~~

~~(3) Parking services may extend its hours of operations to encompass the hours of an event. The following conditions shall require a parking fee for events scheduled outside the normal hours of operation:~~

~~(a) Any activity which in the judgment of parking services is expected to attract over five hundred vehicles to campus; or~~

~~(b) Any event requiring a city of Seattle special event permit.~~

~~(4) University departments which sponsor functions such as athletic events, conferences, seminars and dinners may arrange parking for their guests on a space available basis. Departments have the option of paying for guest parking; otherwise, their guests will be responsible for the parking fee. Departments may also collect parking fees to facilitate prepaid parking with the prior approval of parking services.~~

~~(5) Parking services may displace permit holders from their regularly assigned areas during special events. Permit holders shall be provided an alternate area assignment during special events at no extra charge.~~)) (1) During special events causing additional or heavy traffic, the university may impose additional traffic and parking restrictions per WAC 478-116-035.

(2) The university reserves the right to close any campus parking area it deems necessary for maintenance, safety, events, construction or to meet special needs. Transportation services will, to the extent practical, provide notice to users and suitable alternatives for affected permit holders.

NEW SECTION

WAC 478-116-135 Parking within designated spaces. (1) No motor vehicle shall be parked on the campus except in areas designated as parking areas, unless authorized by transportation services, or in emergency situations, by UWPD.

(2) No person shall stop, stand, or park any motor vehicle so as to create a safety hazard, obstruct traffic along or upon any street, or obstruct pedestrian movement along any plaza, path, or sidewalk.

(3) No motor vehicle shall be parked so as to occupy any portion of more than one parking space as designated within the parking area, unless authorized by transportation services. The fact that other motor vehicles may have been so parked as to require the vehicle to occupy a portion of more than one space or stall shall not excuse a violation of this section.

NEW SECTION

WAC 478-116-155 Parking regulated by meter or permit-issuance machine. (1) Notwithstanding display of a valid permit to park in other parking areas/lots on campus, any motor vehicle which occupies a metered space is subject to payment of the meter fee and subject to the posted time limits. Motor vehicles displaying a disability permit or license plate issued by the state department of licensing shall not be subject to payment of fees when parked in a space which is restricted as to the length of time parking is permitted.

(2) Notwithstanding the display of a valid permit to park in other parking area/lots on campus, any motor vehicle which occupies a space requiring a space-specific permit administered by a permit-issuance machine is subject to payment of a permit fee and the posted time limits. Vehicles displaying a disability permit or license plate issued by the state department of licensing shall not be subject to payment of fees when parked in a space which is restricted as to the length of time parking is permitted.

NEW SECTION

WAC 478-116-175 Overtime parking violations. After a motor vehicle has been cited for parking beyond the time posted, the vehicle may be cited a frequency of one additional citation for each period of time equal to the maximum time limit posted for the space.

NEW SECTION

WAC 478-116-185 Operator's responsibility. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first:

(1) Stopping the engine and locking the ignition; and

(2) Effectively setting the brake and transmission to prevent movement of the vehicle.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

WAC 478-116-191 Regulatory signs, ((~~barricades, and~~)) markings, barricades, etc. (1) ((~~Signs, barricades, markings and directions shall be so made and placed to best meet the objectives stated in WAC 478-116-020 of these rules.~~)) The university may erect permanent or temporary signs, barricades, paint marks, and other structures or directions upon the streets, curbs, and parking areas within the campus. Drivers of motorized and nonmotorized vehicles shall obey the signs, barricades, structures, markings, and directions. Drivers of motorized and nonmotorized vehicles shall comply with directions given to them by authorized agents of transportation services and UWPD in the control and regulation of traffic, in the assignment of parking spaces, and in the collection of parking fees.

(2) No ((~~unauthorized person~~)) one without authorization from transportation services or UWPD shall ((~~remove,~~)) move, deface, or in any way change a sign, barricade, structure, marking, or direction ((~~so placed, or previously placed, for the purpose of regulating~~)) that regulates traffic or parking. ((~~Authority to make temporary changes of this nature with respect to streets or roadways must be obtained from the university police department.~~))

NEW SECTION

WAC 478-116-193 Prohibited parking area(s). (1) No motor vehicle shall be parked at any place where official signs prohibit parking such as, but not limited to, "tow zone," "fire zone," "prohibited," or "no parking."

(2) No motor vehicle shall be parked within fifteen feet of a fire hydrant.

NEW SECTION

WAC 478-116-195 Prohibited parking—Space designated as disability or wheelchair. No motor vehicle shall be parked in a disability or wheelchair space or lot without an appropriate permit.

NEW SECTION

WAC 478-116-197 Motorcycle, moped, scooter, and motorized bicycle parking. (1) Motorcycles, scooters, mopeds, and motorized bicycles powered or assisted by combustible engines are considered motor vehicles and subject to all parking rules. These vehicles shall not be permitted to park on pathways, sidewalks, authorized bicycle racks or storage facilities, pedestrian areas, or in buildings.

(2) Motorcycles, scooters, mopeds, and motorized bicycles powered or assisted by combustible engines may only be parked in designated cycle areas and require a permit.

NEW SECTION

WAC 478-116-199 Bicycle parking. (1) Bicycles and bicycles assisted by electric motors shall be parked only in bicycle racks or designated bicycle parking facilities. All bicycle owners are encouraged to secure their bicycles with a secure lock. At no time shall a bicycle be parked:

(a) In a building, except where bicycle storage rooms are provided;

(b) Near a building exit;

(c) On a path or sidewalk unless attached to a university bike rack;

(d) In planted areas; or

(e) Chained or otherwise secured to trees, lamp standards, railings, garbage receptacles, fencing, or sign posts.

(2) Bicycle racks in campus areas are for parking and shall not be used for overnight storage, except for those racks adjacent to residence halls which may be used for storage when the owner/operator is a current resident of that hall. Bicycle lockers in campus are to be used for bicycle parking and may be used for overnight storage of a bicycle.

PART III
((~~PARKING VIOLATIONS~~)) USE OF MOTORIZED AND NONMOTORIZED VEHICLES

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

WAC 478-116-221 ((~~Parking~~)) Use of motorcycles ((~~and~~)), mopeds, scooters, and motorized bicycles. (1) Motorcycles, scooters, mopeds, and motorized bicycles((~~, and scooters must only be parked in designated cycle areas. Motorcycles, motorized bicycles, and scooters are~~)) powered or assisted by combustible engines or engaged electric motors are considered motor vehicles and subject to all traffic rules. These vehicles shall not be permitted ((~~to drive or park~~)) on paths, ((~~on~~)) sidewalks, ((~~on planted areas, in buildings, or in~~)) authorized bicycle or pedestrian areas, or in buildings.

(2) Bicycles assisted by electric motors are permitted on campus paths and sidewalks where bicycles are permitted to travel if the motor is disengaged and the bicycle is powered solely through human pedaling.

NEW SECTION

WAC 478-116-232 Use of bicycles. (1) The primary aim of the bicycle control program is safety. All bicycle owners are encouraged to register their bicycles at UWPD.

(2) Bicycles may be ridden any place where vehicles are permitted. They may be ridden on most sidewalks, though pedestrians always have the right of way. It shall be a violation of this section for any bicycle rider to fail to yield to pedestrians, or to ride a bicycle on paths, sidewalks, or streets where signs indicate it is prohibited. An audible signal or warning must be given by the bicyclist whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the bicycle.

(3) Bicycles operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

(4) Bicycles shall be operated in a safe manner at all times. Riding at speeds too fast for conditions, weaving in

and out of vehicular or pedestrian traffic, or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

(5) Moving or riding a bicycle into any unauthorized area such as a building or construction zone is prohibited.

NEW SECTION

WAC 478-116-242 Use of skateboards. Skateboard use in pedestrian areas including, but not limited to, walkways, ramps, concourses, and plazas (such as "Red Square"), and on internal university streets and loading areas on the campus, is restricted solely to transporting an individual from one campus destination to another. Any recreational, athletic, or other exhibitional use of skateboards unrelated to transportation is strictly prohibited, unless expressly approved in advance by the appropriate committee on the use of university facilities, pursuant to chapter 478-136 WAC. The use of skateboards for any purpose within parking lots or parking garages is strictly prohibited.

PART IV
((~~MOTOR VEHICLE CITATION ISSUANCE~~)) FINES, CITATIONS, IMMOBILIZATION, AND IMPOUNDMENT

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

WAC 478-116-301 Issuance of parking and traffic citations ((~~for motor vehicle violations~~)). (1) ((~~The university police department~~)) Upon probable cause to believe that a violation of this chapter related to motorized vehicle parking has occurred, an authorized agent of transportation services may issue a parking citation ((~~for a violation of these rules. The citation shall set~~)) setting forth the date, approximate time, locality, ((~~and~~)) nature of the violation((~~. The citation shall be served upon the person charged with the violation by delivery, mail, or placement upon the vehicle involved~~)), identifiable characteristics of the vehicle if applicable, and the amount of the fine(s).

(2) Upon probable cause to believe that a violation related to parking, traffic, or nonmotorized vehicles has occurred, UWPD may issue a citation setting forth the date, approximate time, locality, nature of violation, identifiable characteristics of the vehicle if applicable, and amount of the fine(s).

(3) The following information shall accompany and/or be printed on the ((~~parking~~)) citation:

(a) The violation fine and instructions for payment; and

(b) Instruction for contesting the citation, including where to obtain and submit petitions((~~; and~~

~~(c) Notice that~~)).

(4) The citation shall be served on the person responsible for the violation by:

(a) Attaching a copy of the citation to the vehicle allegedly involved in the violation;

(b) Mailing a copy of the citation to the registered owner; or

(c) Serving a copy of the citation personally to the person responsible.

(5) Failure to pay fines or contest the citation within the time specified in these rules can result in ((~~the sanctions~~)) a late payment fee as set forth in WAC ((~~478-116-561~~)) 478-116-335.

NEW SECTION

WAC 478-116-305 Immobilization or impoundment of motor vehicles. Any motor vehicle may be subject to immobilization or impoundment for cause as specified under WAC 478-116-351. The university and its officers, employees, and agents shall not be liable for loss or damage of any kind resulting from such immobilization or impoundment. The permit holder and/or registered owner of a vehicle that has been immobilized shall be fully liable for any loss or damage to immobilization equipment.

NEW SECTION

WAC 478-116-315 Parking product revocations. Parking products issued by the university are the property of the university, and may be recalled or revoked by the university for any of the following reasons:

(1) When the purposes for which the parking product was issued changes or no longer exists;

(2) When an unauthorized individual uses the parking product;

(3) Falsification on a parking product application;

(4) Nonpayment of fees and/or fines;

(5) Receiving over eight citations within a calendar year;

(6) Counterfeiting or altering of parking products; or

(7) Failure to comply with a final adjudicated decision of transportation services.

NEW SECTION

WAC 478-116-321 Use of recalled, revoked, lost, stolen, or forged/altered permits prohibited. (1) Vehicles displaying parking products that have been recalled, revoked, forged, altered, or reported lost or stolen will be subject to a citation and immobilization or impoundment on sight. Parking products that have been revoked, recalled, or reported lost or stolen must be returned to transportation services or an authorized agent of transportation services before the vehicle will be released.

(2) Purchasing a parking product from a party other than commuter services or a lawful designee, shall not constitute an excuse or defense for violating this section.

(3) Parties using parking products that have been recalled, revoked, forged, altered, or reported lost or stolen shall be subject to a serious violation per WAC 478-116-325 and, in addition, will be responsible for paying the cost of an equivalent permit fee from the date the permit was revoked, recalled, or reported lost or stolen to the date the permit expired or was returned to commuter services.

(4) Any unpaid fines for a violation of the rules in chapter 478-116 WAC will be deducted from any refunds resulting from the revocation of parking products.

NEW SECTION

WAC 478-116-325 Motor vehicle fine schedule. The following schedule of fines for violations of the rules listed below is hereby established.

Offense Category	Maximum Citation Fine	Fine if Citation is Paid Within 20 Calendar Days	Applicable Violations
Minor	$20.00	$15.00	• Permit not registered to vehicle, see WAC 478-116-114; • Parking outside of area assigned by permit, see WAC 478-116-114; • Improper display of permit, see WAC 478-116-122.
General	$40.00	$35.00	• No valid permit displayed, no valid permit for space or parking without making payment, see WAC 478-116-111, 478-116-112, and 478-116-155; • Occupying more than one space, see WAC 478-116-135; • Parking at expired meter, see WAC 478-116-155; • Overtime parking, see WAC 478-116-175; • All other violations of this chapter.
Major	$60.00	$50.00	• Obstructing traffic or pedestrian movements, see WAC 478-116-135; • Parking in restricted, prohibited, or nonparking areas, see WAC 478-116-135, 478-116-191, and 478-116-193.
Serious	$300.00	$250.00	• Disability/wheelchair space violations, see WAC 478-116-195; • Use of revoked, stolen, forged, or altered parking products, see WAC 478-116-315.
Late Payment Fee	Maximum Citation Fine + $25.00	N/A	Penalty for failure to pay fine, respond, or comply with final decision of the citation hearing office within time limits, see WAC 478-116-301.

NEW SECTION

WAC 478-116-331 Nonmotorized vehicle fine schedule. The following schedule of fines for violations of the rules listed below is hereby established.

Offense Category	Maximum Citation Fine	Applicable Violations
General	$10.00	Failure to yield to pedestrians, riding in restricted/prohibited areas, violation of state bicycle codes, see WAC 478-116-232.
Major	$25.00	Negligent riding, see WAC 478-116-232.
Impoundment Fee	$10.00	Bicycle impoundment, skateboard impoundment, see WAC 478-116-365 and 478-116-371.
Skateboard Violations	$10.00 - $30.00	Fines based on number of violations within a set time period, see WAC 478-116-371.
Late Payment Fee	Maximum Citation Fine + $25.00	Penalty for failure to pay fine, respond, or comply with the final decision of the citation hearing office within time limits, see WAC 478-116-301.

NEW SECTION

WAC 478-116-335 Payment of citation fines. (1) All fines must be paid as designated on the citation within twenty calendar days from the date of the citation. If a parking citation is paid within twenty calendar days, the citation fine shall be discounted according to the amounts listed in WAC 478-116-325.

(2) Fines for parking citations must be delivered in person to the transportation services' office, paid on-line, or

mailed and postmarked on or before the due date specified in these rules to avoid additional penalties.

(3) Fines for traffic citations associated with violations of this chapter must be delivered in person to the UWPD office, or mailed and postmarked on or before the due date specified in these rules to avoid additional penalties.

(4) If any citation has neither been paid nor appealed after twenty calendar days from the date of the citation, the university shall impose an additional fine as specified in WAC 478-116-325 or 478-116-331 and may:

(a) Withhold the violator's degrees, transcripts, grades, refunds, or credits until all fines are paid;

(b) Delay registration for the following quarter;

(c) Impound or immobilize the violator's vehicle after providing notice of nonpayment to the permit holder and/or registered owner;

(d) Deny future parking privileges to the violator; or

(e) Refer outstanding balances associated with unpaid fines for collection in accordance with applicable statutes and university procedure.

(5) An accumulation of traffic and parking violations by a student may be cause for discipline under the student conduct code of the university (see chapter 478-120 WAC).

(6) In addition to any other penalty which may be imposed as a result of actions described in this chapter, campus parking privileges shall be suspended until all such debts are paid.

NEW SECTION

WAC 478-116-341 Motorized vehicles—Responsible parties for illegal parking. (1) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is registered to a permit holder, there shall be a prima facie presumption that the permit holder was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(2) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is not registered to a permit holder, there shall be a prima facie presumption that the registered owner of the motor vehicle was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(3) This section shall not apply to university operated motor vehicles. The operator of a university motor vehicle is personally liable for any citation issued to the motor vehicle.

(4) A third party other than the permit holder or registered owner can assume responsibility for a citation by either paying the citation within twenty calendars days of the date of the citation or submitting a petition where the third party agrees to take responsibility. If responsibility is assumed by the third party, responsibility for the citation is waived for the permit holder and/or registered owner.

NEW SECTION

WAC 478-116-351 Motorized vehicles—Immobilization and impoundment. (1) In addition to issuing citations for violations of these rules, authorized agents of transportation services and UWPD may immobilize or impound any motorized vehicle parked on campus in violation of these rules. The expenses of immobilization, impoundment, and storage shall be charged to the owner or operator of the motor vehicle, or both, and must be paid before the motor vehicle's release. Grounds for immobilizing or impounding motor vehicles shall include, but not be limited to, the following:

(a) Blocking a roadway so as to impede the flow of traffic;

(b) Blocking a walkway, trail, sidewalk, or crosswalk so as to impede the flow of pedestrian traffic;

(c) Blocking a fire hydrant or fire lane;

(d) Creating a public safety hazard;

(e) Blocking another legally parked vehicle;

(f) Parking in a marked "tow-away" zone;

(g) Failing to pay a fine imposed under this chapter following notice of nonpayment to the registered permit holder and/or registered owner of the motor vehicle;

(h) UWPD has probable cause to believe the motor vehicle is stolen;

(i) UWPD has probable cause to believe the motor vehicle contains or constitutes evidence of a crime and impoundment is necessary to obtain or preserve such evidence; or

(j) When a driver is arrested and/or deprived of the right to leave with the driver's motor vehicle and UWPD is responsible for safekeeping of the vehicle.

(2) Not more than one business day after immobilization or impoundment of any motor vehicle, the university shall mail a notice of immobilization or impoundment to the permit holder and/or registered owner of the motor vehicle and to any other person who claims the right to possession of the motor vehicle, if those persons can be identified. Similar notice shall be given to each person who seeks to redeem an immobilized or impounded motor vehicle. If a motor vehicle is redeemed prior to the mailing of the notice, the notice may not be mailed. The notice shall contain the date of immobilization or impoundment, reason for the action, the location of the motor vehicle if impounded, redemption procedures, and an opportunity to contest the immobilization or impoundment as provided in WAC 478-116-415.

(3) A sticker will be attached to a motor vehicle that is immobilized which shall include, but is not limited to, the following information:

(a) Date and time of immobilization;

(b) Reason for immobilization;

(c) Instruction for motor vehicle release; and

(d) Notification that the motor vehicle will be towed within seventy-two hours of the date/time indicated on the sticker if the motor vehicle remains immobilized.

Motor vehicles that remain immobilized seventy-two hours after the immobilization device was placed on the motor vehicle will be impounded. Impoundment of these motor vehicles will follow the procedures outlined in WAC 478-116-361.

(4) Impounding or immobilizing a motor vehicle does not remove the obligation for any fines associated with the violation or other outstanding citations. All fines, fees, and the cost of the immobilization and impoundment (e.g., booting, towing, storage fees) must be paid prior to the removal of

an immobilization device or the release of an impounded motor vehicle.

(5) Impounded motor vehicles shall only be redeemed by the registered owner who has a valid driver's license or a person authorized by the registered owner who has a valid driver's license and who produces proof of authorization and signs a receipt for the motor vehicle.

(6) Any person seeking to redeem a motor vehicle impounded or immobilized under this chapter has the right to contest the validity of the impoundment or immobilization, the amount of applicable booting, towing, and storage fees and shall have the motor vehicle released upon requesting a review provided in WAC 478-116-415, and paying any outstanding fines, towing, and storage charges.

NEW SECTION

WAC 478-116-361 Motorized vehicles—Impoundment of abandoned motor vehicles. Authorized agents of transportation services discovering an apparently abandoned motor vehicle shall attach to the motor vehicle a readily visible notification sticker warning of impoundment if the motor vehicle is not removed within seventy-two hours from the time the sticker is attached. The sticker shall contain the following information:

(1) The date and time sticker was attached;

(2) A statement that if the motor vehicle is not removed within seventy-two hours from the time the sticker is attached, the motor vehicle will be impounded; and

(3) The address and telephone number where additional information may be obtained.

If, the motor vehicle is not removed within seventy-two hours, the motor vehicle shall be impounded as described in WAC 478-116-351.

NEW SECTION

WAC 478-116-365 Nonmotorized vehicles—Impoundment of bicycles. (1) Bicycles parked in violation of WAC 478-116-199 will be subject to seizure and impoundment by the university.

(2) Except as provided by WAC 478-116-199(2), a bicycle abandoned or parked on campus, other than at residential halls, for fourteen consecutive days or longer is presumed abandoned and is subject to seizure and impoundment by the university. Bicycles remaining at resident halls once the school year ends will be presumed abandoned and are subject to seizure and impoundment by the university. A bicycle will not be considered abandoned when the owner/operator is unable to remove it and so notifies UWPD. A bicycle that has been obviously stripped or vandalized may be immediately impounded.

(3) Owners of impounded bicycles, if identifiable, will be notified as soon as reasonably possible after impoundment and must reclaim their bicycle within fifteen consecutive days. All fines, fees, and the impoundment fee must be paid prior to the release of the bicycle. Bicycles unclaimed after sixty consecutive days will be subject to sale through the university surplus property department.

(4) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impoundment, storage, or sale of any item under this section.

(5) Impoundment or sale of any bicycle under this section shall neither substitute for, or release, any person from liability for damage to persons or property caused by the use of a bicycle, nor does it remove the obligation for any fines associated with the violation or other outstanding citations. Any proceeds resulting from the sale of a bicycle though the university surplus department will be credited toward the outstanding fee associated with the impoundment of that bicycle.

(6) Any person seeking to redeem a bicycle impounded under this chapter has the right to contest the validity of the impoundment and the amount of applicable fees and shall have the bicycle released upon establishing ownership, requesting a review provided in WAC 478-116-415, and paying any outstanding fines or storage charges.

NEW SECTION

WAC 478-116-371 Nonmotorized vehicles—Skateboard violations. (1) Skateboard use in violation of WAC 478-116-242 shall result in the following:

(a) For the first offense, UWPD will record the name of the individual and provide a written warning against further skateboard use in violation of WAC 478-116-242. Individuals who cannot produce satisfactory identification will be given a receipt for their skateboard, which will be impounded at the UWPD station until they are able to return with the receipt and identification. There will be no impoundment fee.

(b) For a second offense, within twenty-four months of any previous offense or warning, the skateboard will be impounded for not less than forty-eight hours and the offender shall be subject to a fine of ten dollars plus applicable impoundment fee.

(c) For a third or subsequent offense, within twenty-four months of any previous two offenses, warnings, or combination thereof, the skateboard will be impounded for not less than thirty calendar days and the offender shall be subject to a fine of thirty dollars plus the applicable impoundment fee.

(d) Impounded skateboards will be held by UWPD and released only during regular business hours to individuals with satisfactory identification. Payment of a ten-dollar storage fee will also be required for release, except as provided in (a) of this subsection.

