

WSR 11-18-096
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)
[Filed September 7, 2011, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-091.

Title of Rule and Other Identifying Information: The department intends to amend WAC 388-76-10000 Definitions, 388-76-10015 License—Adult family home—Compliance required, 388-76-10025 License annual fee, 388-76-10035 License requirements—Multiple home providers, 388-76-10064 Application—Forty-eight hour class training requirements, 388-76-10070 Application—Fees required, 388-76-10073 Application—Processing fees required, WAC 388-76-10080 Application—Coprovider, 388-76-10105 Application—Change of ownership, 388-76-10120 License—Must be denied, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10146 Qualifications—Training and home care aide certification requirements, 388-76-10160 Background check—General, 388-76-10174 Background check—Disclosure of information by health care facilities, 388-76-10395 Emergency admissions, 388-76-10540 Resident rights—Disclosure of fees and notice requirements—Deposits, 388-76-10570 Resident rights—Financial affairs related to resident death, 388-76-10915 Department staff access—Willful interference prohibited, 388-76-10945 Remedies—Imposition of remedies—Serious risk—Recurring violations—Uncorrected violations, 388-76-10960 Remedies—Department may impose remedies, and 388-76-10975 Remedies—Specific—Civil penalties, and other related rules as appropriate.

The department intends to repeal WAC 388-76-10162 Background check—National fingerprint checks—Who is required to have.

The department intends to add new sections WAC 388-76-10037 Multiple adult family homes—Additional homes, 388-76-10561 Resident rights—Resident security deposit account, 388-76-10911 Inspection—Multiple adult family home providers, 388-76-10946 Remedies—Increasing severity for certain violations, 388-76-10947 Remedies—Criteria considered, and 388-76-10976 Remedies—Civil fine grid.

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 October 25, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 26, 2011.

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 October 25, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 6, 2011,

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 these rules as a result of legislative activity during session and to be consistent with newly passed state laws: ESHB 1548 Implementation of long-term care worker requirements regarding background checks and training, ESHB 1277 Oversight of licensed or certified long-term care settings for vulnerable adults, SSB 5042 Vulnerable adults protection, and 2E2SHB 1738 Changing the designation of the medicaid single state agency.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 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: Mike Tornquist, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025(3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

August 31, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually

explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - the resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.-34.020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or "immediate threat" means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health and safety of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Boarding homes), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and
- (3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in RCW 18.XXX and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

- (1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or
- (2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

- (1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

- (1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;
- (2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and
- (3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

- (1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.
- (2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

- (1) Another employee or volunteer from the same business or organization; or
- (2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules, and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10015 License—Adult family home—Compliance required. (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations including chapter 74.39A RCW; and
(2) The provider is ultimately responsible for the day-to-day operation of the adult family home.

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

WAC 388-76-10025 License annual fee. (1) The adult family home must pay an annual license fee as (~~required in chapter 70.128 RCW~~) established in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the home does not pay the fee when due, the department will impose remedies.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10035 License requirements—Multiple family home providers. ~~((To be licensed to operate more than one adult family home, the applicant must have))~~ The department will only consider an application for more than one home if the applicant has:

(1) Evidence of successful completion of the forty-eight hour residential care administrator's training to meet the applicable requirements of chapter 388-112 WAC((-);

~~((Operated an adult family home in Washington for at least one year without a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and~~

~~((3))~~ The ability to operate more than one home((-);

~~((4))~~ (3) The following plans for each home the applicant intends to operate. Each of the following plans must be updated and maintained:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking.

~~((5))~~ (4) A ~~((credit))~~ demonstrated history ~~((considered if the history relates))~~ of financial solvency related to the ability to provide care and services((-); and

~~((6))~~ (5) An entity representative or a resident manager at each home who is responsible for the care of each resident at all times.

NEW SECTION

WAC 388-76-10037 License requirements—Multiple adult family homes—Additional homes. The department will only accept an application for an additional license as follows:

(1) For a second home, if the applicant has maintained the first adult family home license for at least twenty-four months with no enforcement actions as listed in RCW 70.128.160(2) related to a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(2) For a third or additional homes, if a minimum of twelve months have passed since the previous adult family home license was granted and no enforcement action was taken against any of the currently licensed homes.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10064 Application—Forty-eight hour administration and business planning class training requirements. (1) The applicant, and the entity representative must successfully complete the department approved forty-eight hour adult family home administration and business planning class as required in chapter 388-112 WAC.