(2) Skateboards impounded under this section which are unclaimed sixty consecutive days after the applicable minimum impoundment time period has elapsed will be presumed abandoned and be subject to sale at a public auction conducted by the university surplus property department.

(3) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impounding, storage, or sale of any item under this section.

(4) Impoundment or sale of any skateboard under this section shall neither substitute for, nor release any person from liability for damage to persons or property caused by use of a skateboard at the university, nor does it remove the obligation for any fines associated with the violation or other outstanding citations. Any proceeds resulting from the sale

of a skateboard though the university surplus department will be credited toward the outstanding fee associated with the impoundment of that skateboard.

(5) Any person seeking to redeem a skateboard impounded under this chapter has the right to contest the validity of the impoundment, the amount of applicable fees, and shall have the skateboard released upon requesting a review provided in WAC 478-116-415, and paying any outstanding fines or impoundment fees.

PART V
((~~IMPOUNDED MOTOR VEHICLES~~)) CITATION, IMMOBILIZATION, AND IMPOUNDMENT APPEALS

NEW SECTION

WAC 478-116-405 Election to pay fine or contest citations. (1) **Election to pay fine.** A person who receives a citation, shall, within twenty calendar days from the date of the citation either pay the applicable fine or contest the issuance of the citation in the manner prescribed in subsection (2) of this section. If paid within twenty calendar days of citation issuance, motorized parking citation fines shall be discounted per WAC 478-116-325. Once the applicable fine is paid, the citation can no longer be appealed. Failure to either pay the fine or timely appeal the citation shall automatically result in the citation being final, the full amount of the fine shall stand, and an additional late payment fee per offense shall be imposed for each citation which is not responded to within the time limits set forth in this section.

(2) **Election to contest a citation.** A person wishing to contest a citation (hereinafter "petitioner") may do so by completing and submitting a citation petition (hereinafter "petition") to the citation hearing office within twenty calendar days of the date of the citation. Petitions for motorized and nonmotorized parking citations must be delivered to transportation services within the allotted time limit. Petitions for traffic and all other nonmotorized citations must be delivered to UWPD within the allotted time limit.

Petition forms are available at transportation services and UWPD or on the transportation services and UWPD web sites. The petitioner must complete each section of the petition form and provide a brief statement regarding circumstances associated with the citation. A citation hearing officer shall review the petition and provide written notification of his or her initial decision with information about the opportunity for further review within ten calendar days of taking action on the initial decision. The amount of any reduction to the fine assessed in the initial decision is at the discretion of the citation hearing officer. Any fines owed on an initial decision not contested as provided in subsection (3) of this section shall be paid within twenty-one calendar days after service of the initial decision. If payment is not received within twenty-one calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(3) **Review of initial decision.** If a petitioner chooses to contest the initial decision issued by the citation hearing officer, the petitioner shall forfeit any reduction in the assessed fines offered in the initial decision. The petitioner must contact the department processing the petition (transportation services or UWPD) orally or in writing within twenty-one calendar days after service of the decision. The request for review shall contain an explanation of the petitioner's position and a statement of reasons why the initial decision on the petition was incorrect. The reviewing officer shall, within twenty calendar days of the date of the request to review the initial decision, render a final written decision which shall include a brief statement of the reasons for the decision, offer of settlement if applicable, and provide information about the opportunity to appeal the decision to district court. The amount of fine or settlement assessed in the final decision is at the discretion of the citation hearing officer. Any final decision of the reviewing officer not appealed as provided in subsection (4) or (5) of this section shall be paid within ten calendar days after service of the decision. If payment is not received within ten calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(4) **Discretionary review of initial decision.** If the petitioner has not requested a review of the initial decision, the citation hearing officer may, within twenty calendar days after service of the initial decision, conduct a review and issue a final decision on its own motion and without notice to the parties, but it may not take any action on review less favorable to the petitioner than the initial decision without giving the petitioner notice and opportunity to explain his or her view of the matter.

(5) **Appeal to district court.** The application for appeal to district court shall be in writing and must be filed with the department processing the petition (transportation services or UWPD) within ten calendar days of service of the final decision. The written notice must be submitted on the "Notice of Appeal" form provided by transportation services or UWPD. The Notice of Appeal form will be available at transportation services or UWPD during regular hours of operation. The department processing the citation will forward the documents relating to the appeal to district court. No appeal to the district court may be taken unless the citation has been contested as provided in subsections (2) and (3) of this section, in addition to this subsection. If a petitioner chooses to contest the decision issued by the citation hearing officer via appeal to the district court, the petitioner shall forfeit any reduction in the assessed fines offered in the hearing officer's decision.

(6) **Providing an oral statement.** A petitioner who requests a review of the initial decision under subsection (3) of this section may request the opportunity to provide an oral statement before the citation hearing officer. A request to make an oral statement must be included in the request for review of the initial decision and must be submitted within ten calendar days of the initial decision. If the request for an oral statement is made, the citation hearing officer shall provide reasonable notice of the time and place for receiving the oral statement, which must occur no later than twenty calendar days after the request for review was submitted. If an oral statement cannot be scheduled within this time frame, the

citation hearing officer will review the request as outlined in subsection (3) of this section.

NEW SECTION

WAC 478-116-415 Election to contest immobilization or impoundment. (1) **Submission of petition.** A person wishing to contest immobilization or impoundment of his or her motor vehicle or bicycle (hereinafter "petitioner") may do so by completing and submitting an immobilization or impoundment petition (hereinafter "petition") to transportation services within twenty calendar days of the date of the immobilization or impoundment. A person wishing to contest impoundment of his or her skateboard (hereinafter "petitioner") may do so by completing and submitting a petition to UWPD within twenty calendar days of the date of impoundment.

The petitioner must complete each section of the petition form and provide a brief statement regarding circumstances associated with immobilization or impoundment. The citation hearing officer shall review the petition and provide written notification of his or her decision with information about further review within ten calendar days of taking action on the petition. The amount of fine or fees assessed in the initial decision is at the discretion of the citation hearing officer. Any fines or fees owed on an initial decision not contested as provided in subsection (2) of this section shall be paid within twenty-one calendar days after service of the initial decision. If payment is not received within twenty-one calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine and fees shall stand, an additional late fee shall be imposed, and the immobilization or impoundment shall be deemed final.

(2) **Review of initial decision.** If a petitioner chooses to contest the initial decision issued by the citation hearing officer, the petitioner shall forfeit any reduction to the assessed fines offered in the initial decision. The petitioner must contact the department processing the petition (transportation services or UWPD) orally or in writing within twenty-one calendar days after service of the decision. The request for review shall contain an explanation of the petitioner's position and a statement of reasons why the initial decision on the petition was incorrect. The reviewing officer shall, within twenty calendar days of the date of the request to review the initial decision, render a final written decision which shall include a brief statement of the reasons for the decision, offer of settlement if applicable, and provide information about the opportunity to appeal the decision to district court. The amount of fine or settlement assessed in the final decision is at the discretion of the citation hearing officer. Any final decision of the reviewing officer not appealed as provided in subsection (3) or (4) of this section shall be paid within ten calendar days after service of the decision. If payment is not received within ten calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine or fee shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(3) **Discretionary review of initial decision.** If the petitioner has not requested a review of the initial decision, the citation hearing officer may, within twenty days after service of the initial decision, conduct a review and issue a final decision on its own motion and without notice to the parties, but it may not take any action on review less favorable to the petitioner than the initial decision without giving the petitioner notice and opportunity to explain his or her view of the matter.

(4) **Appeal to district court.** The application for appeal to district court shall be in writing and must be filed with the department processing the petition (transportation services or UWPD) within ten calendar days of service of the final decision. The written notice must be submitted on the "Notice of Appeal" form provided by transportation services or UWPD. The Notice of Appeal form will be available at transportation services or UWPD during regular hours of operation. The department processing the petition will forward the documents relating to the appeal to district court. No appeal to the district court may be taken unless the immobilization or impoundment has been contested as provided in subsections (2) and (3) of this section, in addition to this subsection.

(5) **Providing an oral statement.** A petitioner who requests a review of the initial decision under subsection (2) of this section may request the opportunity to provide an oral statement before the citation hearing officer. A request to make an oral statement must be included in the request for review of the initial decision and must be submitted within ten calendar days of the initial decision. If the request for an oral statement is made, the citation hearing officer shall provide reasonable notice of the time and place for receiving the oral statement, which must occur no later than twenty calendar days after the request for review was submitted. If an oral statement cannot be scheduled within this time frame, the citation hearing officer will review the request as outlined in subsection (2) of this section. If a petitioner chooses to contest the decision issued by the citation hearing officer via appeal to the district court, the petitioner shall forfeit any reduction in the assessed fines offered in the hearing officer's decision.

NEW SECTION

WAC 478-116-425 Presiding and reviewing citation hearing officer. The presiding and reviewing citation hearing officers shall be appointed in accordance with WAC 478-108-030 and shall have authority to hear and decide matters involving violation of these rules including, but not limited to, the ability to issue warnings, dismiss citations, and reduce, suspend, or impose the fines set forth in this chapter.

((~~PART VI~~
~~APPEALS AND PAYMENT OF MOTOR VEHICLE FINES~~))

((~~PART VII~~
~~BICYCLES AND NONMOTORIZED VEHICLES~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-116-044	Authorized use of streets and parking facilities.
WAC 478-116-051	Definitions.
WAC 478-116-101	Numbering of parking areas, parking allocation and issuance of permits.
WAC 478-116-116	Alternate and replacement permits.
WAC 478-116-121	Visitor parking.
WAC 478-116-125	Other types of permits.
WAC 478-116-141	Annual and quarterly permit periods.
WAC 478-116-145	Night and swing permits.
WAC 478-116-147	Carpool permits.
WAC 478-116-151	Parking of state of Washington-owned university-operated motor vehicles.
WAC 478-116-161	Parking fee payment.
WAC 478-116-163	Fee schedule.
WAC 478-116-165	Vehicle and driver's licenses required.
WAC 478-116-167	Right to refuse to issue a permit.
WAC 478-116-171	Responsibility of person to whom the permit is issued.
WAC 478-116-181	Refund conditions for parking permits.
WAC 478-116-184	Recall of permits.
WAC 478-116-186	Recall of carpool permits.
WAC 478-116-201	Permits required for motor vehicles parked during hours of operation—Assigned parking areas.
WAC 478-116-211	Metered parking.
WAC 478-116-223	Display of permits.
WAC 478-116-225	Permits and vehicle license plates.
WAC 478-116-227	Permit transfer.
WAC 478-116-231	Use of revoked permits prohibited.
WAC 478-116-241	Overtime parking violations—Repeated.
WAC 478-116-245	Obstructing traffic and pedestrian movement prohibited.
WAC 478-116-251	Obeying regulatory signs and instructions.
WAC 478-116-253	Prohibited parking area(s).
WAC 478-116-255	Prohibited parking—Space designated as disability or wheelchair.
WAC 478-116-261	Designated parking areas.
WAC 478-116-271	Parking within a designated parking space.
WAC 478-116-281	Parking—Safekeeping of unattended motor vehicles.
WAC 478-116-291	Impoundment of motor vehicles.
WAC 478-116-311	Motor vehicle fines and penalties.
WAC 478-116-401	Impoundment for failure to pay fines.
WAC 478-116-411	Impoundment without prior notice.
WAC 478-116-421	Impoundment of abandoned vehicles.
WAC 478-116-431	Notice and redemption of impounded vehicles.
WAC 478-116-501	Registered owner responsible for illegal parking.
WAC 478-116-520	Motor vehicles—Payment of fines and penalties.
WAC 478-116-531	Motor vehicles—Election to pay fine or contest citation.
WAC 478-116-541	Motor vehicles—Election to contest impoundment.
WAC 478-116-551	Motor vehicles—Presiding and reviewing officer.
WAC 478-116-561	Motor vehicles—Enforcement of decisions of citation hearing office.
WAC 478-116-605	Bicycle parking and traffic rules.
WAC 478-116-611	Nonmotorized vehicles—Citation for violations.
WAC 478-116-620	Nonmotorized vehicles—Fines and penalties.
WAC 478-116-630	Nonmotorized vehicles—Schedule of fines and penalties.

WAC 478-116-640	Nonmotorized vehicles—Election to pay fine or contest citation.
WAC 478-116-650	Nonmotorized vehicles—Presiding and reviewing officer.
WAC 478-116-660	Nonmotorized vehicles—Enforcement of decisions of citation hearing office.
WAC 478-116-670	Use of skateboards.

WSR 10-22-104
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 2, 2010, 12:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-107.

Title of Rule and Other Identifying Information: Chapter 296-127 WAC, Prevailing wage—Scope of work definitions.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on December 9, 2010, at 2:00 p.m.

Date of Intended Adoption: January 18, 2011.

Submit Written Comments to: Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by December 9, 2010.

Assistance for Persons with Disabilities: Contact Sally Elliott by November 24, 2010, at (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prevailing wage rates on public works projects are determined and enforced according to the trade or occupation or "classification" of work actually performed. The purpose of this rule making is to write scope of work descriptions for dredge workers, truck drivers, and ready mix truck drivers.

Reasons Supporting Proposal: See Purpose above.

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

Statute Being Implemented: Chapter 39.12 RCW and RCW 43.22.270.

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

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

Name of Agency Personnel Responsible for Drafting: David Soma, Tumwater, Washington, (360) 902-5330; Implementation and Enforcement: Steve McLain, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is specifically exempt from the small business economic impact statement requirement because the proposed rule will not impose more than minor costs on businesses (see RCW 19.85.030 (1)(a)).

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

November 2, 2010
Judy Schurke
Director

NEW SECTION

WAC 296-127-01366 Ready mix truck drivers. For the purpose of the Washington state public works law, chapter 39.12 RCW, ready mix truck drivers drive transit mixer type trucks used for the transportation of wet concrete products and related supplies to, from, and on construction projects.

The work includes all types of construction projects that are covered under chapter 39.12 RCW and WAC 296-127-018.

The work includes the use of any transit mixer type truck designed to deliver wet concrete including, but not limited to: Roller or barrel trucks, semi-mixer trucks, and roll-off mixer bodies.

Ready mix truck drivers deliver wet concrete to forms, trenches, pumpers, pumper trucks, conveyors, curb machines, buckets, wheel barrows, buggies, screeds, and slip-form machines, etc.

NEW SECTION

WAC 296-127-01397 Dredge workers. For the purpose of the Washington state public works law, chapter 39.12 RCW, dredge workers perform hydraulic dredge operations by operating and maintaining dredge equipment to mine or excavate sand, gravel, contaminants, or other materials from any existing body of water, and to maintain navigable channels in waterways. Dredge work includes, but is not limited to:

(1) Assistant engineer. Works under the engineer or fills the responsibilities of the engineer in his absence.

(2) Assistant mate (deck hand). Handles lines to moor vessels to wharves, ties up vessels to other vessels, or rigs towing lines. Assists the mate in the general operation of the dredge.

(3) Boatman (licensed). Operates vessels that assist in the assembly and disassembly of the dredge pipeline, moves dredges from one location to another, moves anchors and transfers crew and supplies to and from hydraulic dredges. Must be licensed by U.S. Coast Guard according to waters navigated, tonnage, and length of vessel.

(4) Engineer. Operates and maintains engines, generators, and machinery aboard dredges except when the dredge is laid up for a period exceeding five days for maintenance, overhaul, or repair. See subsection (8) of this section.

(5) Fill equipment operator. Operates the equipment to construct and maintain the fill grade at shore disposal sites.

(6) Fireman. Maintains steam pressure within specified parameters. Feeds fuel to the boiler fire box.

(7) Leverman, hydraulic. Operates power-driven dredges to excavate and maintain navigable channels in waterways and to mine sand, gravel, or minerals from the bottoms of lakes, rivers, and streams. Directs workers engaged in placing shore anchors and cables, laying additional lengths of pipes from dredge to shore, and in pumping water from pontoons. Starts and stops engines to operate equipment. Moves levers to place dredges in position for excavation, engages hydraulic pumps, raises and lowers suction booms, and controls rotation of cutter heads. Operates the winches that control the positioning of dredges (anchors, cables, or spuds). Determines by various means depths of excavations.

(8) Maintenance. Performs work on dredges when the dredge is laid up for a period exceeding five days for maintenance, overhaul, or repair.

(9) Mate. Works under the direction of the leverman and is responsible for quickly effecting repair of dredge breakdowns that stop or impede the dredging process. Maintains deck lines and performs general maintenance, including cleaning and painting. Directs deck hands in assisting with the above responsibilities.

(10) Oiler. Is responsible for lubrication of all machinery aboard dredges, checking and maintaining all fluid levels, and cleaning and painting engine rooms, except when the dredge is laid up for a period exceeding five days for maintenance, overhaul, or repair. See subsection (8) of this section. Assists engineers as required.

(11) Tenderman/boatman (unlicensed). Operates vessels that assist in the assembly and disassembly of dredge pipelines, moves anchors and transfers crew and supplies to and from hydraulic dredges.

(12) Welder. Repairs buckets, machinery, and other metal items on board dredges. Responsible for all welding work on board dredges, except when the dredge is laid up for a period exceeding five days for maintenance, overhaul, or repair. See subsection (8) of this section.

NEW SECTION

WAC 296-127-01398 Truck drivers. For the purpose of the Washington state public works law, chapter 39.12 RCW, truck drivers drive all types of self-propelled trucks and other vehicles used for the transportation of materials, personnel, and supplies to, from, and on construction projects. The truck drivers scope of work does not include any transit mixer type truck when used to deliver wet concrete products, including roller or barrel truck, semi-mixer truck, roll-off mixer body, or any work that is covered under the ready mix truck drivers scope of work.

The work includes the following types of projects:

All types of construction projects that are covered under chapter 39.12 RCW and WAC 296-127-018.

The work includes, but is not limited to, operation of the following types of equipment:

(1) Any truck, or truck and trailer mounted bulk material delivery system that uses gravity, pneumatic, hydraulic, electrical, mechanical, or other means to load and/or unload, including a solo dump truck, dump truck and trailer, dump truck and pup, transfer dump truck and trailer, side dump truck, belly dump truck (single trailer or combination), flowboy (walking floor trailer), debris trailer, chip trailer, top-loaded container and chassis, semi-end dump truck, roll-off dump body truck, off-road end dump truck, hard tail, articulating end dump truck, pneumatic trailer (dry bulk), hopper trailer, and conveyor aggregate delivery truck.

(2) Any tank truck, water truck, water pull truck, tack truck, oil spreader truck, sweeper truck, and vacuum sweeper truck.

(3) Any truck or truck tractor and flat bed, stretch trailer, drop frame, tilt bed, low boy, drop tail, or any configuration of specialized equipment trailers.

Truck drivers:

Deliver and place aggregate materials such as rock, crushed rock, sand, gravel, pit run, fill dirt, top soil and top soil mixes, lime, cement, dry concrete, bark and bark products, and other "material" on construction projects;

Deliver project specific premanufactured concrete and/or steel bridge spans, premanufactured concrete segments, tunnel liner segments, and other project specific premanufactured structures;

Deliver and place nonproject specific premanufactured concrete and/or steel bridge spans, premanufactured concrete segments, tunnel liner segments, and other nonproject specific premanufactured structures on the project;

Deliver and place asphalt, asphalt products, and other paving materials at job sites;

Drive various types of trucks and equipment, moving materials, operating sweepers, and water trucks for cleanup and dust control at and on construction sites; and

Remove by export, overburden, common and contaminated excavation, construction debris, demolition debris, recycle debris, and unused stockpiled material from job sites.

WSR 10-22-106
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT

[Filed November 2, 2010, 1:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-105.

Title of Rule and Other Identifying Information: Regulating affordable housing entities joint self-insurance program requirements.

Hearing Location(s): Office of Financial Management, Insurance Building, Conference Room 440, Olympia, WA 98504, on December 10, at 9:30 a.m.

Date of Intended Adoption: February 1, 2011.

Submit Written Comments to: Roselyn Marcus, Office of Financial Management, P.O. Box 43113, Olympia, WA 98504-3113, e-mail Roselyn.Marcus@ofm.wa.gov, fax (306) 664-2832, by December 10, 2010.

Assistance for Persons with Disabilities: Contact Lillian Austin by December 8, 2010, TTY (360) 902-0679 or (360) 902-0533.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5665, enacted in the 2009 legislative session (see chapter 314, Laws of 2009), provides authority for affordable housing entities to jointly self-insure property and liability risks in a multiple state risk sharing program regulated by the state risk manager. The bill was codified as chapter 48.64 RCW. RCW 48.64.15 requires the state risk manager to adopt rules that include standards for management, operations, and solvency, including frequency of actuarial analyses and claims audits. The rules are to include standards for claims management procedures. The rules must also include standards for contracts between joint self-insurance programs and private business, including standards for contracts between third party administrators and joint self-insurance programs. RCW 48.64.020 also requires the state risk manager to adopt rules further clarifying the definitions of "affordable housing" and "affordable housing entity," including rules which define the conditions and limitations under which affordable housing entities may participate or be expelled from the joint self-insurance program.

One of the outcomes of this rule-making process is to create a new chapter under office of financial management (OFM), Title 82 WAC, where all the rules related to self-insurance are found.

Reasons Supporting Proposal: Rules are necessary for implementation of chapter 48.64 RCW.

Statutory Authority for Adoption: RCW 48.64.020 and 48.64.050.

Statute Being Implemented: Chapter 48.64 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: To obtain a copy of the rules, or to submit written comments on the rules, please contact either Shannon Stuber at shannon.stuber@ofm.wa.gov, phone (360) 902-7311, or Roselyn Marcus at roselyn.marcus@ofm.wa.gov, phone (360) 902-0568.

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shannon Stuber, General Administration Building, P.O. Box 41027, Olympia, (360) 902-7311.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules have no or minimal cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. The OFM is not an agency listed in RCW 34.06.-328 (5)(a)(i). Further OFM does not voluntarily make section 201 applicable to this rule adoption nor to date, has JARRC made section 201 applicable to this rule adoption.

November 2, 2010
Roselyn Marcus
Director of Legal Affairs
Rules Coordinator

Chapter 82-70 WAC

AFFORDABLE HOUSING ENTITY JOINT SELF-INSURANCE PROPERTY AND LIABILITY PROGRAM REQUIREMENTS

NEW SECTION

WAC 82-70-010 Preamble and authority. These rules governing affordable housing self-insurance transactions are adopted by the state risk manager to implement chapter 48.64 RCW relating to the management and operations of a joint affordable housing entity property and liability self-insurance program.

NEW SECTION

WAC 82-70-020 Definitions. "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

"Affordable housing" means housing projects in which some of the dwelling units may be purchased or rented on a basis that is affordable to households with an income of eighty percent or less of the county median family income, adjusted for family size.

"Affordable housing entity" means any of the following:

(a) A housing authority created under the laws of this state or another state and any agency or instrumentality of a housing authority including, but not limited to, a legal entity created to conduct a joint self-insurance program for housing authorities that is operating in accordance with chapter 48.62 RCW; a nonprofit corporation shall be considered an "agency" of a housing authority if the nonprofit corporation is fulfilling one or more purposes of a housing authority and is affiliated with a housing authority that:

(i) Has, or has the right to acquire a membership interest in the nonprofit corporation;

(ii) Has provided financing to the nonprofit corporation;

(iii) Has entered into a contract with a nonprofit corporation to provide staff, management services or property management services; or

(iv) Has transferred or leased affordable housing to the nonprofit corporation or is leasing affordable housing from the nonprofit corporation; a nonprofit corporation shall be considered an "instrumentality" of a housing authority if the nonprofit corporation is fulfilling one or more functions of a housing authority and whose assets, operations or management are subject to control by the housing authority by reason of contracts, affiliation, legal structure or otherwise including, but not limited to:

(A) The housing authority organizing the nonprofit corporation;

(B) Directors or employees of the housing authority serving as directors of the nonprofit corporation;

(C) The nonprofit corporation utilizing housing authority funds or assets to carry out housing functions; or

(D) The housing authority possessing the power to direct the management or policies of the nonprofit corporation or being under common control with the nonprofit corporation;

(b) A nonprofit corporation that is engaged in providing affordable housing and is necessary for the completion, management, or operation of a project because of its access to funding sources that are not available to a housing authority; or

(c) A general or limited partnership or limited liability company, whether organized under the laws of this state or another state, that is engaged in providing affordable housing; a partnership or limited liability company may only be considered an affordable housing entity if a housing authority (including any agency or instrumentality of a housing authority) or nonprofit corporation, as described above, satisfies any one of the following conditions:

(i) It has, or has the right to, acquire a financial or ownership interest in the partnership or limited liability company;

(ii) It possesses the power to direct management or policies of the partnership or limited liability company; or

(iii) It has entered into a contract to lease, manage, or operate the affordable housing owned by the partnership or limited liability company.

"Board of directors" means the individuals vested with overall management of the joint self-insurance program; management of the joint self-insurance program shall be exercised by or under the authority of the board of directors, and the affairs of the joint self-insurance program shall be managed under the direction of the board of directors.

"Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

"Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

"Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

"Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

"Claims auditor" means a person who has the following qualifications:

(a) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(b) Proof of professional liability insurance; and

(c) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

"Competitive process" means a documented procurement process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

"Contribution" means the moneys paid by the participants to a joint self-insurance program.

"Consultant" means an independent individual or private business contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

"Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of an owner of a joint self-insurance program formed under this chapter.

"Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the joint self-insurance program as of the date of the financial statement. IBNR claims include:

(a) Known loss events that are expected to be presented later as claims;

(b) Unknown loss events that are expected to become claims; and

(c) Future development on claims already reported.

"Joint self-insurance program" means any two or more affordable housing entities which have entered into a cooperative risk sharing agreement subject to regulation under chapter 48.64 RCW.

"Nonowner participant" means an affordable housing entity that:

(a) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW;

(b) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW; and

(c) Has no ownership interest in the joint self-insurance program.

"Nonprofit corporation" means a nonprofit corporation organized under the laws of this state or the laws of any other state, of which no part of the income of the nonprofit corporation is distributable to its members, directors or officers.

"Owner" means an affordable housing entity that has the rights and obligations of ownership in the joint self-insurance program and satisfies the requirements in either (a) or (b) of this definition:

(a) The affordable housing entity acquires an ownership interest in the joint self-insurance program by making a financial contribution; and

(i) Is a signatory to a joint self-insurance program's ownership agreement;

(ii) Obtains approval to join the joint self-insurance program from the governing body of the owner, which approval shall be by resolution or ordinance of the governing body as appropriate for the entity type;

(iii) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW;

(iv) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW; or

(b) The affordable housing entity acquires an ownership interest in the joint self-insurance program by reason of its membership or ownership of another joint self-insurance program authorized by chapter 48.62 RCW or chapter 48.64 RCW without making a financial contribution and:

(i) Obtains coverage in the excess or self-insured retention portion of the joint self-insurance program subject to regulation under chapter 48.64 RCW; and

(ii) Is an affordable housing entity authorized to participate in a joint self-insurance program authorized by chapter 48.64 RCW.

"Ownership agreement" means the written agreement that sets forth the rights and obligations of the owners in a joint self-insurance program authorized by chapter 48.64 RCW.

"Participant" means either an owner or nonowner participant or both in a joint self-insurance program authorized by chapter 48.64 RCW.

"Primary assets" means cash and investments (less any nonclaims liabilities).

"Risk sharing" means that the participant of a joint self-insurance program jointly absorbs certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated loss; and/or jointly purchase insurance or reinsurance through a joint self-insurance program formed under chapter 48.64 RCW.

"Secondary assets" means insurance receivables, real estate or other assets (less any nonclaims liabilities) the value of which can be independently verified by the state risk manager.

"Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of coverage in the excess or self-insured retention portion of the joint self-insurance programs.

"Stop-loss insurance" means a promise by an insurance company or other insurance provider that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

"Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

"Unallocated loss adjustment expense" or "ULAE" means costs that cannot be associated with specific claims but are related to the claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

"Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss, loss adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

NEW SECTION

WAC 82-70-030 Standards for operation—Participation. Only participants may participate in risk-sharing in a joint self-insurance program.

NEW SECTION

WAC 82-70-050 Standards for operation—Communication with participants—Annual membership report. The joint self-insurance program shall make available to each participant an annual membership report which includes a copy of the program's annual audited financial statements. The annual report may also include other information as determined by the board of directors. 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 82-70-060 Standards for operations—Meetings. All joint self-insurance programs authorized by chapter 48.64 RCW are subject to the requirements of the Open Public Meetings Act as described in chapter 42.30 RCW.

NEW SECTION

WAC 82-70-070 Standards for operation—Notice of regular meetings of the board of directors or owners. Every joint self-insurance program shall provide every participant with a notice of the time and place of each regular meeting of the board of directors or owners 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 participants in the same form, manner and time as provided to participants. 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 82-70-080 Standards for operation—Notice of special meetings of the board or directors or owners. All joint self-insurance programs shall comply with the requirements of RCW 42.30.080 in providing notification of special meetings of the board of directors or owners. In addition, programs shall provide notice by electronic mail to the state risk manager and every participant of the joint self-insurance program twenty-four hours in advance of every special meeting.

NEW SECTION

WAC 82-70-090 Standards for operations—Meeting agendas—Meeting minutes. Every joint self-insurance program will provide the state risk manager and every participant with a preliminary agenda in advance of each meeting of the board of directors or owners. 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 posted on the web site of the program accessible to the public.

NEW SECTION

WAC 82-70-100 Standards for operation—Notification of amendments to ownership agreement. Every joint self-insurance program shall provide notification of the intent to amend the ownership agreement to each owner 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 amendment will occur. Such notification shall include a copy of proposed amendments.

NEW SECTION

WAC 82-70-110 Standards for operation—Amendments to ownership agreement. (1) Any amendments to ownership agreement shall be approved by the board of directors before being submitted to the owners for approval. Each owner shall be notified that one of the purposes of the meeting of the owners is to consider the proposed amendments to the ownership agreement, accompanied by a copy of the proposed amendments. Any amendments to the ownership agreement shall be approved by a majority in interest of the owners, or by a greater vote if provided for in the ownership agreement. Amendment to the ownership agreement shall be approved by the vote of the owners during a regular or special meeting of the owners or by the submission of written mail-in ballots. Voting by proxy shall be permitted in the manner set forth in the ownership agreement. If written mail-in ballots are used, the ballots are to be secured and remain unopened until the next meeting of the board of directors. The opening and counting of the written mail-in ballots shall be conducted by the board of directors during its next meeting and retained in compliance with public records retention laws. Each proxy or written mail-in ballot shall be read orally as to the owner name and vote, either in the affirmative or negative, and recorded in the meeting minutes.

(2) The ownership agreement and subsequent amendments shall be published on the electronic web site of the joint self-insurance program.

(3) The addition or termination of owners or nonowner participants in the joint self-insurance program shall not be considered an amendment to the ownership agreement.

NEW SECTION

WAC 82-70-120 Standards for operation—Elections of the board of directors. (1) All or a majority of the board of directors of every joint self-insurance program shall be elected by the owners. Unless otherwise provided in the ownership agreement, the directors shall be elected by a plurality of the votes cast by the owners at a regular meeting of the owners at which at least one-third of the owners are represented in person or by proxy. Voting by proxy shall be permitted in the manner set forth in the ownership agreement. Each proxy shall be read orally as to the owner name and vote and recorded in the meeting minutes. Voting for directors by written mail-in ballot shall not be permitted.

(2) The board of directors shall also include two or more individuals who are affiliated with the nonowner participants. These directors shall be elected by either the owners or the nonowner participants or both or shall be appointed by the directors elected by the owners in accordance with subsection (1) of this section.

(3) The ownership agreement may provide for staggering the terms of the directors by dividing the total number of directors into two or three groups, with each group to be as nearly equal in number as possible.

NEW SECTION

WAC 82-70-130 Standards for management and operation—Adoption of program. The ownership agreement of a joint self-insurance program shall be adopted by resolution or ordinance by the governing body of each owner, unless the owner acquires an ownership interest in the joint self-insurance program by reason of its membership or ownership in another joint self-insurance program authorized by chapter 48.62 RCW or chapter 48.64 RCW without making a financial contribution. Any such resolution or ordinance shall include, but not be limited to, an acknowledgment that the entity shall be subject to contributions as required by the joint self-insurance program. Copies of each such resolution or ordinance shall be retained by the joint self-insurance program and available for inspection by the state risk manager. The ownership agreement, along with a list of the owners of the joint self-insurance program, shall be published on the public web site of each joint self-insurance program.

NEW SECTION

WAC 82-70-140 Standards for solvency—Actuarially determined liabilities, program funding and liquidity requirements. (1) All joint self-insurance programs shall obtain an annual actuarial review as of fiscal year end which provides estimates of the unpaid claims measured at the expected and the seventy percent confidence level.

(2) The board of directors of the joint self-insurance program shall establish and maintain primary assets in an amount at least equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the requirement to maintain sufficient primary assets as of fiscal year end shall notify the state risk manager in writing of the condition. The state risk manager shall take corrective action, which may include the service of a cease and desist order upon the program, to require that the program increase primary assets in an amount equal to the unpaid claims estimate at the expected level as determined by the program's actuary as of fiscal year end.

(3) The board of directors of the joint self-insurance program shall establish and maintain total primary and secondary assets in an amount equal to or greater than the unpaid claim estimate at the seventy percent confidence level as determined by the program's actuary as of fiscal year end. All joint self-insurance programs that do not meet the reserve requirements to maintain sufficient primary and secondary assets shall notify the state risk manager in writing of the condition. The state risk manager shall require that the program submit a written corrective action plan to the state risk manager within sixty days of notification. Such plan shall include a proposal for improving the financial condition of the self-insurance program and a time frame for completion. The state risk manager shall approve or deny the proposed plan in writing within thirty days of receipt of the final plan submission. Failure by the joint self-insurance program to respond or submit a plan to improve the financial condition of the program shall cause the state risk manager to take corrective action, which may include the service of a cease and desist order upon the program.

(4) The state risk manager shall evaluate the operational safety and soundness of the program by monitoring changes in liquidity, claims reserves and liabilities, owner equity, self-insured retention, and other financial trends over time. Programs experiencing adverse trends may cause the state risk manager to increase frequency of on-site program review and monitoring, including increased communication with the board of directors and requirements for corrective plans.

(5) When the state risk manager determines it necessary to analyze the program's soundness and financial safety, the state risk manager may obtain an independent actuarial evaluation to determine the adequacy of reserves. Costs of these services shall be the responsibility of the joint self-insurance program.

NEW SECTION

WAC 82-70-150 Standards for management and operations—Individual rate setting—Nondiscrimination in joint program contributions. (1) Joint self-insurance program contribution formulas shall include all costs including rating for insured and self-insured layers of coverage. Contribution formulas shall be consistent and shall not unfairly discriminate among the participants relative to the risks covered and the coverage benefits provided under the joint self-insurance program. Contribution formulas shall prohibit public entity participants from subsidizing rates for nonprofit and/or privately owned affordable housing entities.

(2) This provision shall not be construed to prohibit individual choice of coverage by participants from several offered by the joint self-insurance program. The contribution formula, including the insured and self-insured components, shall be consistently applied to reflect the selection from among these choices.

(3) The contribution formula shall be available for review by the state risk manager.

NEW SECTION

WAC 82-70-160 Standards for operations—Disclosures. All joint self-insurance programs shall furnish to every participant of the program written statements which describe:

(1) Insurance coverages or benefits currently provided by the program, including any applicable restrictions, limitations, and exclusions;

(2) The procedure for filing a claim against the joint self-insurance program;

(3) The procedure for a participant to request an adjudication of disputes or appeals arising from coverage, claim payment or denial, and other issues; and

(4) General characteristics of the insurance coverage portion of the program.

NEW SECTION

WAC 82-70-170 Standards for operations—Standards for solvency—Termination provisions. (1) Program terminations. All joint 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) Participation terminations. All joint self-insurance programs shall maintain a written plan that provides for the termination of owners and nonowner participants.

NEW SECTION

WAC 82-70-180 Standards for management and operations—Financial plans. (1) All joint self-insurance programs shall maintain a written plan or policy approved by the board of directors for managing the financial resources of the program. The financial plan shall include:

(a) A procedure for accounting for moneys received, payments made and liabilities of the joint program which complies with generally accepted accounting principles;

(b) An investment policy which conforms to those laws and regulations applicable to the joint self-insurance program and to the investment guidelines stated in the program's original application approved by the state risk manager; and

(c) The preparation and submission of audited financial statements to the state risk manager within one hundred twenty days after the program's fiscal year end.

(2) No financial plan of a joint self-insurance program shall permit loans to any participant from primary assets held for payment of unpaid claims at the expected level as determined by an actuary as of fiscal year end.

NEW SECTION

WAC 82-70-190 Standards for management—Standards for contracts—Third-party administrator contracts. Before contracting with private businesses for third-party administrator professional services, all joint self-insurance programs shall establish and maintain written procedures approved by the board of directors for contracting with

privately owned third-party administrators. Entering a contract for services shall not relieve the board of directors of the joint self-insurance program of its ultimate oversight, managerial and financial responsibilities. The procedures shall, as a minimum:

(1) Provide a method of privately owned third-party administrator selection using a competitive process;

(2) Require a complete written description of the services to be provided, remuneration levels, contract period and expiration date providing for a contract term no greater than five years. The contract may include an additional one year extension to be exercised at the discretion of the joint self-insurance program;

(3) Provide for the confidentiality of the program's information, data and other intellectual property developed or shared during the course of the contract;

(4) Provide for the program's ownership of the information, data, and other intellectual property developed or shared during the course of the contract;

(5) Provide for the expressed authorization of the joint self-insurance program, consultants to the program, the state auditor, the state risk manager, or their designees, to enter the third-party administrator's premises to inspect and audit the records and performance of the third-party administrator which pertains to the program and to obtain such records electronically when audit travel costs can be eliminated or reduced;

(6) Require the compliance with all applicable local, state and federal laws; and

(7) Establish indemnification provisions and set forth insurance requirements between the parties.

NEW SECTION

WAC 82-70-210 Standards for operation and management—Risk management. All joint self-insurance programs formed under this chapter shall have a written risk management program which includes, but is not limited to, loss control, loss prevention, training and evaluation of risk based on loss experience.

NEW SECTION

WAC 82-70-220 Standards for claims management—Claims administration. (1) All joint self-insurance programs shall adopt a written claims administration program which includes, as a minimum, the following procedures:

(a) Claims filing procedures and forms.

(b) Standards requiring case reserves for each claim be established in the amount of the undiscounted jury verdict value.

(c) Standards requiring case reserves be reviewed every ninety days or when reasonably practicable and such review is documented in the claims diary.

(d) Standards requiring appropriate adjuster workloads.

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.

(f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099 MISC reporting.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

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

(3) All joint self-insurance programs shall have a written coverage appeal procedure that contains, as a minimum, procedures for a participant filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

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

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the board of directors of the joint self-insurance program, avoid further damage, injury, or loss of use to a participant or third-party claimant.

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

(7) All joint self-insurance programs shall obtain an independent review of claim reserving, adjusting and payment procedures every three years at a minimum. Said audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the board of directors and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section.

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

NEW SECTION

WAC 82-70-230 Standards for management and operations—State risk manager reports. (1) Every joint property and liability self-insurance program authorized to

transact business in the state of Washington shall submit the annual report to the state risk manager.

(2) The annual report to the state risk manager shall require the following information to be submitted in electronic form within one hundred twenty days of fiscal year end:

(a) Audited annual financial statements, including signed, as provided to the financial auditors;

(b) Actuarial reserve review report on which the net claims liabilities at fiscal year end reported in the audited financial statements are based;

(c) Copies of all insurance coverage documents;

(d) List of contracted consultants;

(e) Details of changes in the ownership agreement; and

(f) Details of services provided by contract to nonmember participants.

(3) All joint self-insurance programs shall submit quarterly financial reports if, in the estimation of the state risk manager, the financial condition of a program warrants additional quarterly reporting requirements.

(4) Failure to provide required financial reports may result in corrective action by the state risk manager. Such actions may include:

(a) Increase in frequency of examinations, the cost of which shall be the responsibility of the program;

(b) On-site monitoring by the state risk manager;

(c) Service of a cease and desist order upon the program.

NEW SECTION

WAC 82-70-240 Standards for operations—Program changes—Notification to the state risk manager. (1) All joint self-insurance programs shall operate in the same form and manner stated in the program's original application approved by the state risk manager. Programs shall submit a written request and receive approval from the state risk manager prior to implementing the following proposed program changes:

(a) Any change in the terms of the ownership agreement;

(b) Elimination or reduction of stop-loss insurance;

(c) Acceptance of any loans or lines of credit;

(d) Provision of services to nonparticipants;

(e) Addition of participants of other entity types than those included in original application approved by state risk manager;

(f) Any change in the program's investment guidelines.

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

(a) Increases in retention level;

(b) Decrease or increase insurance limits;

(c) Initial contract with a third-party administrator, or change in third-party administrator;

(d) Any change to ownership agreement.

NEW SECTION

WAC 82-70-250 Standards for management and operations—Conflict of interest. (1) Every joint self-insurance program formed under this chapter shall require the claims auditor, the private third-party administrator, the actuary, and the broker of record to contract separately with the joint self-insurance program. Each contract shall require that a written statement be submitted to the program on a form provided by the state risk manager providing assurance that no conflict of interest exists prior to acceptance of the contract by the joint self-insurance program.

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

(a) No member of the board of directors, private business, including a third-party administrator, or any other person having responsibility for the management or administration of a joint self-insurance program or the investment or other handling of the program's money shall:

(i) Receive directly or indirectly or be pecuniarily interested in any fee, commission, compensation, or emolument arising out of any transaction to which the program is or is expected to be a party except for salary or other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(ii) Receive compensation as a consultant to the program while also acting as a member of the board of directors, private 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 joint self-insurance program shall directly or indirectly receive or be pecuniarily interested in any commission or other compensation arising out of any contract or transaction between the joint self-insurance program and any insurer or consultant except for salary and other similar compensation regularly fixed and allowed for because of services regularly rendered to the program.

(c) Brokers of record for the joint self-insurance programs may receive compensation for insurance transactions performed within the scope of their licenses. The amount and other terms of compensation of a broker of record shall be provided for in a written contract approved by the board of directors. Any such contract shall include a provision that contingent commissions or other forms of compensation not specified in the contract shall not be paid to the broker of record as a result of any joint self-insurance program insurance transactions. The joint self-insurance program shall establish a contract provision which requires the broker provide to the board of directors of the joint self-insurance 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 employee or other representative of a broker of record, insurer or private third-party administrator shall serve as an officer or on the board of directors of a self-insurance program.

NEW SECTION

WAC 82-70-260 Standards for operations—State risk manager—Expense and operating cost fees. (1) The state risk manager shall fix state risk manager assessment

fees to cover expenses and operating costs of the state risk manager's office in administering chapter 48.64 RCW. Such fees shall be levied against each joint property and liability self-insurance program regulated by chapter 48.64 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 joint self-insurance program formed under this chapter to the state of Washington, office of financial management within sixty days of the date of invoice. Any joint self-insurance program failing to remit its fee when due is subject to denial of permission to operate or to a cease and desist order until the fee is paid.

(3) A joint 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 joint self-insurance program have been satisfied.

(4) The state risk manager shall assess each prospective joint self-insurance program an initial investigation fee at a rate determined annually by the state risk manager. Such fee shall be sufficient to cover the costs for the initial review and approval of that self-insurance program.

NEW SECTION

WAC 82-70-270 Standards for operations—Appeals of fees. (1) A joint self-insurance program which disagrees with a fee for services issued to it by the state risk manager shall notify the state risk manager in writing within thirty days after receipt of the invoice. The writing shall include the self-insurance program's reasons for challenging the fee and any other information the self-insurance program deems pertinent.

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

NEW SECTION

WAC 82-70-280 Standards for operations—Appeals of cease and desist orders. Within ten days after a joint self-insurance program covering property or liability risks formed under this chapter has been served with a cease and desist order under RCW 48.64.080(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 82-70-290 Standards for contracts—Competitive procurement standards for consultant contracts. Every joint self-insurance program formed under this chapter shall use a competitive process in the selection of consultants. The process shall provide an equal and open opportunity to qualified parties and shall culminate in a selection based on pre-established criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts. Bid responses, solicitation documents and evidence of publication shall be retained in accordance with laws governing public records and shall be available for review by the state risk manager and financial auditors. The requirements of this section shall not pertain to consultants of a joint self-insurance program that is wholly owned by another self-insurance program that is operating in compliance with chapter 48.64 or 48.62 RCW if the consultant performs the same type of services for such other joint self-insurance programs.

WSR 10-22-107
PROPOSED RULES
MILITARY DEPARTMENT
[Filed November 2, 2010, 4:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-15-007.

Title of Rule and Other Identifying Information: Revisions to chapter 118-66 WAC, Enhanced 9-1-1 funding, revisions to the rules concerning reimbursement to counties for expenses incurred under the county obligation to provide enhanced 9-1-1 access to emergency services.