(2) An applicant and entity representative may not be required to take the forty-eight hour class if there is a change in ownership and the applicant and entity representative are

already participants in the operation of a currently licensed home.

(3) An applicant and entity representative must take the forty-eight hour class when the application is for an additional licensed home and the forty-eight hour class has not already been successfully taken.

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

WAC 388-76-10070 Application—Fees required. (1) The applicant must pay all processing and license fees established ~~((by chapter 70.128 RCW))~~ in the state omnibus appropriations act and any amendment or additions made to that act.

(2) The applicant must submit the required fees with the application form.

~~((3))~~ The processing fee will be returned as required by chapter 70.128 RCW.

~~((4))~~ The license fee will be returned to the applicant if the application is withdrawn, voided or the license is denied.

AMENDATORY SECTION (Amending WSR 09-21-075, filed 10/16/09, effective 11/16/09)

WAC 388-76-10073 Application—Processing fees required. The processing fee, required in ~~((chapter 70.128 RCW))~~ the state omnibus appropriations act and any amendment or additions made to that act, applies to any application submitted to the department, including but not limited to an application for licensure, change of ownership, or a change of location.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10080 Application—Coprovider. Couples who are legally married or domestic partners under Washington state law:

(1) May not apply for separate licenses; and

(2) May apply jointly to be coproviders, if they are both qualified. One person may apply to be a provider without requiring the other person to apply.

AMENDATORY SECTION (Amending WSR 10-14-058, filed 6/30/10, effective 7/31/10)

WAC 388-76-10105 Application—Change of ownership. (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract or otherwise.

(2) A change of ownership of an adult family home requires both a new license application and a new license.

(3) A change of ownership occurs when there is a change in:

(a) The provider; or

(b) The control of a provider.

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

(a) The form of legal organization of the adult family home is changed, such as when an adult family home forms:

- (i) A partnership;
- (ii) A corporation;
- (iii) A limited liability company; or
- (iv) When it merges with another legal organization.

(b) The adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of real property, personal property, or both.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death, results in only one person operating the home.

(d) Dissolution of a business partnership that is licensed to operate the adult family home.

(e) If the adult family home is a corporation and the corporation:

- (i) Is dissolved;
- (ii) Merges with another corporation, resulting in a change in the control of the provider; or
- (iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of its shares to one or more of the following:

- (A) New or former shareholders; or
- (B) Present shareholders, each having less than five percent of the shares before the initial transaction.

(f) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the provider's control of the adult family home.

(5) The new owner:

(a) Must obtain a new license from the department before transfer of ownership;

(b) Must not begin operation of the adult family home until the department has granted the license;

(c) Must correct all deficiencies that exist at the time of the ownership change;

(d) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations; and

(e) Must ensure that any funds in the resident's accounts at the time of the ownership change remain in an equivalent account. If any funds in resident's accounts are moved, the new owner must promptly notify residents in writing of the name, address, and location of the new depository; and

(f) Must provide the department with a copy of the written notice of the change of ownership that was given to each resident, or applicable resident representatives.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10120 License—Must be denied. The adult family home license will not be granted if:

(1) The applicant has not successfully completed a department-approved forty-eight hour adult family home

administration and business planning class except as provided in WAC 388-76-10064.

(2) It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice that the department intended to deny, suspend, not renew or revoke the license.

(3) The applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has prior violations of federal or state laws or regulations relating to residential care facilities resulting in revocation, suspension, or nonrenewal of a license or contract with the department within the past ten years;

(c) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (3)(c), (d), (e), (f), or (g) below;

~~((e))~~ (d) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

~~((d))~~ (e) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~((e))~~ (f) Has been convicted of:

(i) Violation of the Imitation Controlled Substance Act (VICSA);

(ii) Violation of the Uniform Controlled Substances Act (VUCSA);

(iii) Violation of the Uniform Legend Drug Act (VULDA); or

(iv) Violation of the Uniform Precursor Drug Act (VUPDA).