Hearing Location(s): Building 20B, Earthquake Conference Room, Camp Murray, Washington, on December 9, 2010, at 2:00 p.m.

Date of Intended Adoption: January 4, 2011.

Submit Written Comments to: Robert G. Oenning, Building 20, 20 Aviation Drive, Camp Murray, WA 98430-5011, e-mail b.oenning@emd.wa.gov, fax (253) 512-7202, by December 3, 2010.

Assistance for Persons with Disabilities: Contact Anna Marie Ortiz by December 1, 2010, (253) 512-7012.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates the rules for reimbursement to counties for expenses related to 9-1-1 operations including changes to conform with definitions and purposes of revised statutes.

WAC 118-66-020 Purpose and priorities, updates the section to match legislation passed in the 2010 session.

WAC 118-66-030 Definitions, updates to definitions to match revised RCW language, incorporate changes in national 9-1-1 technical standards and eliminate no longer used terms.

WAC 118-66-040 County eligibility for funding, modifies to match RCW 38.52.510.

WAC 118-66-045 Washington state patrol (WSP) eligible expenses, expands the items to be supported for WSP dispatch centers that receive 9-1-1 calls directly to include essential equipment equal to support granted to counties.

WAC 118-66-050 State eligible expenses, modifies categories for support to counties providing greater flexibility on the use of funds and in order to provide support for opera-

tional requirements associated with system modernization. Adds a category for 9-1-1 console furniture as a supported item.

WAC 118-66-060 County eligible expenses (new section), defines 911 elements for which county 9-1-1 funds may be expended. Assures that certain expenses are permitted in calculating 9-1-1 expenditures for purposes of determining ability to reimburse wireless carriers.

WAC 118-66-090, adds the federal communications commission to the list of agencies that may have associated rules that impact definitions or application of these rules.

Statutory Authority for Adoption: RCW 38.52.545.

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

Name of Proponent: Military department, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert G. Oenning, Building 20, 20 Aviation Drive, Camp Murray, WA, (253) 512-7011.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in a small business economic impact statement (SBEIS). Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The military department has analyzed this chapter and concluded that since the rules only impact reimbursement to counties there will be no economic impact on small businesses. The preparation of a comprehensive SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. As required by RCW 34.05.328 (1)(c), the military department has analyzed the probable costs and probable benefits of the proposed new rules, taking into account both the qualitative and quantitative benefits and costs. The only agencies that are impacted by these rules are county government with no impacts on reporting requirements, record keeping or other activities beyond current practice. In some cases the rule changes may result in a reduction in requirements. The changes will permit additional eligibility for reimbursement by counties and Washington state patrol.

November 2, 2010
Robert G. Oenning
Enhanced 911 Administrator

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-020 Purpose and priorities. The purpose of these rules is to define:

(1) The criteria and priority for enhanced 9-1-1 funding for the state enhanced 9-1-1 account and county 9-1-1 excise taxes.

(2) Requirements for eligibility to receive enhanced 9-1-1 assistance from the state enhanced 9-1-1 account.

(3) County eligible 9-1-1 expenses.

(4) RCW 38.52.540 authorizes the establishment of ((~~an~~)) a state enhanced 9-1-1 account ((~~in the state treasury and specifies that the funds shall be used only~~

~~(a) To support the statewide coordination and management of the enhanced 9-1-1 system,~~

~~(b) For the implementation of wireless enhanced 9-1-1 statewide, and~~

~~(c) To help supplement, within available funds, the operational costs of the system, including:~~

~~(i) Adequate funding of counties to enable implementation of wireless enhanced 9-1-1 service, and~~

~~(ii) Reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 9-1-1 service pursuant to negotiated contracts between counties or their agents and the radio communications service companies.~~

~~(2)~~)) and a county enhanced 9-1-1 excise tax account in the state treasury.

(a) The state enhanced 9-1-1 account funds shall be used only:

(i) To support the statewide coordination and management of the enhanced 9-1-1 system;

(ii) For the implementation of wireless enhanced 9-1-1 statewide; and

(iii) For the modernization of enhanced 9-1-1 communications systems statewide.

(b) To help supplement, within available funds, the operational costs of the system, including:

(i) Adequate funding of counties to enable implementation of wireless enhanced 9-1-1 service; and

(ii) Reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 9-1-1 service pursuant to negotiated contracts between counties or their agents and the radio communications service companies.

(5) RCW 38.52.545 provides that the rules defining the purposes for which available enhanced 9-1-1 funds may be expended ((~~shall~~)) must consider the base needs of individual counties for specific assistance, and establishes the following expenditure priorities for such funds:

(a) To assure that 9-1-1 dialing is operational statewide;

(b) To assist counties as necessary to assure they can achieve a basic service level for 9-1-1 operations; and

(c) To assist counties as practicable to acquire items of a capital nature appropriate to increasing 9-1-1 effectiveness.

(((~~(3)~~))) (6) The state enhanced 9-1-1 coordinator, with the advice and assistance of the enhanced 9-1-1 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of enhanced 9-1-1 services for all counties and to specify by rule the ((~~operational~~)) additional purposes for which ((~~funds~~)) moneys, if available, may be expended from the state enhanced 9-1-1 account.

(((~~(4) The purpose of these rules is to define the criteria and priority for enhanced 9-1-1 fundable items and requirements for eligible entities to receive enhanced 9-1-1 assistance from the state enhanced 9-1-1 account.~~)))

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-030 Definitions. (1) ((~~**"9-1-1 management information system"** shall mean equipment that collects, stores and collates 9-1-1 call data into reports and statistics.~~

~~(2)~~)) **"9-1-1 call(s)"** shall mean voice or data that is routed to a public safety answering point (PSAP) by dialing or accessing 9-1-1 in emergency situations.

(2) **"9-1-1 demarcation point"** shall mean the point at which the 9-1-1 network begins and provides the ingress from the telecommunications providers' network.

(3) **"9-1-1 ((~~voice~~)) network"** shall mean ((~~switching systems and circuits which provide the connection between the caller's switching office and the public safety answering point (PSAP).~~

~~(3) **"Address"** shall mean the identification of a unique physical location by street name, number, and postal community, latitude, longitude (and, when available, altitude). When applicable, the address may contain the identification of separately-occupied subunits, such as apartment or suite numbers, and where appropriate, other information such as building name or floor number which defines a unique physical location.~~

~~(4)~~)) the system of circuits, networks and/or equipment managed and maintained by the Washington state E9-1-1 office to provide 9-1-1 communications from the 9-1-1 demarcation point to the PSAP demarcation point, including the information technology system known as emergency services internet protocol network (ESInet).

(4) **"9-1-1 management information system (MIS)"** shall mean equipment that collects, stores, and collates 9-1-1 call data into reports and statistics.

(5) **"Address"** shall mean the identification of a unique physical location by street name, number, postal community (and when available, zip code), latitude, longitude (and, when available, altitude). When applicable, the address may contain the identification of separately-occupied subunits, such as apartment or suite numbers, and where appropriate, other information such as building name or floor number which defines a unique physical location.

(6) **"Advisory committee"** shall mean the enhanced 9-1-1 advisory committee as established by RCW 38.52.530.

(((~~5~~))) (7) **"Alternate routing"** shall mean a method of routing 9-1-1 calls to a designated alternate PSAP location when all 9-1-1 lines are busy at the primary PSAP location.

(((~~6~~))) (8) **"ANI/ALI controllers"** shall mean the ((~~stand-alone components that provide control functions for retrieving and interpreting information in the ANI and ALI data bases.~~

~~(7) **"ANI/ALI display equipment"** shall mean the equipment at the PSAP call answering position necessary for the display of automatic number identification and automatic location identification.~~

~~(8)~~)) equipment that processes the 9-1-1 calls and/or data and provides control functions for retrieving and interpreting information in the ANI and ALI data bases.

(9) **"Automatic location identification (ALI)"** shall mean a feature of the enhanced 9-1-1 emergency communications system by which the name and address associated with the calling party's telephone number (identified by ANI feature) is forwarded to the PSAP for display.

(((~~9~~))) (10) **"Automatic location identification (ALI) data base"** shall mean the set of ALI records residing on a computer system at an E9-1-1 Service Provider.

(((~~10~~))) (11) **"Automatic location identification/data management system (ALI/DMS)"** shall mean a system of manual procedures and computer programs used to create, store, and update the data required for automatic location identification in support of enhanced 9-1-1.

(((~~11~~))) (12) **"Automatic number identification (ANI)"** shall mean a feature of the enhanced 9-1-1 emergency communications system that allows for the automatic display of the telephone number used to ((~~place a~~)) access 9-1-1 ((~~call~~)).

(((~~12~~))) (13) **"B.01/P.01 grade of service"** shall mean a level of service where the probability that one call out of one hundred (one percent) will be blocked during the average busy hour.

(((~~13~~))) (14) **"Call detail recorder"** shall mean equipment used to store, record ((~~and~~)) or print ANI/ALI information for 9-1-1 calls.

(((~~14) **"Cell sector"** shall mean an area, geographically defined according to an RCSC's radio frequency coverage data, consisting of a certain portion or all of the total coverage area of a cell site.~~

~~(15) **"Cell site"** shall mean an RCSC's radio frequency base station that receives calls from wireless end users.~~

~~(16)~~)) (15) **"Computer aided dispatch (CAD)"** shall mean equipment capable of receiving and disseminating detailed information related to emergency ((~~services~~)) call taking and dispatching.

(((~~17~~))) (16) **"Coordinator professional development"** shall mean a defined group of support elements provided to all counties and Washington state patrol.

(17) **"Customer premise equipment (CPE)"** shall mean equipment utilized by the PSAP to receive and process 9-1-1 communications.

(18) **"Department"** shall mean the Military Department as referred to in RCW 38.52.010.

(((~~18) **"E9-1-1 mapping administration"** shall mean personnel, hardware, and software necessary to create and maintain map data necessary to interpret Phase II E9-1-1 latitude and longitude (and, when available, altitude), and to display the data on a PSAP call answering position.~~

~~(19) **"E9-1-1 service provider"** shall mean a LEC providing the selective routing services for county wireline E9-1-1 service.~~

~~(20)~~)) (19) **"Electronic mail"** shall mean a means of delivering text, data, graphics and other electronic media via a private computer network or the internet.

(((~~21) **"Emergency service number (ESN)"** shall mean a number representing an emergency service zone, used to facilitate the selective routing and selective transfer of 9-1-1 calls to the appropriate PSAP.~~

~~(22) **"Emergency service zone (ESZ)"** shall mean a geographical area with a combination of designated police, fire, and emergency medical service providers.~~

~~(23)~~)) (20) **"Emergency services communication system"** shall mean a multicounty or county-wide communica-

tions network, including an enhanced 9-1-1 system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(21) **"Emergency service number (ESN)"** shall mean a number representing an emergency service zone, used to facilitate the selective routing and selective transfer of 9-1-1 calls to the appropriate PSAP.

(22) **"Emergency service zone (ESZ)"** shall mean a geographical area with a combination of designated police, fire, and emergency medical service providers.

(23) **"Enhanced 9-1-1 (E9-1-1) mapping administration"** shall mean personnel, hardware, and software necessary to create and maintain geographical information system (GIS) data necessary to interpret Phase II E9-1-1 latitude and longitude (and, when available, altitude), and to display the data on a PSAP call answering position.

(24) **"Enhanced 9-1-1 emergency communications system"** shall mean a public communications system consisting of a network, data base, and on-premises equipment that is accessed by dialing or accessing 9-1-1 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 9-1-1 voice or data to the appropriate public safety answering point that operates in a defined 9-1-1 service area and capability to automatically display the name, address, and telephone number of incoming 9-1-1 voice or data at the appropriate public safety answering point. Enhanced 9-1-1 emergency communications system includes the modernization to next generation 9-1-1 systems.

(25) **"Enhanced 9-1-1 information technology services"** shall mean the technical support and maintenance of eligible E9-1-1 equipment.

(26) **"Enhanced 9-1-1 public education services"** shall mean the development and delivery of 9-1-1 public education.

(27) **"Enhanced 9-1-1 training coordination"** shall mean the development and delivery of 9-1-1 call receiver in-house training program.

(28) **"Geographical information system (GIS)"** shall mean an integrated system of hardware and software for capturing, managing, analyzing, and displaying geographically referenced information.

(29) **"Instant call check"** shall mean equipment which records 9-1-1 call conversations for immediate playback on demand.

(((~~(24)~~))) (30) **"Interconnected voice over internet protocol service (VoIP)"** has the same meaning as established under RCW 82.14B.020.

(31) **"Interconnected voice over internet protocol service line"** has the same meaning as established under RCW 82.14B.020.

(32) **"Language ((~~line~~)) interpreter service"** shall mean language ((~~interpreter~~)) translation services for 9-1-1 calls.

(((25) ~~**"Local exchange company (LEC)"** shall mean every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide telephone exchange service or exchange access. Such term does not include the provision of radio communications service.~~

(26) ~~**"Location"** has the same definition as "address" in this section.~~

(~~(27)~~)) (33) **"Location determination technology (LDT)"** shall mean the technology used exclusively to determine position or geographic location using latitude and longitude (and, when available, altitude) of a wireless ((~~E9-1-1~~)) 9-1-1 caller when the mobile switching center (MSC) starts a call or while the MSC is engaged in a call, or of a VoIP 9-1-1 caller when the VoIP switch starts a call or while the VoIP switch is engaged in a call.

(((~~(28)~~))) (34) **"Logging recorder"** shall mean a device that is capable of time stamping, recording and replaying 9-1-1 ((~~call conversations~~)) voice and data.

(((~~(29)~~))) (35) **"Mapping display"** shall mean equipment capable of displaying 9-1-1 call locations on a map.

(((~~(30)~~))) (36) **"Master street address guide (MSAG)"** shall mean a data base of street names and address ranges within their associated postal communities defining emergency service zones for 9-1-1 purposes.

(((31) ~~**"Mobile directory number (MDN)"** shall mean the telephone number of the mobile handset used to originate the 9-1-1 call.~~

(~~(32)~~))) (37) **"Mobile positioning center (MPC)"** shall mean a point of interface to a wireless network for the emergency service network. The gateway mobile location center (GMLC) serves as the point of interface to the global ((~~standard~~)) system for mobile communications (GSM) wireless network. The MPC and GMLC serve as the entity that retrieves, forwards, stores and controls position data within the location network. The MPC/GMLC entity receives position information from the wireless network, forwards it to the emergency services network upon request and coordinates requests for position update.

(((~~(33)~~))) (38) **"Mobile switching center (MSC)"** shall mean the wireless equivalent of a switching office that provides switching functions for wireless calls.

(((~~(34)~~))) (39) **"MSC Phase I software capabilities"** shall mean software at an MSC that is necessary for the provision of Phase I E9-1-1 service and is used exclusively (([~~for~~])) for this purpose.

(((~~(35)~~))) (40) **"MSC Phase II software capabilities"** shall mean software at the MSC that is necessary for the provision of Phase II E9-1-1 service, and is exclusively used for this purpose.

(((~~(36)~~))) (41) **"Multicounty region"** shall mean two or more counties served by a regional PSAP.

(((~~(37)~~))) (42) **"Next Generation 9-1-1 (NG9-1-1) network"** shall mean the next evolutionary step in the development of the 9-1-1 emergency communications system known as E9-1-1 since the 1970s. NG9-1-1 is a system comprised of managed IP based networks and elements that augment present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 will eventually replace the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for PSAPs and other emergency service organizations.

(43) **"Night service"** shall mean a feature that forwards all 9-1-1 calls routed to a designated PSAP to an alternate directory number preassigned for that PSAP. The alternate directory number may be associated with another PSAP or other alternate destination.

(((38) ~~**"Phase I 9-1-1 voice network"** shall mean the dedicated 9-1-1 trunks between an MSC and a selective router, and between a selective router and PSAPs.~~

~~(39)~~)) (44) **"Phase I address"** shall mean the identification of a cell site and cell sector from which a 9-1-1 call originates, and includes identification of a cell site address, cell sector orientation, and/or a text description of the area.

(((~~(40)~~)) (45) **"Phase I ALI data base"** shall mean a computer data base used to update the mobile directory number (MDN) information of wireless end user and cell site and cell sector information.

(((~~(41)~~)) (46) **"Phase I ALI data circuit"** shall mean a dedicated 9-1-1 data circuit between an MSC and a service control point (SCP), and between an SCP and an ALI data base.

(((~~(42)~~)) (47) **"Phase I ((~~automatic location identification~~)) (ALI)"** shall mean the MDN information of wireless end users and the cell site and cell sector information.

(((~~(43)~~)) (48) **"Phase I E9-1-1 service"** shall mean service that facilitates the selective routing of wireless 9-1-1 calls and the display of Phase I ALI at the PSAPs.

(((~~(44)~~)) (49) **"Phase I implementation plan"** shall mean a plan of an RCSC or county for implementation of Phase I E9-1-1 service in a county or counties in Washington state, including, but not limited to: Phase I E9-1-1 service activation date; network flowchart (including the company's relevant MSCs); specification of the technology used for interface to the selective router and the ALI/data management system (ALI/DMS) and a 9-1-1 call flow description; procedures for updating cell site and cell sector information; default and diverse routing plans; and an outline of Phase I E9-1-1 service testing procedures.

(((~~(45)~~)) (50) **"Phase I interface to ALI data base"** shall mean the physical connection of Phase I ALI data circuits from a service control point (SCP) or selective router to the ALI data base, and the ALI feature enabling of the circuits.

(((~~(46)~~)) (51) **"Phase I interface to selective router"** shall mean the physical connection of the Phase I 9-1-1 voice network from an MSC of an RCSC to a selective router, and the selective router feature enabling of the 9-1-1 trunks.

(((~~(47)~~)) (52) **"Phase I master street address guide (MSAG)"** shall mean records in a master street address guide associated with each cell sector that provide cell site and cell sector identification, address, coverage information, service provider name, and PSAP of the cell sector for automatic display at the PSAP when a wireless 9-1-1 call is processed by that cell sector.

(((~~(48)~~)) (53) **"Phase I testing"** shall mean testing conducted by an RCSC when Phase I E9-1-1 service is implemented to ensure the service is working correctly and testing after a company makes Phase I E9-1-1 service affecting additions or changes to their networks.

(((~~(49)~~)) (54) **"Phase II address"** shall mean the latitude and longitude (and, when available, altitude) of the wireless end user.

(((~~(50)~~)) (55) **"Phase II ALI"** shall mean the latitude and longitude (and, when available, altitude) of the wireless end user, in addition to the ((~~MDN~~)) mobile directory number information. When the latitude and longitude are not available the Phase II ALI defaults to Phase I ALI as defined in this chapter.

(((51) ~~**"Phase II ALI data stream"** shall mean the location information and formatting required for data collected by the LDT and transmitted to the PSAP.~~

~~(52)~~)) (56) **"Phase II computer aided dispatch (CAD) system upgrades"** shall mean upgrades to the PSAP CAD system necessary to interpret the Phase II ALI data stream or to provide output to display Phase II location.

(((~~(53)~~)) (57) **"Phase II E9-1-1 service"** shall mean service provided by an RCSC that delivers Phase I E9-1-1 service and latitude and longitude (and, when available, altitude) of the wireless end user.

(((~~(54)~~)) (58) **"Phase II implementation plan"** shall mean a plan of an RCSC or county for implementation of Phase II E9-1-1 service in a county or counties in Washington state, including, but not limited to: Phase II E9-1-1 service activation date; network flowchart (including specification of the technology used for Phase II); and an outline of Phase II E9-1-1 service testing procedures.

(((~~(55)~~)) (59) **"Phase II testing"** shall mean testing conducted by an RCSC when Phase II E9-1-1 service is implemented to ensure the service is working correctly, and periodic testing necessary for the maintenance of the service.

(((~~(56) **"Position determining entity (PDE)"** is used interchangeably with and shall mean "location determination technology (LDT)" as defined herein.~~

~~(57)~~)) (60) **"Place of primary use"** shall mean the street address representative of where the subscriber's use of radio access line or interconnected voice over internet protocol service line occurs, which must be:

(a) The residential street address or primary business street addresses of the subscriber; and

(b) In the case of radio access lines, within the licensed service area of the home service provider.

(61) **"PSAP demarcation point"** shall mean the point at which the 9-1-1 network accesses the PSAP's CPE.

(62) **"PSAP mapping"** shall mean a system capable of converting ((~~Phase II~~)) latitude and longitude (and, when available, altitude) to a map display at the 9-1-1 call answering positions at the PSAPs.

(((~~(58)~~)) (63) **"Pseudo-ANI (P-ANI)"** shall mean a nondialable telephone number used to support routing of wireless 9-1-1 calls that may identify a wireless cell, cell sector, or PSAP to which the call should be routed; or a nondialable telephone number used to support routing of VoIP 9-1-1 calls that identifies the PSAP to which the call should be routed.

(((~~(59)~~)) (64) **"Public safety answering point (PSAP)"** shall mean the public safety answering location for 9-1-1 calls originating in a given area. PSAPs are designated as primary or secondary, which refers to the order in which calls are directed for answering.

(((~~(60)~~)) (65) **"Radio communications service company (RCSC)"** shall mean every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court,

and every city or town making available facilities to provide commercial mobile radio communications services, or cellular communications service for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio-paging providers.

(((61) ~~**"Regional PSAP"** shall mean a single facility answering 9-1-1 calls for multiple counties (two or more) on a twenty-four hours a day, seven days a week basis and operated under a single management and fiscal structure.~~

~~(62)~~)) (66) **"Reverse ALI search"** shall mean the ability to electronically query the ALI data base to obtain an address associated with a known telephone number.

(((~~(63)~~)) (67) **"Route diversity"** shall mean a method of assuring continuity of service by using multiple transmission routes to deliver a particular service between two points on a network.

(((~~(64)~~)) (68) **"Selective router"** shall mean a ((~~switching office that provides tandem~~)) device that provides the switching of 9-1-1 calls and controls delivery of a voice call with ANI to the PSAP and provides selective routing, speed calling, selective transfer, fixed transfer, and certain maintenance functions for each PSAP.

(((~~(65)~~)) (69) **"Selective routing"** shall mean a feature that permits a 9-1-1 call to be routed to a predesignated PSAP based upon the address and/or location associated with the originating ((~~telephone number~~)) 9-1-1 access point.

(((~~(66)~~)) (70) **"Service control point (SCP)"** (also referred to as "signal control point") shall mean a remote data base within the signaling system 7 (SS7) signaling network that supplies the translation and routing data needed to deliver advanced network services.