~~((f))~~ (g) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

~~((g))~~ (h) Has been convicted of criminal mistreatment;

~~((h))~~ (i) Has been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

~~((i))~~ (j) Has a finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998.

~~((j))~~ (k) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

- (i) Listed on any registry, including the department's registry;
- (ii) Listed on the department's background check central unit (BCCU) report; or
- (iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

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 WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

- (1) Be twenty-one years of age or older;
- (2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:
 - (a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;
 - (b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;
 - (c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;
 - (d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;
 - (e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or
 - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.
- (3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter 388-112 WAC;
- (4) Have good moral and responsible character and reputation;
- (5) Be literate and able to communicate in the English language, ~~((or meet alternative requirements by assuring))~~ and assure that a person is on staff and available at the home who is~~(=~~
 - ~~(a) Able to communicate or make provisions for communicating with the resident in his or her primary language; and~~
 - ~~(b) Capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans))~~ capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Assure that there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line.

(7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

~~((7))~~ (8) Have completed at least ~~(three hundred and twenty)~~ one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home~~(=~~

~~(8))~~ Individuals holding one of the following professional licenses are exempt from this requirement:

- (a) Physician licensed under chapter 18.71 RCW;
- (b) Osteopathic physician licensed under chapter 18.57 RCW;
- (c) Osteopathic physician assistant licensed under chapter 18.57A RCW;
- (d) Physician assistant licensed under chapter 18.71A RCW;
- (e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW.

(9) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

~~((9))~~ (10) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

~~((10))~~ (11) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10395 Emergency admissions. (1) The adult family home may only admit a resident to the home without an assessment or a preliminary service plan if a true emergency exists.

(2) To establish that a true emergency exists, the home must verify that the resident's life, health or safety is at serious risk due to circumstances in the resident's current place of residence or harm to the resident has occurred.

(3) After establishing that a true emergency exists, the home must:

(a) Ensure the assessment and preliminary service plan are completed within five working days after admitting the resident, if the resident pays for services with private funds; or

(b) Obtain approval from an authorized department case manager before admission if the resident's care and services are paid by the ~~((department))~~ health care authority; and

(c) If approval is obtained verbally, document the time, date, and name of the case manager who gave approval.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits. (1) ~~((Before admission,))~~ If the adult family home requires payment of an admission~~(s)~~ fee, deposit, prepaid charges or ~~((a minimum stay fee))~~ any other fees or charges, by or on behalf of a person seeking admission, the home ~~((must give the resident full disclosure in writing in a language the resident understands))~~:

(a) Must give full disclosure in writing:

(b) In a language the resident understands;

(c) Prior to the receipt of any funds.

(2) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, ~~((or))~~ minimum stay fees or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, or is transferred or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, ~~((or))~~ minimum stay fees or any other fees or charges that will be refunded to the resident if the resident leaves the home.

(3) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home. The home must retain a copy of the disclosure and acknowledgment.

(4) If the home does not provide these disclosures, the home must not keep the security deposits, admission fees, prepaid charges, ~~((or))~~ minimum stay fees, or any other fees or charges.

(5) If a resident dies, is hospitalized or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges; unless the resident has given advance notice in compliance with the admission agreement;

(c) May not require the resident to obtain a refund from a placement agency or person.

(6) The adult family home may not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

~~((6))~~ (7) All adult family homes covered under this section are required to refund any and all refunds due the resident within thirty days from the resident's date of discharge from the home.