(((67) ~~**"Service control point (SCP) Phase I capabilities"** shall mean data base and routing translations necessary for interpretation of data provided by the MSC on wireless 9-1-1 calls to allow 9-1-1 calls to be routed to the correct PSAP and display the correct MDN of the wireless phone and the correct cell site and cell sector information.~~

~~(68) **"Service control point (SCP) Phase II capabilities"** shall mean specific functions and features necessary for interpretation of Phase II data provided by the MPC on wireless 9-1-1 calls to allow 9-1-1 calls to be routed to the correct PSAP and display the latitude and longitude (and, when available, altitude) of the caller.~~

~~(69)~~)) (71)(a) **"Service control point (SCP) Phase I capabilities"** shall mean data base and routing translations necessary for interpretation of data provided by the MSC on wireless 9-1-1 calls to allow 9-1-1 calls to be routed to the correct PSAP and display the correct MDN of the wireless phone and the correct cell site and cell sector information.

(b) **"Service control point (SCP) Phase II capabilities"** shall mean specific functions and features necessary for interpretation of Phase II data provided by the MPC on wireless 9-1-1 calls to allow 9-1-1 calls to be routed to the correct PSAP and display the latitude and longitude (and, when available, altitude) of the caller.

(72) **"Signaling system 7 (SS7)"** shall mean an out of band signaling system used to provide basic routing information, call set-up and other call termination functions in which signaling is removed from the voice channel itself and put on a separate data network.

(((~~(70)~~)) (73) **"Statewide services"** shall mean services which benefit all counties and do not require local revenue to be used prior to state reimbursement. Some are paid directly by the state E9-1-1 office and some are reimbursed through county contracts.

(74) **"Switching office"** shall mean a telecommunications provider facility that houses the switching and trunking equipment serving telephones in a defined area.

(((~~(71)~~)) (75) **"Switching office enabling"** shall mean the technology that allows the public network telephone switching office to recognize and accept the digits 9-1-1.

(((~~(72)~~)) (76) **"Telecommunications provider"** shall mean a telecommunications company as defined in RCW 80.04.010, a RCSC as defined herein, and a commercial mobile radio service provider as defined in 47 CFR, section 20.3, and providers of VoIP as defined herein and/or data service.

(((~~(73) **"TTY"**~~)) (77) **"Telecommunications services priority (TSP)"** shall mean a service that assigns a priority to telecommunications lines for service restoration.

(78) **"Teletype (TTY)"** shall mean a telecommunications device that permits typed telephone conversations with or between deaf, hard of hearing, or speech impaired people with a machine at their location.

(((~~(74)~~)) (79) **"Traffic studies"** shall mean 9-1-1 call studies performed by a telecommunications provider.

(((~~(75)~~)) (80) **"Uninterruptible power supply (UPS)"** shall mean a system designed to provide power, without delay or electrical transients, during a period when the normal power supply is incapable of performing acceptably.

(((~~(76) **"Wireless end user"** shall mean any person or entity placing a 9-1-1 call on an RCSC's network.~~)) (81) **"Voice over internet protocol (VoIP) service"** shall mean as defined by the Federal Communications Commission (FCC) in 47 CFR Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

(82) **"VoIP ALI"** shall mean a feature by which the name and registered address associated with the calling party's VoIP telephone number is forwarded to the PSAP for display.

(83) **"VoIP ALI data base"** shall mean a set of VoIP ALI records residing on a computer system at an E9-1-1 service provider or VoIP positioning center.

(84) **"VoIP interface to ALI data base"** shall mean the data connection between the VoIP positioning center (VPC) and the ALI data base that serves the PSAP.

(85) **"VoIP positioning center (VPC)"** shall mean a point of interface to a VoIP network for the NG9-1-1 emergency services internet protocol network (ESInet). The VPC serves as the entity that retrieves, forwards, stores and controls position data within the location network and forwards it to the NG9-1-1 ESInet upon request.

(86) **"VoIP service provider"** shall mean a provider of VoIP service as defined by the Federal Communications Commission (FCC) in 47 CFR Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

(87) **"VoIP service provider soft switch"** shall mean the VoIP equivalent of a switching office that provides switching functions for VoIP calls.

(88) **"VoIP testing"** shall mean testing conducted by a VoIP service provider when E9-1-1 service is implemented to ensure the service is working correctly, and testing after a company makes E9-1-1 service affecting additions or changes to their networks.

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-040 County eligibility for funding. (1) As required by RCW 38.52.510, each county shall provide funding for the enhanced 9-1-1 emergency communications system in the county ((~~or district~~)) in an amount equal to the amount the maximum taxes under RCW 82.14B.030(((~~1~~))) would generate in the county ((~~or district~~)) or the amount necessary to provide full funding of the system in the county ((~~or district, whichever is less~~)).

(2) A county in the state of Washington may be eligible to receive available ((~~wireline~~)) funds from the enhanced 9-1-1 account (state) for certain eligible ((~~wireline~~)) enhanced 9-1-1 expenses as described in this chapter only if the county has imposed the maximum county ((~~wireline~~)) enhanced 9-1-1 tax allowed under RCW 82.14B.030 (1) and (2).

(((~~(3) A county in the state of Washington may be eligible to receive available wireless funds from the enhanced 9-1-1 account for certain eligible wireless enhanced 9-1-1 expenses as described in this chapter related to implementation and operation of the enhanced wireless communication system only if the county has imposed the maximum county wireless enhanced 9-1-1 tax allowed under RCW 82.14B.030(2).~~

~~(4) Funds for wireless enhanced 9-1-1 service shall not be distributed to any county that has not negotiated or in good faith attempted to negotiate a wireless enhanced 9-1-1 Phase I or Phase II service agreement with the applicable RCSC(s).~~))

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-045 Washington state patrol (WSP) ((~~eligibility for wireless funding~~)) eligible expenses. Upon designation by a county as a ((~~public safety answering point~~)) primary PSAP for wireless 9-1-1 calls, Washington state patrol ((~~communications centers~~)) may be eligible to receive available wireless funds from the state enhanced 9-1-1 account for the following eligible components:

((~~ANI/ALI controllers and necessary interfaces to send data to other PSAP equipment, Phase I E9-1-1 voice network, PSAP mapping, Phase II CAD upgrades, and for ANI/ALI display equipment. Such eligibility shall be based on the portion of wireless 9-1-1 calls initially received by the regional Washington state patrol communications center serving the designating county.~~)) Coordinator professional development.

(1) Statewide dialing items:

(a) Customer premises equipment (CPE)/telephone system;

(b) Telephone system display equipment;

(c) E9-1-1 coordinator duties;

(d) PSAP mapping and maintenance.

(2) Basic service items:

(a) Uninterrupted power supply (UPS) and maintenance;

(b) Route diversity between server end office and PSAP;

(c) E9-1-1 mapping administration;

(d) Instant call check equipment and maintenance;

(e) Mapping display equipment;

(f) 9-1-1 Management information system;

(g) Call detail recorder and/or printer and maintenance;

(h) Headsets for 9-1-1 call takers.

(3) Capital items:

(a) Logging/voice recorder for E9-1-1 calls and maintenance;

(b) Computer-aided dispatch (CAD) system hardware, software and maintenance;

(c) Auxiliary generator and maintenance;

(d) Clock synchronizer and maintenance;

(e) Console furniture for 9-1-1 call receiver equipment and maintenance.

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-050 State eligible expenses. Enhanced 9-1-1 communications systems are comprised of multiple components. Subject to available funds, expenses for implementation, operation, and maintenance costs of these components may be eligible for reimbursement if incurred by eligible entities. The components listed below may be eligible for reimbursement to eligible entities from the enhanced 9-1-1 account based on a reasonable prioritization by the state E9-1-1 coordinator with the advice and assistance of the enhanced 9-1-1 advisory committee and in accordance with the purposes and priorities established by statute and regulation, including WAC 118-66-020. The state E9-1-1 coordinator will adopt policies defining specific details related to reimbursement eligibility.

(1) Expenses for the following wireline service components may be eligible for reimbursement from the enhanced 9-1-1 account from funds generated under the state wireline/VoIP enhanced 9-1-1 ((~~excise tax~~)) account (RCW 82.14B.030(((~~3~~))) (5) and (7)):

(((~~a~~))) Statewide dialing items:

(((~~i~~))) (a) Switching office enabling;

(((~~ii~~))) (b) Automatic number identification (ANI);

(((~~iii) 9-1-1 voice network (B.01/P.01 grade of service level required);~~

(~~iv~~))) (c) Traffic studies between switching offices and the selective router;

(((~~v) MSAG coordination and maintenance;~~

(~~vi~~))) (d) ALI/DMS service;

(((~~vii~~))) (e) Reverse ALI search capability((~~;~~

~~(b) Basic service items:~~

~~(i) Route diversity between switching offices and selective router;~~)).

(2) Expenses for the following wireless components may be eligible for reimbursement from enhanced 9-1-1 account funds generated under the state wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(((~~4~~))) (6)):

(a) Wireless Phase I E9-1-1 service components:

(i) Phase I automatic location identification (ALI);

(ii) Phase I address;

(iii) Service control point Phase I capabilities;

(iv) Phase I ALI data base;

(v) ((~~Phase I MSAG coordination;~~

~~(vi)~~)) Phase I interface to selective router;

(((~~(vii)~~))) (vi) Phase I interface to ALI data base;

(((~~(viii)~~))) (vii) Phase I testing;

(((~~(ix)~~))) (viii) Phase I implementation plans;

(((~~(x)~~))) (ix) Phase I implementation agreements;

(((~~(xi)~~))) (x) Pseudo-ANI (P-ANI);

(((~~(xii) Phase I 9-1-1 voice network;~~

~~(xiii)~~))) (xi) MSC Phase I software capabilities;

(((~~(xiv)~~))) (xii) Traffic studies between the MSC and selective router;

(((~~(xv)~~))) (xiii) Phase I ALI data circuits;

(b) Wireless E9-1-1 Phase II service components (including all Phase I components):

(i) ((~~PSAP mapping;~~

~~(ii) Phase II CAD system upgrades;~~

~~(iii)~~)) Location determination technology;

(((~~(iv)~~))) (ii) Phase II implementation plan;

(((~~(v)~~))) (iii) Phase II testing;

(((~~(vi)~~))) (iv) MSC Phase II software capabilities;

(((~~(vii)~~))) (v) Service control point Phase II capabilities; and

(((~~(viii)~~))) (vi) Mobile positioning center.

(3) Expenses for the following components are shared with wireline/VoIP and wireless enhanced 9-1-1 services and may be eligible for reimbursement from enhanced 9-1-1 account funds generated under the state wireline/VoIP enhanced 9-1-1 excise tax (RCW 82.14B.030(((~~3~~))) (5) and (7)) and from enhanced 9-1-1 account funds generated under the statewide wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(((~~4~~))) (6)):

(a) Statewide dialing items:

(((~~(i) Selective routing;~~

~~(ii) Automatic location identification (ALI) data base;~~

~~(iii) Traffic studies between selective router and PSAP;~~

~~(iv) ANI/ALI controllers and necessary interfaces to send data to other PSAP equipment;~~

~~(v) ANI/ALI display equipment for primary PSAPs;~~

~~(vi) That portion of a telephone system compatible with enhanced 9-1-1 that is used to answer 9-1-1 calls;~~

~~(vii) TTY required for compliance with the American Disabilities Act (ADA);~~

~~(viii) County 9-1-1 coordinator duties;~~)) (i) NG9-1-1 network;

(ii) 9-1-1 network equivalent (B.01/P.01 grade of service level required);

(iii) Selective routing;

(iv) Automatic location identification (ALI) data base;

(v) Traffic studies between selective router and PSAP;

(vi) Telecommunications service priority;

(vii) Language interpretive service;

(viii) Alternate routing and/or night service;

(ix) Customer premises equipment (CPE)/telephone system and maintenance;

(x) TTY required for compliance with the American Disabilities Act (ADA);

(xi) ANI/ALI controllers and necessary interfaces to send data to other PSAP equipment;

(xii) ANI/ALI display equipment for primary PSAPs;

(xiii) PSAP mapping and maintenance;

(xiv) County 9-1-1 coordinator duties;

(xv) MSAG coordination and maintenance;

(xvi) Mapping/GIS coordination and maintenance;

(xvii) 9-1-1 information technology services;

(xviii) 9-1-1 call receiver salaries and benefits;

(xix) 9-1-1 public education coordination;

(xx) 9-1-1 training coordination.

(b) Basic service items:

(i) Uninterruptible power supply (UPS) for PSAP enhanced 9-1-1 equipment and maintenance;

(ii) Route diversity between selective router and PSAP;

(iii) Call receiver training;

(iv) 9-1-1 Coordinator training;

(v) MSAG training;

(vi) IT training;

(vii) Mapping/GIS training;

(viii) E9-1-1 mapping administration;

(ix) Instant call check equipment and maintenance;

(x) Mapping display for call answering positions that are ANI/ALI equipped;

(xi) 9-1-1 Management information system;

(xii) Call detail recorder and/or printer and maintenance;

(((~~(ii) E9-1-1 mapping administration;~~

~~(iii) Mapping display for call answering positions that are ANI/ALI equipped.~~

~~(iv) Instant call check equipment (one per 9-1-1 call answering position);~~

~~(v) Uninterruptible power supply (UPS) for PSAP enhanced 9-1-1 equipment;~~

~~(vi) 9-1-1 management information system;~~

~~(vii)~~)) (xiii) Headsets for 9-1-1 call takers;

(((~~(viii) 9-1-1 call receiver salaries and benefits;~~

~~(ix) Language line service;~~

~~(x) Call receiver training;~~

~~(xi)~~))) (xiv) Enhanced 9-1-1 document ((~~retention and~~)) destruction;

(((~~(xii)~~))) (xv) 9-1-1 coordinator electronic mail((~~;~~

~~(xiii) Route diversity between selective router and PSAP;~~

~~(xiv) Alternate routing and/or night service;~~)).

(c) Capital:

(i) Logging recorder for 9-1-1 calls and maintenance;

(ii) Computer aided dispatch (CAD) system hardware and software and maintenance;

(iii) Auxiliary generator to support 9-1-1 ((~~emergency telephone~~)) eligible equipment/telephone services for backup and maintenance;

(((~~(ii) Logging recorder for 9-1-1 call;~~

~~(iii) Computer aided dispatch (CAD) system hardware and software; and~~))

(iv) Clock synchronizer and maintenance; and

(v) Console furniture for 9-1-1 call receiving equipment and maintenance.

(A) Within available funds and consistent with statutory and regulatory purposes and priorities, the state enhanced 9-1-1 coordinator (with the advice and assistance of the enhanced 9-1-1 advisory committee) has the discretion to allocate state enhanced 9-1-1 account funds to eligible enti-

ties as reimbursement for wireline/VoIP and wireless enhanced 9-1-1 eligible expenses.

(B) Eligible expenses for wireline/VoIP components established in WAC 118-66-050(1) may only be eligible for reimbursement from enhanced 9-1-1 account funds generated under the state wireline/VoIP enhanced 9-1-1 excise tax (RCW 82.14B.030 (5) and (7)). Such funds shall be allocated based on statutory and regulatory purposes and priorities and WAC 118-66-020.

(C) Eligible expenses for wireless components established in WAC 118-66-050(2) may only be eligible for reimbursement from enhanced 9-1-1 account funds generated under the state wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(6)). Such funds shall be allocated based on statutory and regulatory purposes and priorities and WAC 118-66-020.

(D) Eligible expenses for components established in WAC 118-66-050(3) may be eligible for reimbursement from state enhanced 9-1-1 account funds generated under the state wireline/VoIP enhanced 9-1-1 excise tax (RCW 82.14B.030 (5) and (7)) and enhanced 9-1-1 account funds generated under the state wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(6)). (All shared components.) The amount allocated from each tax source will be based on an equitable distribution determined by the state E9-1-1 coordinator with the advice and assistance of the enhanced 9-1-1 advisory committee. Such funds shall be allocated based on statutory and regulatory purposes and priorities and WAC 118-66-020.

NEW SECTION

WAC 118-66-060 County eligible expenses. In addition to the items listed in WAC 118-66-050 (1) through (3) the following items are eligible 9-1-1 expenses from the county enhanced 9-1-1 excise taxes but not eligible for funding from the state enhanced 9-1-1 account nor used in the determination of eligibility in receiving state assistance from the state enhanced 9-1-1 account. These items are not prioritized. When these items are used in association with other PSAP operations such as dispatching, the 9-1-1 eligible percentage of use shall be determined.

PSAP and 9-1-1 administration costs, to include:

(1) Management services;

(2) Human resources services;

(3) Legal costs;

(4) Financial services;

(5) PSAP and 9-1-1 administration lease/purchase costs;

(6) E9-1-1 building repair and maintenance, and major systems replacement/repair;

(7) E9-1-1 property and liability insurance;

(8) PSAP and 9-1-1 administrative telephone system;

(9) E9-1-1/NG9-1-1 reserve accounts.

(10) Radio communications services companies wireless enhanced 9-1-1 recovery expenses IAW RCW 38.52.540.

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-090 Other rules. Through other ((~~state~~)) governmental agencies, such as((~~,~~)) the Federal Communications Commission and the Washington utilities and transportation commission, rules have and will be adopted which will impact the statewide operation of enhanced 9-1-1. By this reference, this rule is intended to be consistent with and complementary to these other rules.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 118-66-080	Allocation of funds.

WSR 10-22-108
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)

[Filed November 2, 2010, 4:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-143.

Title of Rule and Other Identifying Information: Creating new section WAC 246-853-640, for nonsurgical medical cosmetic procedures (osteopathic physicians) and creating a new section WAC 246-854-230, for nonsurgical medical cosmetic procedures (osteopathic physician assistants).

Hearing Location(s): St. Francis Hospital, Garden Room, 34515 9th Avenue S., Federal Way, WA 98003, on January 21, 2011, at 9:00 a.m.

Date of Intended Adoption: January 21, 2011.

Submit Written Comments to: Erin Obenland, Program Manager, Department of Health, Board of Osteopathic Medicine and Surgery, P.O. Box 47852, Olympia, WA 98504-7852, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by January 7, 2011.

Assistance for Persons with Disabilities: Contact Erin Obenland by January 7, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is no state law specifically regulating nonsurgical cosmetic procedures, specifically the injection of medication or substances into humans or the use of prescription devices for cosmetic procedures. Rules are needed to clarify this area of medicine and set minimum standards for the performance and the delegation of nonsurgical medical cosmetic procedures by osteopathic physicians and osteopathic physician assistants in our state. The proposed rules will establish standards so that osteopathic physicians and osteopathic physician assistants apply the same standards of good medical practice to the performance and delegation of nonsurgical medical cosmetic procedures.

Reasons Supporting Proposal: The number of offices and clinics nationwide providing nonsurgical medical cosmetic procedures is increasing at a rapid rate. More consumers are demanding medical cosmetic procedures, and more physicians and nonphysicians are entering this lucrative field, many without adequate training or an appropriate health care license. The concern is that in these offices and clinics individuals with little or no training, without an appropriate

license, or without adequate supervision, are injecting medication or substances into patients, or are using prescription devices on patients.

Statutory Authority for Adoption: RCW 18.57.005, 18.57A.020, 18.130.050.

Statute Being Implemented: RCW 18.130.050.

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

Name of Proponent: Department of health, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Erin Obenland, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4945.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Erin Obenland, P.O. Box 47852, Olympia, WA 98504, phone (360) 236-4945, fax (360) 236-2901, e-mail erin.obenland@doh.wa.gov.

Blake T. Maresh
Executive Director

NEW SECTION

WAC 246-853-640 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to set forth the duties and responsibilities of an osteopathic physician who delegates the injection of medications or substances for cosmetic purposes or the use of prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of osteopathic medicine under RCW 18.57.001(4).

(2) This rule does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin. This is covered in WAC 246-853-630 and 246-854-220;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes.

(b) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.

(c) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

OSTEOPATHIC PHYSICIAN RESPONSIBILITIES

(4) An osteopathic physician must be appropriately trained in a nonsurgical medical cosmetic procedure prior to performing the procedure or delegating the procedure. The osteopathic physician must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the board.

(5) Prior to authorizing a nonsurgical medical cosmetic procedure, an osteopathic physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(6) Regardless of who performs the nonsurgical medical cosmetic procedure, the osteopathic physician is ultimately responsible for the safety of the patient.

(7) Regardless of who performs the nonsurgical medical cosmetic procedure, the osteopathic physician is responsible for ensuring that each treatment is documented in the patient's medical record.

(8) The osteopathic physician must ensure that there is a quality assurance program for the facility at which nonsurgical medical cosmetic procedures are performed regarding the selection and treatment of patients. An appropriate quality assurance program must include the following:

(a) A mechanism to identify complications and untoward effects of treatment and to determine their cause;

(b) A mechanism to review the adherence of supervised health care practitioners to written protocols;

(c) A mechanism to monitor the quality of treatments;

(d) A mechanism by which the findings of the quality assurance program are reviewed and incorporated into future protocols required by subsection (10) of this section and osteopathic physician supervising practices; and

(e) Ongoing training to maintain and improve the quality of treatment and performance of supervised health care practitioners.

(9) An osteopathic physician may not sell or give a prescription device or medication to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(10) The osteopathic physician must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

PHYSICIAN DELEGATION

(11) An osteopathic physician who meets the above requirements may delegate a nonsurgical medical cosmetic procedure to a properly trained physician assistant, registered nurse or licensed practical nurse, provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) The osteopathic physician delegates procedures that are within the delegate's lawful scope of practice;

(c) The delegate has appropriate training in, at a minimum:

(i) Techniques for each procedure;

(ii) Cutaneous medicine;

(iii) Indications and contraindications for each procedure;

(iv) Preprocedural and postprocedural care;

(v) Recognition and acute management of potential complications that may result from the procedure; and

(vi) Infectious disease control involved with each treatment.

(d) The osteopathic physician has a written office protocol for the delegate to follow in performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(i) The identity of the osteopathic physician responsible for the delegation of the procedure;

(ii) Selection criteria to screen patients for the appropriateness of treatment;

(iii) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(iv) A statement of the activities, decision criteria, and plan the delegate shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing osteopathic physician concerning specific decisions made.

(e) The osteopathic physician ensures that the delegate performs each procedure in accordance with the written office protocol;

(f) Each patient signs a consent form prior to treatment that lists foreseeable side effects and complications, and the identity and license of the delegate or delegates who will perform the procedure; and

(g) Each delegate performing a procedure covered by this section must be readily identified by a name tag or similar means so that the patient understands the identity and license of the treating delegate.

(12) If an osteopathic physician delegates the performance of a procedure that uses a medication or substance, whether or not approved by the federal Food and Drug Administration for the particular purpose for which it is used, the osteopathic physician must be on-site during the procedure.

(13) If the physician is unavailable to supervise a delegate as required by this section, the osteopathic physician must make arrangements for an alternate physician to provide the necessary supervision. The alternate supervisor must be familiar with the protocols in use at the site, will be accountable for adequately supervising the treatment pursuant to the protocols, and must have comparable training as the primary supervising osteopathic physician.

(14) An osteopathic physician may not permit a delegate to further delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

NEW SECTION

WAC 246-854-230 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of an osteopathic physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.57.001.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-853-630 and 246-854-220;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes.

(b) "Physician" means an individual licensed under chapter 18.57 RCW.

(c) "Physician assistant" means an individual licensed under chapter 18.57A RCW.

(d) "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) An osteopathic physician assistant may perform a nonsurgical medical cosmetic procedure only after the board approves a practice plan permitting the osteopathic physician assistant to perform such procedures. An osteopathic physician assistant must ensure that the supervising or sponsoring osteopathic physician is in full compliance with WAC 246-853-640.

(5) An osteopathic physician assistant may not perform a nonsurgical medical cosmetic procedure unless his or her supervising or sponsoring osteopathic physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, an osteopathic physician assistant must have appropriate training in, at a minimum:

(a) Techniques for each procedure;

(b) Cutaneous medicine;

(c) Indications and contraindications for each procedure;

(d) Preprocedural and postprocedural care;

(e) Recognition and acute management of potential complications that may result from the procedure; and

(f) Infectious disease control involved with each treatment.

(7) The osteopathic physician assistant must keep a record of his or her training in the office and available for review upon request by a patient or a representative of the board.

(8) Prior to performing a nonsurgical medical cosmetic procedure, either the osteopathic physician assistant or the delegating osteopathic physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(9) The osteopathic physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(a) A statement of the activities, decision criteria, and plan the osteopathic physician assistant must follow when performing procedures under this rule;

(b) Selection criteria to screen patients for the appropriateness of treatment;

(c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(d) A statement of the activities, decision criteria, and plan the osteopathic physician assistant must follow if performing a procedure delegated by an osteopathic physician pursuant to WAC 246-853-640, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(10) An osteopathic physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

(11) An osteopathic physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance, whether or not approved by the federal Food and Drug Administration for the particular purpose for which it is used, so long as the osteopathic physician assistant's sponsoring or supervising osteopathic physician is onsite.

(12) An osteopathic physician assistant must ensure that each treatment is documented in the patient's medical record.

(13) An osteopathic physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

(14) An osteopathic physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

(15) An osteopathic physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-853-640.

WSR 10-22-110
PROPOSED RULES
DEPARTMENT OF HEALTH
(Chiropractic Quality Assurance Commission)

[Filed November 2, 2010, 4:45 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-808-133, chiropractic quality assurance commission, adding a new section to issue a temporary practice permit while chiropractic applicants are waiting for completion of the national background check.

Hearing Location(s): Department of Health, Health Systems Quality Assurance, Point Plaza East Building, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on December 9, 2010, at 10:00 a.m.

Date of Intended Adoption: December 9, 2010.

Submit Written Comments to: Leann Yount, Program Manager, Department of Health, Chiropractic Program, P.O. Box 47852, Olympia, WA 98504-7852, web site http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by December 1, 2010.

Assistance for Persons with Disabilities: Contact Leann Yount by December 1, 2010, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule provides for a temporary practice permit to be issued to an otherwise qualified chiropractic applicant while a fingerprint background check is completed. The national background check process is lengthy and has caused licensing delays that may affect the public's access to health care. To receive the temporary practice permit, the applicant must meet all other licensing requirements, qualifications, and have no criminal record in Washington. The proposed rules will provide for qualified chiropractic applicants to practice in the full scope of their profession.

Reasons Supporting Proposal: RCW 18.130.064 authorizes fingerprint-based national background checks when a state background check is inadequate, such as out-of-state applicants. The proposed rule will remove barriers for out-of-state applicants who must have the national background check and otherwise meet all licensing requirements. This will improve access to health care for the public by allowing otherwise qualified applicants to provide care. The proposed rule will allow the individual to work in the full scope of practice for a maximum of one hundred eighty days.

Statutory Authority for Adoption: RCW 18.25.0171, 18.130.064, 18.130.075.

Statute Being Implemented: RCW 18.130.075, 18.130.-064.

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

Name of Proponent: Department of health, chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leann Yount, Program Manager, 310 Israel Road S.E. Tumwater, WA 98501, (360) 236-4856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules if the content of which is explicitly and specifically dictated by the statute.

November 2, 2010
Leann Yount
Program Manager

NEW SECTION

WAC 246-808-133 Background check—Temporary practice permit. The chiropractic quality assurance commission (CQAC) conducts background checks on applicants to assure safe patient care. Completion of a national criminal background check may require additional time. The CQAC may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) A temporary practice permit may be issued to an applicant who:

(a) Holds an unrestricted, active chiropractic license in another state that has substantially equivalent licensing standards to those in Washington state;

(b) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(c) Does not have a criminal record in Washington.

(2) A temporary practice permit grants the individual the full chiropractic scope of practice.

(3) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

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

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

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

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

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

(c) Provide verification of having an active unrestricted chiropractic license from another state that has substantially equivalent licensing standards to those in Washington state.

(d) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 10-22-112
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket U-100523—Filed November 3, 2010, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-08-094 and 10-16-143.

Title of Rule and Other Identifying Information: WAC 480-90-179 and 480-100-179, electronic information (new section); 480-90-103(3) and 480-100-103(3), information to consumers; WAC 480-90-153(2) and 480-100-153(2), disclosure of private information; WAC 480-90-153 (3) and (4), 480-100-153 (3) and (4), disclosure of private information (new section); WAC 480-90-178(4) and 480-100-178(4), billing requirement and payment date; WAC 480-90-194 and 480-100-194, publication of proposed tariff changes to increase charges or restrict access to services; WAC 480-90-194(1) and 480-100-194(1), thirty-day notice to individual customers; WAC 480-90-194 (3)(a) and 480-100-194 (3)(a), reduced publication with shortened notice to individual customers; and WAC 480-90-194 (5)(c) Optional method of publication for purchase gas adjustment (PGA).

The proposed rule changes would add a new rule and amend existing rules regarding the provision of information by electronic means.

Specifically, the proposed changes would allow companies to provide bills, notices of tariff revisions, bill inserts including inserts containing information required to be provided to customers or applicants by statute, or rule or commission orders by electronic means in lieu of the use of paper copies sent by United States mail, and the electronic permission for the disclosure of private information with the consent of the customer or other interested parties.

Further, the proposed rule clarifies the consent and disclosures required before the companies can provide the information by electronic means.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on January 4, 2011, at 1:30 p.m.

Date of Intended Adoption: January 4, 2011.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by December 6, 2010.

Assistance for Persons with Disabilities: Contact Susan Holman by December 20, 2010, TTY (360) 586-8203 or (360) 664-1243.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington utilities and transportation commission (UTC) is responsible for protecting consumers by ensuring that investor-owned utility services are fairly priced, available, and reliable and by improving the flow of information to allow for more customer choices. E-mailing of bills is not provided for in the Washington Administrative Code rules (chapters 480-90 and 480-100 WAC). In lieu of required use of paper copies, companies request the option to provide customers or other inter-

ested persons electronic bills, notices of tariff revisions, and bill inserts and to allow electronic permission for the disclosure of private information with the consent of the customer or other interested parties. This may, among other things, save mailing and printing costs.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Roger Kouchi, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1101; Implementation and Enforcement: David W. Danner, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1208.

No small business economic impact statement has been prepared under chapter 19.85 RCW. With the CR-101, the UTC elicited comments from interested persons regarding the economic impact of the proposed changes. The proposed rules incorporate changes proposed by interested parties and will not result in or impose more than minor costs. Because there will not be more than minor increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

November 3, 2010
David W. Danner
Executive Director
and Secretary

AMENDATORY SECTION (Amending Docket No. UG-990294, General Order No. R-484, filed 5/3/01, effective 6/3/01)

WAC 480-90-103 Information to consumers. (1) Each gas utility must make available at each of its listed business offices information regarding rates, rules, and regulations needed for its customers and applicants to obtain adequate and efficient service.

(2) The utility must maintain a toll-free telephone number available for its applicants and customers during business hours to receive information relating to services and rates, to accept and process orders for service, to explain charges on customer bills, to adjust charges made in error, to respond to customer inquiries and complaints, and to generally act as representatives of the utility.

(3) The utility must provide to each applicant relevant rate information and a brochure that explains the rights and responsibilities of a utility customer. The brochure must include, at a minimum, information about the utility's regular business hours, the utility's mailing address, the utility's toll-free number, the twenty-four hour emergency number(s), and an explanation of the utility's processes to establish credit, deposits, billing, delinquent accounts, disconnection of service initiated by the utility, cancellation of service by the customer, the dispute resolution process, and the commission's informal complaint procedures to be followed if the customer remains dissatisfied with the utility's dispute process. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(4) At least once each year, the utility must directly advise each of its customers how to obtain:

(a) A copy of the consumer brochure described in subsection (3) of this section;

(b) A copy of the customer's applicable rate information;

(c) A copy of the gas rules, chapter 480-90 WAC; and

(d) A copy of the utility's current rates and regulations.

(5) The utility must provide an applicant, upon request, the high and low bills for the requested service premises during the prior calendar year, if such data is available.

(6) The utility must provide a customer, upon request, a detailed account of the customer's actual natural gas usage at the service premises for the previous twelve-month period, if such data is available.

(7) The utility must provide customers information comparing energy usage for the current month and the same billing month of the previous year, if available, either on the customers' bills or upon request as follows:

(a) Number of days in billing period;

(b) Therms used; and

(c) Average therms used per day.

(8) The utility must provide the commission with electronic or paper copies of all pamphlets, brochures, and bill inserts of regulated service information at the same time the utility delivers such material to its customers.

AMENDATORY SECTION (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

WAC 480-90-153 Disclosure of private information. (1) A gas utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written or electronic permission to do so.

(2) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship. For each individual service or product offering, the utility must obtain and maintain a record of customer consent for the disclosure of private consumer information.

(3) The utility must obtain customer disclosure permission for each individual service, product offering or disclosure and maintain a record of each permission for the disclosure of private customer information.

(4) The utility will ensure the following specific information is retained when the customer consent for disclosure of private customer information is provided electronically:

(a) The confirmation of consent for the disclosure of private customer information;

(b) A list of the service, product offering or disclosure with respect to which the customer has authorized disclosure of his or her private customer information; and

(c) A confirmation that the name, service address, and account number exactly matches the utility record for such account.

(((~~(3)~~))) (5) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-143 (Special contracts for gas, electric, and water companies).

(((~~(4)~~))) (6) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

(((~~(5)~~))) (7) The utility may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

AMENDATORY SECTION (Amending Docket No. UG-990294, General Order No. R-484, filed 5/3/01, effective 6/3/01)

WAC 480-90-178 Billing requirements and payment date. (1) Customer bills must:

(a) Be issued at intervals not to exceed two one-month billing cycles, unless the utility can show good cause for delaying the issuance of the bill. The utility must be able to show good cause if requested by the commission;

(b) Show the total amount due and payable;

(c) Show the date the bill becomes delinquent if not paid;

(d) Show the utility's business address, business hours, and toll-free telephone number and emergency telephone number by which a customer may contact the utility;

(e) Show the current and previous meter readings, the current read date, and the total amount of therms used;

(f) Show the amount of therms used for each billing rate, the applicable billing rates per therm, the basic charge or minimum bill;

(g) Show the amount of any municipal tax surcharges or their respective percentage rates;

(h) Clearly identify when a bill has been prorated. A prorated bill must be issued when service is provided for a fraction of the billing period. Unless otherwise specified in the utility's tariff, the charge must be prorated in the following manner:

(i) Flat-rate service must be prorated on the basis of the proportionate part of the period that service was rendered;

(ii) Metered service must be billed for the amount metered. The basic or minimum charge must be billed in full;

(i) Clearly identify when a bill is based on an estimation.

(i) A utility must detail its method(s) for estimating customer bills in its tariff;

(ii) The utility may not estimate for more than four consecutive months unless the cause of the estimation is inclement weather, terrain, or a previous arrangement with the customer; and

(j) Clearly identify determination of maximum demand. A utility providing service to any customer on a demand basis must detail in its filed tariff the method of applying charges and of ascertaining the demand.

(2) The minimum time allowed for payment after the bill's mailing date must be fifteen days, if mailed from within the states of Washington, Oregon, or Idaho, or eighteen days if mailed from outside the states of Washington, Oregon, and Idaho.

(3) The utility must allow a customer to change a designated payment-due date when the customer has a satisfactory reason for the change. A satisfactory reason may include, but is not limited to, adjustment of a designated payment-due date to parallel receipt of income. The preferred payment date must be prior to the next billing date.

(4) With the consent of the customer, a utility may provide billings in electronic form if the bill meets all the requirements for the use of electronic information in this chapter. The utility must maintain a record of the consent as a part of the customer's account record, and the customer may change from electronic to printed billing upon request, as provided in this chapter. The utility must complete the change within two billing cycles of the request.

NEW SECTION

WAC 480-90-179 Electronic information. With the prior consent of the customer or applicant, a utility may provide the following by electronic means, by transmission to the customer's e-mail address, instead of in paper copy sent to the customer's mailing address:

- Bills;
- Notices of tariff revisions; and
- Bill inserts containing information required to be provided to customers or applicants by statute, rule, or commission order.

The provision of this electronic information to a customer will be considered compliant with any statute, rule, commission order, or tariff provision that refers to the mailing of bills, notices of tariff revisions or bill inserts when a customer has consented to receive the information in electronic form, provided that the e-mail includes the information, provides a link to the electronic information, or otherwise advises the customer of the electronic location of such information.

(1) **Format of electronic communications.** All information provided in electronic form must meet the requirements for format, due dates, calculation of due dates, minimum time frames, and any other requirements specified in this chapter. Electronic information will be treated the same as documents that are mailed from a location within the state of Washington for the purposes of calculating due dates and minimum time frames.

(2) **Obtaining and documenting customer consent.** The utility must obtain prior written or electronic consent to provide prescribed information in electronic form (customer consent). The customer consent must be obtained directly from the customer of record and comply with the following:

(a) The consent section on the document, screen, or web page may also offer the customer separate, individual opportunities to consent to:

(i) Paperless billing.

(ii) Automatic payment services.

(iii) Equal payment plan.

No other information may be combined on the same document, screen or web page except company contact information. The customer must personally check each box or space giving his or her consent to one or more services. Each service requires a separate, affirmative consent. The consent screen must not have the consent box or space already filled in.

(b) The utility must retain a record of the customer's consent as a part of the customer's account records as evidence of the customer's consent to receive selected documents in electronic form, or to participate in paperless billing or automatic payment services or to participate in the utility's equal payment service.

(c) Documentation of the consent must be made available to the customer and to the commission at no charge, if requested.

(d) At a minimum, the customer consent must include the following:

(i) The name, service address, and account number that exactly matches the utility record for such account;

(ii) The customer's opt-in decision to choose electronic information;

(iii) Confirmation that the customer understands the utility will provide, upon request, a paper copy of any document sent electronically at no additional charge and that the customer may opt out of receiving information electronically at any time and revert to paper format through the mail at no additional charge;

(iv) Confirmation that the customer understands it is their responsibility to notify the utility of any change to their e-mail or other electronic address; and

(v) Confirmation that the customer understands that in addition to the paperless bills they will now receive all notices regarding service, including notices of the utility's request to increase rates and changes in service, in electronic form.

(3) **Distribution of electronic notices.**

(a) Electronic notices of proposed tariff changes, including increased rates or restriction of access to services, and public hearings will be marked prominently "IMPORTANT NOTICE REGARDING YOUR GAS SERVICE." (Note: For combined service customers the caption must read "ELECTRIC AND GAS SERVICES.")

(b) If the utility elects to send the notices of proposed tariff changes or public hearings separate from the bill, it will also include a copy of the electronic notice with the electronic bill as an attachment or link. The attachment or link will include the electronic address designated by the commission where customers may file public comment(s) regarding the proposed tariff changes or restriction of access to service.

(4) **Documents requiring paper delivery.** The following documents may not be provided solely by electronic means:

(a) Notices of disconnection; and

(b) Information regarding the winter moratorium on disconnection of low-income heating customers, including written copies, if any, of extended payment plans under the winter low-income payment program.

(5) **Limit on changes to information format.** A utility is not obligated to provide both paper documents and electronic information to a customer on a continuous basis. A utility may limit a customer who has consented to electronic delivery to three requests for paper documents in a twelve-month period. A utility may require that a customer who requests an electronic bill also receive all bill inserts electronically. If a customer is unable to properly receive, view or understand electronic information provided by the utility, the utility may refuse to provide that information in electronic form.

(6) **Specialized electronic format.** When a utility provides electronic billing information in a specialized format, such as, but not limited to, the electronic data interchange (EDI), where the utility incurs a cost that is offset by not sending statements using mail, the utility may offer customers the choice of the specialized format or paper bill. In the event of a disputed bill, the customer may request and the utility shall provide customers receiving bills in a specialized format with billing details understandable by a person who will be reviewing the bills.

(7) **Undeliverable electronic documents.** If any electronic information allowed in this rule is returned to the utility as undeliverable or the utility is made aware by other means that such electronic information did not reach the customer, the utility must take the following steps to ensure customer receipt:

(a) The utility must send the information to the customer-provided e-mail address one additional time, the next business day. If the additional attempt fails, the company must send the customer the information by mail the next business day and automatically return the customer to mail notification; and

(b) The utility must include an explanation with the mailed information that the e-mail address is not functioning. The company must explain that future information will be sent via mail until a functioning e-mail address has been provided to the company. A second verification is not required.

AMENDATORY SECTION (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

WAC 480-90-194 Publication of proposed tariff changes to increase charges or restrict access to services. Each gas utility offering service under tariff must publish or provide electronically all proposed changes to its tariff for at least thirty days, as required by RCW 80.28.060. For any proposed tariff change that would increase recurring charges, except purchased gas adjustment (PGA) filings as provided in subsection (5) of this section, or restrict access to services (e.g., discontinue a service, or limit access to service by imposing a new usage level on existing services), a utility must fulfill the requirements of subsection (1), (2), or (3) of this section. For any other proposed tariffs, the utility must fulfill the requirements of WAC 480-90-195. The utility may

provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

The utility will not be required to accomplish publication under this section if it has agreed to suspend its tariff filing and to provide notice as provided under WAC 480-90-197.

(1) **Thirty-day notice to individual customers.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, mail or provide electronically the posting to each customer that would be affected by the proposed change. The posting must include the information listed in subsection (4) of this section. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(2) **Published notice.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, publish notice of the proposed change within the geographical areas where it offers service. To meet minimum publication requirements, a utility must:

(a) Distribute copies of the published notice to community agencies and organizations in the geographic area where the utility offers service for posting and publication by the agency or organization. The utility must include in its distribution list any agency or organization that requests these notices;

(b) Cause to be printed in large print, as a paid advertisement, a complete copy of the published notice in the daily newspaper of general circulation with the greatest number of subscribers in each geographic area or each of the areas affected by the proposed tariff;

(c) Provide to the news editor of every newspaper, television station, and radio station, in the geographic area within which it offers service a news release or public service announcement summarizing the published notice. The release or announcement must include a toll-free number that customers can use to obtain more information from the utility. The commission will maintain a list of area newspapers, television, and radio stations and will provide it on request to any utility; and

(d) Post a complete copy of the published notice on an Internet web site accessible to the public using generally available browser software.

(3) **Reduced publication with shortened notice to individual customers.** To comply under this method, the utility must:

(a) Mail or provide electronically the posting to each customer that would be affected by the proposed change at least fifteen days before the stated effective date of the proposed change. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information;

(b) At the time of the utility's filing with the commission, distribute copies of the published notice in the same manner as provided in subsection (2)(a) of this section;

(c) At the time of the utility's filing with the commission, provide news media notice in the same manner as provided in subsection (2)(c) of this section; and

(d) At the time of the utility's filing with the commission, post a complete copy of the published notice in the same manner as provided in subsection (2)(d) of this section.

(4) **Content of postings.** The published notice required by this rule must include, when applicable:

(a) The date the notice is issued;

(b) The utility's name and address;

(c) A brief explanation of the reason(s) the utility has requested the rate change (e.g., increase in labor costs, recovery of new plant investment, and increased office expenses, such as postage and customer billing);

(d) A comparison of current and proposed rates by service;

(e) An example showing the monthly increase of the average customer's bill based on the proposed rates (e.g., "based on the proposed rates, a typical gas customer using an average of eighty therms per month would see an average monthly increase of $2.74.");

(f) When the rates will be billed (i.e., monthly or bimonthly);

(g) The requested effective date and, if different, the implementation date;

(h) A statement that the commission has the authority to set final rates that may vary from the utility's request, which may be either higher or lower depending on the results of the investigation;

(i) A description of how customers may contact the utility if they have specific questions or need additional information about the proposal; and

(j) Public involvement language. A utility may choose from:

(i) Commission-suggested language that is available from the commission's designated public affairs officer; or

(ii) Utility-developed language that must include the commission's mailing address, toll-free number, and docket number, if known, and a brief explanation of:

(A) How to participate in the commission's process by mailing or faxing a letter, or submitting an e-mail; and

(B) How to contact the commission for process questions or to be notified of the scheduled open meeting at which the proposal will be considered by the commission.

(5) **Optional method of publication for purchase gas adjustment (PGA).** A utility that publishes notice of a PGA filing pursuant to this subsection is not required to publish notice of the filing pursuant to subsection (1), (2), or (3) of this section.

(a) The utility must provide notice to affected customers before and after final commission disposition. Notice before commission disposition is to educate customers of a potential increase in natural gas prices. Notice after commission disposition is to inform customers of the new rates.

(b) Prior PGA notice. The notice must:

(i) Clearly define what a PGA is and explain how it works;

(ii) State whether the utility expects an increase or decrease in the upcoming filing; and

(iii) Include a utility contact phone number for additional information.

(c) The utility must ((~~mail~~)) provide the notice to each affected customer by mail or by electronic means consistent

with the provisions in this chapter governing the use of electronic information. The utility must also send the notice or a press release about the increase to every daily paper within its service territory.

(d) A newsletter, bill insert, bill message, or separate mailing to customers is permitted for prior notice.

(e) Customer notice after final commission disposition must be provided pursuant to WAC 480-90-195.