~~((7))~~ (8) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health

plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

~~((8))~~ (9) If the home requires an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

NEW SECTION

WAC 388-76-10561 Resident rights—Resident security deposit account. Any funds in excess of one hundred dollars that are paid to an adult family home as a security deposit or as prepayment for charges beyond the first month's residency:

(1) Must be deposited by the adult family home in an interest bearing account that is separate from any of the home's operating accounts and credits all interest earned on the resident's funds to that account. The adult family home must:

(a) Ensure that a record of the account is available upon the request of the resident or their representative;

(b) Not commingle resident funds from these accounts with the adult family home's funds or with the funds of any person other than another resident. If resident funds are commingled, the home must provide each resident with a separate accounting for their share;

(c) Ensure that the account or accounts are held in a financial institution as defined in RCW 30.22.041, and notify each resident in writing of the name, address, and location of the depository.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10570 Resident rights—Financial affairs related to resident death. If a resident's personal funds are deposited with the adult family home, the home must give the resident's funds and a final accounting of the funds within ~~((forty-five))~~ thirty days after the resident's death to the individual or probate jurisdiction administering the resident's estate; except for a resident who received long-term care services paid by the state, the home must send funds and accounting to the state of Washington, department of social and health services, office of financial recovery.

NEW SECTION

WAC 388-76-10911 Inspections—Multiple adult family home providers. In the event of serious noncompliance leading to the imposition of one or more actions listed in RCW 70.128.160(2) on a home operated by a provider with multiple adult family homes, all other homes operated by the provider must be inspected to determine if the same or related deficiencies are present in those homes.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10915 Department staff access—Willful interference prohibited. The adult family home must ensure:

- (1) Department staff have access to:
 - (a) The home, residents, including former residents;
 - (b) Resident records, includes former residents records; ~~((and))~~
 - (c) Facility staff and relevant staff records; and
 - (d) Financial records of the business if good cause to believe that a financial obligation related to resident care or services will not be met.
- (2) The home and staff do not willfully interfere or fail to cooperate with department staff in the performance of official duties.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10945 Remedies—~~((Serious risk—Recurring violations—Uncorrected violations))~~ Imposition of remedies. The department must impose a remedy or remedies listed in WAC 388-76-10940 when violations of chapter 70.128, 70.129 and 74.34 RCW and this chapter ~~((pose a serious risk to any resident, are recurring or are uncorrected))~~ are:

- (1) Serious;
- (2) Recurring;
- (3) Uncorrected; or
- (4) An immediate threat to residents.

NEW SECTION

WAC 388-76-10946 Remedies—Increasing severity for certain violations. The department will consider imposing increasingly severe remedies for a provider's deficient practice that is:

- (1) Recurring; or
- (2) Uncorrected.

NEW SECTION

WAC 388-76-10947 Remedies—Criteria considered. The department will consider several criteria when determining whether to impose remedies, or whether to impose increasingly more severe remedies, for provider noncompliance with the licensing laws and rules. The criteria to be considered includes but is not limited to:

- (1) The seriousness of the harm or possible harm to residents;
- (2) The specific facts of the case;
- (3) The compliance history of the provider including:
 - (a) Which remedies have been imposed;
 - (b) When the remedies were imposed; and
 - (c) The frequency of remedy imposition.
- (4) Whether the noncompliance is:
 - (a) Pervasive;
 - (b) Recurring; and
 - (c) Uncorrected.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10960 Remedies—Department may impose remedies. The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

- (1) Has been convicted of:
 - (a) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or
 - (b) A crime involving a firearm used in the commission of a felony or in any act of violence against a person.
- (2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;
- (3) Has committed an act of domestic violence toward a family or household member;
- (4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused, or financially exploited a vulnerable adult, unless such decision requires imposition of a remedy under WAC 388-76-10955;
- (5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;
- (6) Has a history of violations of chapter 70.128 RCW, or any law regulating residential care facilities, that resulted in revocation, suspension, or nonrenewal of a license with the department;
- (7) Has been enjoined from operating a facility for the care and services of children or adults;
- (8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;
- (9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;
- (10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;
- (11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;
- (12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;
- (13) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;
- (14) Failed or refused to comply with:
 - (a) A condition or limit imposed on a license or a stop placement order; or
 - (b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or any other applicable laws.
- (15) Misappropriated property of a resident, unless such action requires a remedy under WAC 388-76-10955;
- (16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents;

(22) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties; or

(23) Failed to relinquish or surrender the license as required.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10975 Remedies—Specific—Civil penalties. (1) The department may impose civil penalties of not more than ~~((one hundred))~~ three thousand dollars per day per violation except that:

(a) Fines up to one thousand dollars can be issued under RCW 70.128.150 for willful interference with a representative of the long-term care ombudsman; and