AMENDATORY SECTION (Amending Docket No. UE-990473, General Order No. R-482, filed 5/3/01, effective 6/3/01)

WAC 480-100-103 Information to consumers. (1) An electric utility must make available at each of its listed business offices information regarding rates, rules, and regulations needed for its customers and applicants to obtain adequate and efficient service.

(2) The utility must maintain a toll-free telephone number available for its applicants and customers during business hours to receive information relating to services and rates, to accept and process orders for service, to explain charges on customer bills, to adjust charges made in error, to respond to customer inquiries and complaints, and to generally act as representatives of the utility.

(3) The utility must provide to each applicant relevant rate information and a brochure that explains the rights and responsibilities of a utility customer. The brochure must include, at a minimum, information about the utility's regular business hours, the utility's mailing address, the utility's toll-free number, the twenty-four hour emergency number(s), and an explanation of the utility's processes to establish credit, deposits, billing, delinquent accounts, disconnection of service initiated by the utility, cancellation of service by the customer, the dispute resolution process, and the commission's informal complaint procedures to be followed if the customer remains dissatisfied with the utility's dispute process. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(4) At least once each year, the utility must directly advise each of its customers how to obtain:

(a) A copy of the consumer brochure described in subsection (3) of this section;

(b) A copy of the customer's applicable rate information;

(c) A copy of the electric rules, chapter 480-100 WAC; and

(d) A copy of the utility's current rates and regulations.

(5) The utility must provide an applicant, upon request, the high and low bills for the requested service premises during the prior calendar year, if such data is available.

(6) The utility must provide a customer, upon request, a detailed account of the customer's actual electric usage at the service premises for the previous twelve-month period, if such data is available.

(7) The utility must provide customers information comparing energy usage for the current month and same billing month of the previous year, if available, either on the customers' bills or upon request, as follows:

(a) Number of days in billing period;

(b) Kilowatt hours used; and

(c) Average kilowatt hours used per day.

(8) The utility must provide the commission with electronic or paper copies of all pamphlets, brochures, and bill inserts of regulated service information at the same time the utility delivers such material to its customers.

AMENDATORY SECTION (Amending Docket No. A-030832, General Order No. R-509, filed 10/29/03, effective 11/29/03)

WAC 480-100-153 Disclosure of private information. (1) An electric utility may not disclose or sell private consumer information with or to its affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility has first obtained the customer's written or electronic permission to do so.

(2) Private consumer information includes the customer's name, address, telephone number, and any other personally identifying information, as well as information related to the quantity, technical configuration, type, destination, and amount of use of service or products subscribed to by a customer of a regulated utility that is available to the utility solely by virtue of the customer-utility relationship. For each individual service or product offering, the utility must obtain and maintain a record of customer consent for the disclosure of private consumer information.

(3) The utility must obtain customer disclosure permission for each individual service, product offering or disclosure and maintain a record of each permission for the disclosure of private customer information.

(4) The utility will ensure the following specific information is retained when the customer consent for disclosure of private customer information is provided electronically:

(a) The confirmation of consent for the disclosure of private customer information;

(b) A list of the service, product offering or disclosure with respect to which the customer has authorized disclosure of his or her private customer information; and

(c) A confirmation that the name, service address, and account number exactly matches the utility record for such account.

(((~~(3)~~))) (5) This section does not prevent disclosure of the essential terms and conditions of special contracts as provided for in WAC 480-80-143 (Special contracts for gas, electric, and water companies).

(((~~(4)~~))) (6) This section does not prevent the utility from inserting any marketing information into the customer's billing package.

(((~~(5)~~))) (7) The utility may collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

AMENDATORY SECTION (Amending Docket No. UE-990473, General Order No. R-482, filed 5/3/01, effective 6/3/01)

WAC 480-100-178 Billing requirements and payment date. (1) Customer bills must:

(a) Be issued at intervals not to exceed two one-month billing cycles, unless the utility can show good cause for delaying the issuance of the bill. The utility must be able to show good cause if requested by the commission;

(b) Show the total amount due and payable;

(c) Show the date the bill becomes delinquent if not paid;

(d) Show the utility's business address, business hours, and a toll-free telephone number and an emergency telephone number by which a customer may contact the utility;

(e) Show the current and previous meter readings, the current read date, and the total amount of kilowatt hours used;

(f) Show the amount of kilowatt hours used for each billing rate, the applicable billing rates per kilowatt hour, the basic charge or minimum bill;

(g) Show the amount of any municipal tax surcharges or their respective percentage rates;

(h) Clearly identify when a bill has been prorated. A prorated bill must be issued when service is provided for a fraction of the billing period. Unless otherwise specified in the utility's tariff, the charge must be prorated in the following manner:

(i) Flat-rate service must be prorated on the basis of the proportionate part of the period the service was rendered;

(ii) Metered service must be billed for the amount metered. The basic or minimum charge must be billed in full.

(i) Clearly identify when a bill is based on an estimation.

(i) The utility must detail its method(s) for estimating customer bills in its tariff;

(ii) The utility may not estimate for more than four consecutive months, unless the cause of the estimation is inclement weather, terrain, or a previous arrangement with the customer;

(j) Clearly identify determination of maximum demand. A utility providing service to any customer on a demand basis must detail in its filed tariff the method of applying charges and of ascertaining the demand.

(2) The minimum time allowed for payment after the bill's mailing date must be fifteen days, if mailed from within the states of Washington, Oregon, or Idaho, or eighteen days if mailed from outside the states of Washington, Oregon, and Idaho.

(3) The utility must allow a customer to change a designated payment-due date when the customer has a satisfactory reason for the change. A satisfactory reason may include, but is not limited to, adjustment of a designated payment-due date to parallel receipt of income. The preferred payment date must be prior to the next billing date.

(4) With the consent of the customer, a utility may provide billings in electronic form if the bill meets all the requirements for the use of electronic information in this chapter. The utility must maintain a record of the consent as a part of the customer's account record, and the customer may change from electronic to printed billing upon request, as provided in this chapter. The utility must complete the change within two billing cycles of the request.

NEW SECTION

WAC 480-100-179 Electronic information. With the prior consent of the customer or applicant, a utility may provide the following by electronic means, by transmission to the customer's e-mail address, instead of in paper copy sent to the customer's mailing address:

• Bills;

• Notices of tariff revisions; and

• Bill inserts containing information required to be provided to customers or applicants by statute, rule, or commission order.

The provision of this electronic information to a customer will be considered compliant with any statute, rule, commission order, or tariff provision that refers to the mailing of bills, notices of tariff revisions or bill inserts when a customer has consented to receive the information in electronic form, provided that the e-mail includes the information, provides a link to the electronic information, or otherwise advises the customer of the electronic location of such information.

(1) **Format of electronic communications.** All information provided in electronic form must meet the requirements for format, due dates, calculation of due dates, minimum time frames, and any other requirements specified in this chapter. Electronic information will be treated the same as documents that are mailed from a location within the state of Washington for the purposes of calculating due dates and minimum time frames.

(2) **Obtaining and documenting customer consent.** The utility must obtain prior written or electronic consent to provide prescribed information in electronic form (customer consent). The customer consent must be obtained directly from the customer of record and comply with the following:

(a) The consent section on the document, screen, or web page may also offer the customer separate, individual opportunities to consent to:

(i) Paperless billing.

(ii) Automatic payment services.

(iii) Equal payment plan.

No other information may be combined on the same document, screen or web page except company contact information. The customer must personally check each box or space giving his or her consent to one or more services. Each service requires a separate, affirmative consent. The consent screen must not have the consent box or space already filled in.

(b) The utility must retain a record of the customer's consent as a part of the customer's account records as evidence of the customer's consent to receive selected documents in electronic form, or to participate in paperless billing or automatic payment services or to participate in the utility's equal payment service.

(c) Documentation of the consent must be made available to the customer and to the commission at no charge, if requested.

(d) At a minimum, the customer consent must include the following:

(i) The name, service address, and account number that exactly matches the utility record for such account;

(ii) The customer's opt-in decision to choose electronic information;

(iii) Confirmation that the customer understands the utility will provide, upon request, a paper copy of any document sent electronically at no additional charge and that the customer may opt out of receiving information electronically at any time and revert to paper format through the mail at no additional charge;

(iv) Confirmation that the customer understands it is their responsibility to notify the utility of any change to their e-mail or other electronic address; and

(v) Confirmation that the customer understands that in addition to the paperless bills they will now receive all notices regarding service, including notices of the utility's request to increase rates and changes in service, in electronic form.

(3) **Distribution of electronic notices.**

(a) Electronic notices of proposed tariff changes, including increased rates or restriction of access to services, and public hearings will be marked prominently "IMPORTANT NOTICE REGARDING YOUR ELECTRIC SERVICE." (Note: For combined service customers the caption must read "ELECTRIC AND GAS SERVICES.")

(b) If the utility elects to send the notices of proposed tariff changes or public hearings separate from the bill, it will also include a copy of the electronic notice with the electronic bill as an attachment or link. The attachment or link will include the electronic address designated by the commission where customers may file public comment(s) regarding the proposed tariff changes or restriction of access to service.

(4) **Documents requiring paper delivery.** The following documents may not be provided solely by electronic means:

(a) Notices of disconnection; and

(b) Information regarding the winter moratorium on disconnection of low-income heating customers, including written copies, if any, of extended payment plans under the winter low-income payment program.

(5) **Limit on changes to information format.** A utility is not obligated to provide both paper documents and electronic information to a customer on a continuous basis. A utility may limit a customer who has consented to electronic delivery to three requests for paper documents in a twelve-month period. A utility may require that a customer who requests an electronic bill also receive all bill inserts electronically. If a customer is unable to properly receive, view or understand electronic information provided by the utility, the utility may refuse to provide that information in electronic form.

(6) **Specialized electronic format.** When a utility provides electronic billing information in a specialized format, such as, but not limited to, the electronic data interchange (EDI), where the utility incurs a cost that is offset by not sending statements using mail, the utility may offer customers the choice of the specialized format or paper bill. In the event of a disputed bill, the customer may request and the utility shall provide customers receiving bills in a specialized format with billing details understandable by a person who will be reviewing the bills.

(7) **Undeliverable electronic documents.** If any electronic information allowed in this rule is returned to the utility as undeliverable or the utility is made aware by other means that such electronic information did not reach the customer, the utility must take the following steps to ensure customer receipt:

(a) The utility must send the information to the customer-provided e-mail address one additional time, the next business day. If the additional attempt fails, the company must send the customer the information by mail the next business day and automatically return the customer to mail notification; and

(b) The utility must include an explanation with the mailed information that the e-mail address is not functioning. The company must explain that future information will be sent via mail until a functioning e-mail address has been provided to the company. A second verification is not required.

AMENDATORY SECTION (Amending Docket No. U-991301, General Order No. R-498, filed 5/14/02, effective 6/17/02)

WAC 480-100-194 Publication of proposed tariff changes to increase charges or restrict access to services. Each electric utility offering service under tariff must publish or provide electronically all proposed changes to its tariff for at least thirty days, as required by RCW 80.28.060. For any proposed tariff change that would increase recurring or per-occurrence charges or restrict access to services (e.g., discontinue a service, or limit access to service by imposing a new usage level on existing services), a utility must fulfill the requirements of subsection (1), (2), or (3) of this section. For any other proposed tariffs, the utility must fulfill the requirements of WAC 480-100-195. The utility will not be required to accomplish publication under this section if it has agreed to suspend its tariff filing and to provide notice as provided under WAC 480-100-197. The utility may provide the information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(1) **Thirty-day notice to individual customers.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, mail or provide electronically the posting to each customer that would be affected by the proposed change. The posting must include the information listed in subsection (4) of this section. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information.

(2) **Published notice.** To comply under this method, the utility must, at least thirty days before the stated effective date of the proposed change, publish notice of the proposed change within the geographical areas where it offers service. To meet minimum publication requirements, a utility must:

(a) Distribute copies of the published notice to community agencies and organizations in the geographic area where it offers service for posting and publication by the agency or organization. The utility must include in its distribution list any agency or organization that requests these notices;

(b) Cause to be printed in large print, as a paid advertisement, a complete copy of the published notice in the daily

newspaper of general circulation with the greatest number of subscribers in each geographic area or each of the areas affected by the proposed tariff;

(c) Provide to the news editor of every newspaper, television station, and radio station in the geographic area within which it offers service a news release or public service announcement summarizing the published notice. The release or announcement must include a toll-free number that customers can use to obtain more information from the electric utility. The commission will maintain a list of area newspapers, television, and radio stations and will provide it on request to any utility; and

(d) Post a complete copy of the published notice on an Internet web site accessible to the public using generally available browser software.

(3) **Reduced publication with shortened notice to individual customers.** To comply under this method, the utility must:

(a) Mail or provide electronically the posting to each customer that would be affected by the proposed change at least fifteen days before the stated effective date of the proposed change. The utility may provide this information in an electronic format consistent with provisions in this chapter governing the use of electronic information;

(b) At the time of the utility's filing with the commission, distribute copies of the published notice in the same manner as provided in subsection (2)(a) of this section;

(c) At the time of the utility's filing with the commission, provide news media notice in the same manner as provided in subsection (2)(c) of this section; and

(d) At the time of the utility's filing with the commission, post a complete copy of the published notice in the same manner as provided in subsection (2)(d) of this section.

(4) **Content of postings.** The published notice required by this rule must include, when applicable:

(a) The date the notice is issued;

(b) The utility's name and address;

(c) A brief explanation of the reason(s) the utility has requested the rate change (e.g., increase in labor costs, recovery of new plant investment, and increased office expenses, such as postage and customer billing);

(d) A comparison of current and proposed rates by service;

(e) An example showing the monthly increase of the average customer's bill based on the proposed rates (e.g., "based on the proposed rates, a typical electric customer using an average of 1,500 kwhs per month would see an average monthly increase of $10.38.");

(f) When the rates will be billed (i.e., monthly or bimonthly);

(g) The requested effective date and, if different, the implementation date;

(h) A statement that the commission has the authority to set final rates that may vary from the utility's request, which may be either higher or lower depending on the results of the investigation;

(i) A description of how customers may contact the utility if they have specific questions or need additional information about the proposal; and

(j) Public involvement language. A utility may choose from:

(i) Commission-suggested language that is available from the commission's designated public affairs officer; or

(ii) Utility-developed language that must include the commission's mailing address, toll-free number, and docket number, if known, and a brief explanation of:

(A) How to participate in the commission's process by mailing or faxing a letter, or submitting an e-mail; and

(B) How to contact the commission for process questions or to be notified of the scheduled open meeting at which the proposal will be considered by the commission.

WSR 10-22-117
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed November 3, 2010, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-03-106.

Title of Rule and Other Identifying Information: Chapter 16-462 WAC, Grape planting stock—Registration and certification, the department is proposing to amend the rules for the grape planting stock certification program, by revising provisions, including field eligibility criteria. In addition, the department proposes to amend the existing language to increase its clarity and readability and update the language to conform to current industry and regulatory standards.

Hearing Location(s): Washington State Department of Agriculture, 21 North 1st Avenue, Conference Room 238, Yakima, WA 98902, on December 8, 2010, at 1:00 p.m.

Date of Intended Adoption: December 15, 2010.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by close of business, December 8, 2010.

Assistance for Persons with Disabilities: Contact Henri Gonzales by December 1, 2010, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions were requested by participants of the grapevine certification program. Participation in the fee-for-service grapevine certification program is voluntary. The program makes available high quality growing stock virtually free of some types of plant virus diseases, intended to produce healthier vineyards and a market premium for growers participating in the grapevine certification program. Growers would like additional options to mitigate the risk of nematode vectored viruses, including soil testing or soil treatment, while maintaining the program's effectiveness. Other revisions include clarification regarding the number of generations allowed for certified grapevines and other certification criteria.

Reasons Supporting Proposal: This will provide industry more flexibility in land use with regard to the required buffer from noncertified grapevines.

Statutory Authority for Adoption: RCW 15.14.015 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.14 RCW.

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

Name of Proponent: Participants in the grapevine certification program, private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Wessels, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1984.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on businesses in an industry. The department has analyzed the economic effects of the proposed revisions and has concluded that there are no additional costs on the regulated industry and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 3, 2010
Mary A. Martin Toohey
Assistant Director

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

((~~"Aseptic shoot tip propagation" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting from a foundation plant or from green growth (i.e., softwood) from a foundation plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.~~))

"Certified grape planting stock" means vines, rooted cuttings, cuttings or grafted plants taken or propagated directly from foundation vines((~~,~~)) or registered vines ((~~or certified~~)) in compliance with the provisions of this chapter.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture or the director's designee.

"Foundation block" means a planting of grapevines established, operated and maintained by Washington State University, or other ((~~equivalent~~)) sources approved in writing by the director, that are indexed and found free from viruses designated in this chapter and that are not off-type.

"Index" means ((~~determining whether a~~)) testing for virus infection ((~~is present by means of inoculation~~)) by making a graft with tissue from the plant ((~~to be~~)) being tested to an indicator plant, or by any other testing method approved by the department.

"Indicator plant" means any herbaceous or woody plant used to index or determine virus infection.

"Mother vine" means a grapevine used as a source for propagation material.

"Off-type" means appearing under visual examination to be different from the variety listed on the application for registration and certification, or exhibiting symptoms of a genetic or nontransmissible disorder.

"Registered block" means a planting of registered grapevines maintained by a nursery and used as a source of propagation material for certified grapevines.

"Registered vine" means any vine propagated from a foundation block approved by the director, identified to a single vine source, and registered with the Washington state department of agriculture, in compliance with provisions of this chapter.

"Tissue culture" means aseptically removing a vegetative shoot tip from growth arising from a dormant cutting from a foundation plant or from green growth (i.e., softwood) from a foundation plant during the growing season and aseptically transferring this shoot tip to a suitable vessel containing an appropriate culture medium.

"Virus-like" means a graft-transmissible disorder with symptoms resembling a characterized virus disease, including, but not limited to, disorders caused by viroids and phytoplasmas.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-020 Requirements for participation in the grape planting stock program. (1) The applicant shall be responsible, subject to the approval of the department, for the selection of the location and the proper maintenance of registered blocks and planting stock.

(2) The applicant must maintain records identifying the foundation source of registered vines and certified planting stock. The applicant must make these records available to the department upon request.

(3) The applicant shall take suitable precautions in cultivation, irrigation, movement and use of equipment, and in other farming practices, to guard against spread of soil-borne pests to planting stock entered in this program. The applicant shall keep all registered blocks and certified planting stock clean cultivated except for approved cover crops.

(4) Following notification by the department the applicant shall remove and destroy immediately any registered vine or certified planting stock found to be off-type or affected by a virus or virus-like disease or a quarantine pest.

((~~(5) Registered blocks and certified planting stock must be located at least one hundred feet from any land on which noncertified or nonregistered grapevines have been grown within the past ten years. This does not apply to registered and certified stock grown in a fully enclosed greenhouse, screenhouse or laboratory provided the facility does not contain noncertified grapevines.~~))

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-021 Requirements for registered blocks. (1) All registered grapevines must be identified by the number assigned to the single vine source in the foundation block from which they were taken.

(2) With the exception of practices allowed in subsections (3), (4), and (5) of this section, registered plants must be

propagated directly from cuttings taken from a foundation block.

(3) Plants propagated from a foundation block by ((~~aseptic shoot tip propagation~~)) tissue culture and grown entirely under laboratory or greenhouse conditions may serve as a source of softwood cuttings or shoot tip culture used to establish a registered block or registered grapevines.

(4) Registered grapevines may be propagated from other registered grapevines within the same registered block for the purpose of increasing the size of the registered block or for replacement grapevines, if the mother vine was propagated directly from a foundation vine.

(5) ((~~The department may permit~~)) Participating nurseries must obtain a permit from the department to propagate registered grapevines from other registered grapevines for the purpose of establishing or increasing other registered blocks within the nursery ((~~under~~)). All of the following conditions must be complied with:

(a) The mother vines were propagated directly from ((~~a~~)) foundation vines;

(b) Propagation ((~~is~~)) occurs under ((~~environmentally~~)) controlled conditions adequate to prevent the introduction of pests; and

(c) The mother vine is no more than two years old, or ((~~has been tested and found~~)) the department has determined the mother vine is free of regulated viruses ((~~within the past two years~~)).

(6) Prior to planting registered vines, the growing area and its contiguous borders of not less than ten feet must be tested for the presence of the nematodes Xiphenema and Longidorus, which can be virus vectors. If either nematode is detected, the growing area must be fumigated in accordance with rates and practices recommended by Washington State University. This treatment must be carried out under the supervision of the department.

(7) Registered blocks must be located at least one hundred feet from noncertified or nonregistered grapevines. This does not apply to registered stock grown in a fully enclosed greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

AMENDATORY SECTION (Amending WSR 02-11-100, filed 5/20/02, effective 6/20/02)

WAC 16-462-022 Requirements for certified planting stock. (1) Certified planting stock, including all components of budded or grafted plants, must be propagated from cuttings taken from registered or foundation grapevines.

(2) Cuttings from registered blocks must be sorted and kept separate by variety and selection number or clone.

(3) Treatment to control nematodes and other soil-borne pests may be required at any time by the department.

(4) All certified planting stock other than greenhouse grown plants must comply with the grades and standards for Washington certified grape planting stock as listed in WAC 16-462-055.

(5) Certified stock must be separated from noncertified grapevines by one of the following distances. This requirement does not apply to certified stock grown in a fully enclosed greenhouse, screenhouse or laboratory, providing the facility does not contain noncertified grapevines.

(a) Ten feet from any land treated to control nematodes; or

(b) Twenty feet from land not specifically treated to control nematodes.

(6) Certification is based solely on compliance with the requirements prescribed in WAC 16-462-050 and other requirements of this chapter.

AMENDATORY SECTION (Amending WSR 06-19-009, filed 9/8/06, effective 10/9/06)

WAC 16-462-025 Foundation, registered, and certified grape planting stock—Inspections. (1) Inspections and indexing of registered grapevines and certified planting stock will be performed by the department at times determined to be suitable for the detection of virus and virus-like disease symptoms. Washington State University will inspect and index the foundation block.

(2) The department will index registered grapevines by methods ((~~listed in Appendix 1 of the North American Plant Protection Organization (NAPPO) Grapevine Standard~~)) consistent with those utilized by the Washington State University grapevine foundation program.

(3) The department will conduct at least two inspections of registered grapevines during each growing season.

(4) The department will inspect certified planting stock at least three times per year, twice during the growing season and once during or after harvest.

(5) The department will refuse or withdraw registration or certification for any planting stock that is infested or infected with any regulated pest.

WSR 10-22-119
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 3, 2010, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-16-142.

Title of Rule and Other Identifying Information: WAC 388-478-0015 Need standards for cash assistance.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on December 7, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 8, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 7, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 23, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division, economic services administration, is proposing to amend WAC 388-478-0015 in order to revise the basic need standards for cash assistance programs.

The CR-101 was filed on August 4, 2010, as WSR 10-16-142.

Reasons Supporting Proposal: DSHS is required by RCW 74.04.770 to establish standards of need for cash assistance programs on an annual basis.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.04.770, and 74.08.090.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Aurea Figueroa-Rogers, P.O. Box 45440, Olympia, WA 98504, (360) 725-4623.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by revising the need standards for cash assistance.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These rules affect the need standards for cash assistance as outlined in WAC 388-478-0015.

November 1, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-04-111, filed 2/3/10, effective 3/6/10)

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	$((~~1,159~~)) 1,128
2	((~~1,467~~)) 1,428
3	((~~1,811~~)) 1,763
4	((~~2,137~~)) 2,080
5	((~~2,462~~)) 2,397
6	((~~2,788~~)) 2,715
7	((~~3,223~~)) 3,138
8	((~~3,567~~)) 3,472
9	((~~3,911~~)) 3,807
10 or more	((~~4,255~~)) 4,142

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	$((~~603~~)) 583
2	((~~762~~)) 737
3	((~~941~~)) 910
4	((~~1,111~~)) 1,074
5	((~~1,280~~)) 1,238
6	((~~1,450~~)) 1,402
7	((~~1,676~~)) 1,621
8	((~~1,854~~)) 1,794
9	((~~2,033~~)) 1,967
10 or more	((~~2,212~~)) 2,139

WSR 10-22-122
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed November 3, 2010, 11:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-061.

Title of Rule and Other Identifying Information: WAC 388-865-0255 Resolving consumer dissatisfaction—Grievances, appeals, and administrative hearings; and new WAC 388-865-0256 Consumer grievance process, 388-865-0257 Appeal process for medicaid consumers, and 388-865-0258 Notice of action.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html or by calling (360) 664-6094), on December 7, 2010, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 8, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 7, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 23, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of behavioral health and recovery is updating and clarifying

consumer grievance and appeal policy, as well as making the language clearer and easier to understand.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71.05.560, 71.24,035 [71.24.035] (5)(c), and 71.34.380.

Statute Being Implemented: 42 C.F.R. § 438.400.

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

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

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation: David Weston, P.O. Box 45320, Olympia, WA 98504-5320, (360) 725-1133; and Enforcement: Pete Marburger, P.O. Box 45320, Olympia, WA 98504-5320, (360) 725-1513.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change does not impose new costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1344, fax (360) 586-9727, e-mail kevin.sullivan@dshs.wa.gov.

November 1, 2010
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

WAC 388-865-0255 ((~~Consumer grievance process~~)) Resolving consumer dissatisfaction—Grievances, appeals, and administrative hearings. ((~~The regional support network must develop a process for reviewing consumer complaints and grievances. A complaint is defined as a verbal statement of dissatisfaction with some aspect of mental health services. A grievance is a written request that a complaint be heard and adjudicated, usually undertaken after attempted resolution of a complaint fails. The process must be submitted to the mental health division for written approval and incorporation into the agreement between the regional support network and the mental health division. The process must:~~

~~(1) Be age, culturally and linguistically competent;~~

~~(2) Ensure acknowledgment of receipt of the grievance the following working day. This acknowledgment may be by telephone, with written acknowledgment mailed within five working days;~~

~~(3) Ensure that grievances are investigated and resolved within thirty days. This time frame can be extended by mutual written agreement, not to exceed ninety days;~~

~~(4) Be published and made available to all current or potential users of publicly funded mental health services and advocates in language that is clear and understandable to the individual;~~

~~(5) Encourage resolution of complaints at the lowest level possible;~~

~~(6) Include a formal process for dispute resolution;~~

~~(7) Include referral of the consumer to the ombuds service for assistance at all levels of the grievance and fair hearing processes;~~

~~(8) Allow the participation of other people, at the grievant's choice;~~

~~(9) Ensure that the consumer is mailed a written response within thirty days from the date a written grievance is received by the regional support network;~~

~~(10) Ensure that grievances are resolved even if the consumer is no longer receiving services;~~

~~(11) Continue to provide mental health services to the grievant during the grievance and fair hearing process;~~

~~(12) Ensure that full records of all grievances are kept for five years after the completion of the grievance process in confidential files separate from the grievant's clinical record. These records must not be disclosed without the consumer's written permission, except as necessary to resolve the grievance or to DSHS if a fair hearing is requested;~~

~~(13) Provide for follow-up by the regional support network to assure that there is no retaliation against consumers who have filed a grievance;~~

~~(14) Make information about grievances available to the regional support network;~~

~~(15) Inform consumers of their right to file an administrative hearing with DSHS without first accessing the contractor's grievance process. Consumers must utilize the regional support network grievance process prior to requesting disenrollment;~~

~~(16) Inform consumers of their right to use the DSHS prehearing and administrative hearing processes as described in chapter 388-02 WAC. Consumers have this right when:~~

~~(a) The consumer believes there has been a violation of DSHS rule;~~

~~(b) The regional support network did not provide a written response within thirty days from the date a written request was received;~~

~~(c) The regional support network, mental health prepaid health plan, the department of social and health services, or a provider denies services~~)) The regional support network/prepaid inpatient health plan (RSN/PIHP) must develop and implement written procedures for resolving consumer dissatisfaction.

(1) For the purposes of this section and WAC 388-865-0256, 388-865-0257 and 388-865-0258, the following definitions apply:

(a) **"Action"** - A decision by the RSN/PIHP regarding medicaid consumers for any of the following circumstances:

(i) Denial or limited authorization of a requested service, including the type and level of service;

(ii) Reduction, suspension, or termination of a previously authorized service;

(iii) Denial in whole or in part, of payment for a service;

(iv) Failure to provide services in a timely manner, as defined by the state; or

(v) Failure of a prepaid inpatient health plan to act within the timeframes provided in section 42 CFR 438.408(b).

(b) **"Appeal"** - A request by a medicaid consumer or someone acting on the consumer's behalf with their written permission, for review of an action. See WAC 388-865-0257 for specific requirements.

(c) **"Currently authorized services"** - Services authorized for the period of eligibility currently in effect.

(d) **"Grievance"** - An expression of dissatisfaction about any matter, other than an action, that has been formally filed by a consumer with the RSN/PIHP. A grievance may be submitted orally or in writing. See WAC 388-865-0256 for specific requirements.

(e) **"Notice of action"** - The written notice the RSN/PIHP sends to a consumer to communicate an action as defined in subsection (1)(a). See WAC 388-865-0258 for specific requirements.

(2) A consumer who is dissatisfied with anything involving the community mental health agency (CMHA), the RSN/PIHP, or the department:

(a) Has the right to have concerns about their mental health services resolved at the lowest possible level. Consumers may request assistance from the RSN/PIHP ombuds services (see WAC 388-865-0250) in resolving concerns, including help with grievances, appeals, and the state administrative (fair) hearing process;

(b) May decide to pursue concerns or dissatisfactions at the CMHA level or informally through the RSN/PIHP or the department without formally filing a grievance;

(c) May file a grievance at RSN/PIHP level at any time, and without first requesting other remedies;

(d) Has a right, if a medicaid consumer, to appeal an action. All consumers have a right to other grievance resolution and administrative hearing processes;

(e) May request a state administrative hearing to resolve possible violations of WAC or an unfavorable outcome of a grievance or an appeal of a notice of action at the RSN/PIHP level. Consumers who wish to request a state administrative hearing must first have exhausted grievance or appeal remedies through the RSN/PIHP;

(f) May locate further information about the grievance process in WAC 388-865-0256 and the appeal process in WAC 388-865-0257.

NEW SECTION

WAC 388-865-0256 Consumer grievance process. The regional support network/prepaid inpatient health plan (RSN/PIHP) must develop and implement written procedures for reviewing consumer grievances. The procedures must:

(1) Reflect age, cultural and linguistic competence and ensure assistance to consumers in completing forms and taking other procedural steps. This includes, but is not limited to, providing interpreter services, and toll-free numbers that have adequate TTY/TTD and interpreter capability.

(2) Allow the consumer to file a grievance orally or in writing. If orally, it must be followed up in writing within ten days. The RSN/PIHP must ensure acknowledgment of receipt of the grievance the following working day. This acknowledgment may be by telephone, with written acknowledgment mailed within five working days of the oral request (not dependent upon receipt of written request).

(3) Ensure that grievances are investigated and resolved at the RSN/PIHP level within thirty calendar days of receipt. This timeframe can be extended by mutual written agreement, not to exceed ninety days.

(4) Be published and made available to all current or potential users of publicly funded mental health services and advocates in language that is clear and understandable to the individual.

(5) Ensure that grievances are resolved at the lowest local level possible.

(6) Allow the participation of other people at the consumer's choice.

(7) Ensure that the consumer is mailed a written notice of resolution that includes the reason for the decision within ninety days from the date a written grievance is received by the RSN/PIHP. This timeframe can be extended up to fourteen days:

(a) If requested by the consumer; or

(b) By the RSN when it shows additional information is needed and how the delay is in the consumer's interest.

(8) Ensure that grievances are resolved even if the consumer is no longer receiving services.

(9) Ensure the consumer's right to have currently authorized services continued pending resolution of the grievance.

(10) Ensure that the individuals who make decisions on grievances:

(a) Were not involved in any previous level of review or decision making; and

(b) Are mental health professionals who have appropriate clinical expertise, if the grievance is regarding a denial based on lack of medical necessity or a denial of expedited resolution of appeal or involves clinical issues.

(11) Ensure that full records of all grievances are kept for six years after the completion of the grievance process and make them available to the department upon request as part of the state quality strategy. Records must be kept in confidential files separate from the consumer's clinical record. These records must not be disclosed without the consumer's written permission, except to the department or as necessary to resolve the grievance.

(12) Provide for follow up by the RSN/PIHP to assure that there is no retaliation against consumers who have filed a grievance.

NEW SECTION

WAC 388-865-0257 Appeal process for medicaid consumers. The regional support network/prepaid inpatient health plan (RSN/PIHP) must develop and implement procedures for reviewing and resolving appeals requested by medicaid consumers.

(1) A medicaid consumer can appeal any action (as defined in WAC 388-865-0255).

(2) An appeal can be requested by:

(a) A medicaid consumer;

(b) A medicaid consumer's representative (requires written authorization from consumer); or

(c) A community mental health agency (CMHA) on behalf of the medicaid consumer (requires written authorization from consumer).

(3) The appeal procedures must:

(a) Reflect age, cultural and linguistic competence and ensure medicaid consumers receive assistance in completing forms and taking other procedural steps. This includes, but is

not limited to, providing interpreter services, and toll-free telephone numbers that have adequate TTY/TTD and interpreter capability; and

(b) Be published and made available to all current or potential medicaid users of publicly funded mental health services and advocates in language that is clear and understandable to the individual.

(4) The RSN/PIHP must:

(a) Acknowledge receipt of each appeal; and

(b) Maintain records of appeals.

(5) Upon a request from the medicaid consumer, the RSN/PIHP must continue to provide currently authorized services during the appeal process and until a decision is reached, as outlined in subsection (14) of this section.

(6) For all actions related to standard service authorizations, an appeal must be filed either orally or in writing, within thirty calendar days of the date on the RSN/PIHP's notice of action. This also applies to a medicaid consumer's request for an expedited appeal. For appeals other than those for which expedited resolution is requested, an oral filing must be followed by a signed, written appeal within seven days.

(7) The RSN/PIHP must ensure that the individuals who make decisions on appeals are persons who:

(a) Were not involved in any previous level of review or decision making; and

(b) Are mental health professionals who have appropriate clinical expertise if the appeal is regarding a denial based on lack of medical necessity, or a denial of an expedited resolution of appeal, or involves clinical issues.

(8) The process for appeals must:

(a) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal), and must be confirmed in writing, unless the medicaid consumer or CMHA requests an expedited resolution (see subsection (12) of this section for expedited resolution process);

(b) Provide the medicaid consumer a reasonable opportunity to present evidence, and allegation of fact or law, in person as well as in writing;

(c) Provide the medicaid consumer and the medicaid consumer's representative the opportunity, before and during the appeals process, to examine the medicaid consumer's case file, including medical records, and any other documents and records considered during the appeal process; and

(d) Include as parties to the appeal, the medicaid consumer and the medicaid consumer's representative, or the legal representative of the deceased medicaid consumer's estate.

(9) RSN/PIHP must resolve each appeal and provide notice of the resolution, as expeditiously as the medicaid consumer's mental health condition requires, within the following timeframes:

(a) The standard resolution of an appeal, including notice to the affected parties, cannot exceed forty-five calendar days from the day the RSN/PIHP receives the appeal.

(b) For expedited resolution of appeals, the written notice must be provided no later than three working days after the RSN/PIHP receives the appeal.

(c) The timeframes is subsections (a) and (b) may be extended for up to an additional fourteen days at the medicaid consumer's request or if the RSN/PIHP shows to the satisfaction of the department, upon request, that there is need for additional information and how the delay is in the medicaid consumer's interest. If the RSN/PIHP extends the timeframes, it must, for any extension not requested by the medicaid consumer, give the medicaid consumer written notice for the reason for the delay.

(10) The notice of the resolution of the appeal must:

(a) Be in writing. For notice of an expedited resolution, the RSN/PIHP must also make reasonable efforts to provide oral notice (see subsection (12) of this section);

(b) Include the results of the resolution process and the date it was completed; and

(c) For appeals not resolved wholly in favor of the medicaid consumer:

(i) Include information on the consumer's right to request an administrative hearing through the office of administrative hearings (OAH) and how to do so (see WAC 388-865-0257);

(ii) Include information on the medicaid consumer's right to receive currently authorized services while the hearing is pending and how to make the request (see subsection (14) of this section); and

(iii) Inform the medicaid consumer that the medicaid consumer may be held liable for the cost of services received while the hearing is pending if the hearing decision upholds the RSN/PIHP's action (see subsection (13) of this section).

(11) If a medicaid consumer does not agree with the RSN/PIHP's resolution of the appeal, the medicaid consumer may file a request for an administrative hearing with OAH within ninety days of the receipt of the notice of the resolution of the appeal.

(12) The RSN/PIHP must maintain an expedited review process for appeals.

(a) The process applies when the RSN/PIHP determines (for a request from a medicaid consumer) or the CMHA indicates (in making the request on the medicaid consumer's behalf or supporting the medicaid consumer's request), that taking the time for a standard resolution could seriously jeopardize the medicaid consumer's life or mental health or ability to attain, maintain, or regain maximum function;

(b) The process must result in a decision on the appeal within three working days after the RSN/PIHP receives the appeal, except as provided in subsection (9)(c) of this section. The RSN/PIHP must also make reasonable efforts to provide oral notice.

(c) If the RSN/PIHP denies a request for expedited resolution of an appeal, it must:

(i) Transfer the appeal to the timeframe for standard resolution; and

(ii) Make reasonable efforts to give the medicaid consumer prompt oral notice of the denial, and follow up within two calendar days with a written notice.

(d) The RSN/PIHP must ensure that no punitive action is taken against a medicaid consumer or a CMHA who requests an expedited resolution or supports a medicaid consumer's appeal.

(13) Continuation of services:

(a) The RSN/PIHP must ensure the continuation of the medicaid consumer's services if all of the following apply:

(i) The medicaid consumer or the CMHA files the appeal on or before the later of the following:

(A) Within ten calendar days of the RSN/PIHP mailing the notice of action; or

(B) The intended effective date of the RSN/PIHP's proposed action.

(ii) The appeal involves the termination, suspension, or reduction of currently authorized services;

(iii) The services were ordered by an authorized provider;

(iv) The original period covered by the original authorization has not expired; and

(v) The medicaid consumer requests an extension of services.

(b) If, at the medicaid consumer's request the RSN/PIHP continues or reinstates the medicaid consumer's services while the appeal is pending, the currently authorized services must be continued until one of the following occurs:

(i) The medicaid consumer withdraws the appeal;

(ii) Ten calendar days pass after the RSN/PIHP mails the notice of an unfavorable resolution of the appeal, unless the medicaid consumer has requested an administrative hearing. If the medicaid consumer has requested an administrative hearing, then previously authorized services continue until the department administrative hearing decision is reached;

(iii) OAH issues an administrative hearing decision adverse to the medicaid consumer; or

(iv) The time period or service limits of a previously authorized service has been met.

(c) If the final resolution of the appeal upholds the RSN/PIHP's action, the RSN/PIHP may recover the amount paid for the services provided to the medicaid consumer while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.

(14) Effect of reversed resolutions of appeals:

(a) If the RSN/PIHP or OAH reverses a decision related to services that were not provided while the appeal was pending, the RSN/PIHP must authorize or provide the disputed services promptly, and as expeditiously as the medicaid consumer's mental health condition requires; or

(b) If the RSN/PIHP or OAH reverses a decision to deny authorization of services, and the medicaid consumer received the disputed services while the appeal was pending, the RSN/PIHP must pay for those services.

(15) A medicaid consumer appealing an action must exhaust all levels of resolution within the RSN/PIHP prior to filing a request for an administrative hearing.

NEW SECTION

WAC 388-865-0258 Notice of action. Whenever an action is taken regarding a medicaid consumer's services, the RSN/PIHP must provide a notice of action to the consumer. The RSN/PIHP's notice of action must:

(1) Be in writing;

(2) Be in the consumer's primary language and be easily understood as required by 42 CFR 438.10 (c) and (d);

(3) Explain the action the RSN/PIHP or its contractor has taken or intends to take;

(4) Explain the reasons for the action;

(5) Explain the consumer's or the CMHA's right to file an appeal of notice of action to the RSN/PIHP;

(6) Explain the procedures for exercising the consumer's rights;

(7) Explain the circumstances under which an expedited appeal may be requested and how to request it;

(8) Explain the consumer's right to have currently authorized services continue pending resolution of an appeal, how to request that services be continued, and the circumstances under which the consumer may be required to pay the costs of these services;

(9) Be mailed no later than ten days prior to the effective date of the action, for the termination, suspension, or reduction of previously authorized medicaid covered services;

(10) Be mailed at the time of any action affecting the claim, for the denial of payment;

(11) Be provided as expeditiously as the consumer's mental health condition requires;

(12) For standard service authorization decisions that deny or limit services, must be mailed within fourteen calendar days following receipt of the request for service, with a possible extension of up to fourteen additional days if the consumer or CMHA requests extension or the RSN/PIHP justifies a need for an extension which is in the consumer's best interest; and

(13) For expedited authorization decisions, in cases where the CMHA indicates or the RSN/PIHP determines that following the standard timeframe could seriously jeopardize the consumer's life or mental health or ability to attain, maintain, or regain maximum functioning, must be provided within three working days after receipt of the request for service, with a possible extension of up to fourteen additional calendar days if the consumer requests an extension or the RSN/PIHP justifies a need for an extension which is in the consumer's best interest.

WSR 10-22-123
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed November 3, 2010, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-14-056.

Title of Rule and Other Identifying Information: Chapter 388-106 WAC, Long-term care services.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.

html, or by calling (360) 664-6094), on December 7, 2010, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 8, 2010.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 7, 2010.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 23, 2010, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0125 and 388-106-0130 to adjust in-home hours based on individualized CARE assessments related to:

- An elimination of the increase associated with incontinence and/or specialized diet for clients with informal support; and
- An increase that gives back some of the hours reduced July 1, 2009, to all in-home clients.

Amendments are necessary to implement the 2009-2011 supplemental budget, ESSB 6444.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: ESSB 6444.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Geri-Lyn McNeil, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2353.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt, per RCW 34.05.328 (5)(b)(vii), relating only to client medical or financial eligibility.

November 1, 2010.
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-11-050, filed 5/12/10, effective 6/12/10)

WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E.** CARE then further classifies you into:

(a) **Group E High** with ((~~416~~)) 420 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ((~~346~~)) 349 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ((~~277~~)) 279 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ((~~234~~)) 236 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ((~~185~~)) 187 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ((~~138~~)) 139 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ((~~194~~)) 196 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ((~~174~~)) 176 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ((~~132~~)) 133 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ((~~87~~)) 88 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B.** CARE further classifies you into:

(a) **Group B High** with ((~~147~~)) 149 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with ((~~82~~)) 83 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with ((~~47~~)) 48 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B.** CARE further classifies you into:

(a) **Group B High** with ((~~147~~)) 149 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with ((~~101~~)) 102 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with ((~~82~~)) 83 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with ((~~47~~)) 48 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A.** CARE further classifies you into:

(a) **Group A High** with ((~~71~~)) 72 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with ((~~56~~)) 57 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with ((~~26~~)) 27 base hours if you have an ADL score of 0-4.

AMENDATORY SECTION (Amending WSR 08-23-011, filed 11/6/08, effective 12/7/08)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for informal supports, as defined in WAC 388-106-0010, or other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance available to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet		1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Unscheduled ADLs	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Scheduled ADLs	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
			1/2 to 3/4 time	.35
			>3/4 time	.15

IADLs	Self Performance	Status	Assistance Available	Value Percentage
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
			1/2 to 3/4 time	.1
			>3/4 time	.05
IADLs	**Self Performance**	**Status**	**Assistance Available**	**Value Percentage**
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
			1/2 to 3/4 time	.5
			>3/4 time	.3
Key: > means greater than < means less than				

(b) To determine the amount of reduction for informal support, the value percentages are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of in-home hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours when:

(a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

(i) Meal preparation;

(ii) Housekeeping;

(iii) Shopping; and

(iv) Wood supply.

(b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.

(4) ((~~In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for meal preparation as unmet when you adhere to at least one of the following special diets:~~

~~(a) ADA (diabetes);~~

~~(b) Autism diet;~~

~~(c) Calorie reduction;~~

~~(d) Low sodium;~~

~~(e) Mechanically altered;~~

~~(f) Planned weight change program;~~

~~(g) Renal diet; or~~

~~(h) Needs to receive nutrition through tube feeding or receives greater than twenty-five percent of calories through tube or parenteral feeding.~~

~~(5) In addition to any determination of unmet need in (2)(a) when you are not affected by (3) above, the department will score the status for housework as unmet when you are incontinent of bladder or bowel, documented as:~~

~~(a) Incontinent all or most of the time;~~

~~(b) Frequently incontinent; or~~

~~(c) Occasionally incontinent.~~

~~(6)~~)) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	N/A	N/A	8

Condition	Status	Assistance Available	Add On Hours
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
		>3/4 time	2
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

((~~(7)~~)) (5) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.

((~~(8)~~)) (6) The result of actions under subsections (2), (3), and (4)((~~, (5) and (6)~~)) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

((~~(9)~~)) (7) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).