(b) Fines up to three thousand dollars can be issued under RCW 74.39A.060 for retaliation against a resident,

employee, or any other person making a complaint, providing information to, or cooperating with, the ombudsman, the department, the attorney's general office, or a law enforcement agency;

(c) Fines up to three hundred dollars for each inspection may be issued under RCW 70.128.065(5) when one or more actions listed in RCW 70.128.160(2) is imposed on multiple home provider and inspections of other homes are required to determine whether the same or related deficiencies are present in those homes; and

(d) Fines up to ten thousand dollars may be issued under RCW 70.128.065(2) for a current or former licensed provider who is operating an unlicensed home.

(2) When the adult family home fails to pay a fine under this chapter when due, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider from the department.

(3) Civil monetary penalties are due twenty-eight days after the adult family home or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the adult family home requests a hearing in compliance with chapter 34.05 RCW, RCW 43.20A.215, and this chapter. If the hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Thirty days after the department serves the adult family home with notice of the penalty, interest begins to accrue at a rate of one percent per month as authorized by RCW 43.20B.695.

NEW SECTION

WAC 388-76-10976 Remedies—Civil fine grid. The department will consider imposing civil fine remedies based upon the guidance of the grid below:

NO HARM	MINIMAL or MODERATE HARM		SERIOUS HARM		IMMINENT DANGER and/or IMMEDIATE THREAT
	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Repeat/ Uncorrected	Any Violation
Civil fine up to \$100 per violation	Civil fine up to \$500 per violation or a daily civil fine of at least \$250 per day	Civil fine up to \$1,000 per violation or a daily civil fine of at least \$500 per day	Civil fine up to \$2,000 per violation or a daily civil fine of at least \$1,000 per day	Civil fine up to \$3,000 per violation or a daily civil fine of at least \$1,500 per day	Civil fine of \$3,000 or daily civil fine of at least \$1,000 per day

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10146 Qualifications—Training ~~((and home care aide certification))~~ requirements. (1) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers ~~((hired on or after January 1, 2011,))~~ meet the ~~((long term care worker))~~ training requirements of chapter 388-112 WAC, including but not limited to:

- (a) Orientation and safety;
- (b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

~~((2) ((All persons listed in subsection (1) of this section, must obtain the home care aide certification required by chapter 246-980 WAC.~~

~~((3) All adult family home applicants on or after January 1, 2011, must meet the long term care worker training requirements of chapter 388-112 WAC and obtain the home care aide certification required by chapter 246-980 WAC.~~

~~(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.~~

~~(5))~~ The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10160 Background check—General.

Background checks conducted by the department and required in this chapter include but are not limited to:

- (1) Washington state background checks including:
 - (a) Department and department of health findings; and
 - (b) Criminal background check information from the Washington state patrol and the Washington state courts.

~~(2) ((After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.~~

~~(3))~~ Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

~~((4))~~ (3) In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities. In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. ~~((Results of the national fingerprint-based background check may not be shared.))~~ For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the person was last employed at a licensed health care facility and the date of the person's current employment application; and

(c) The background check is no more than two years old.

(2) If background check information is shared, the health care facility employing the subject of the check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in WAC 388-76-10180 since the completion date of the most recent background check.

(3) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying con-

viction or finding as described in WAC 388-76-10180, after the completion date of their most recent background check:

(a) Cannot rely on the applicant's previous employer's background check information; and

(b) Must request a new background check as required by this chapter.

(4) Health care facilities that share background check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(5) Health care facilities must send and receive the background check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(6) In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10162	Background check— National fingerprint checks—Who is required to have.
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WSR 11-18-098

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Division of Child Support)

[Filed September 7, 2011, 10:08 a.m.]

Supplemental Notice to WSR 11-13-108.

Preproposal statement of inquiry was filed as WSR 11-09-030.

Title of Rule and Other Identifying Information: Division of child support (DCS) proposes to adopt new sections and amend other sections in chapter 388-14A WAC to implement changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations. Note: This supplemental notice makes significant changes to the rules proposed under WSR 11-13-108.

New sections WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? and 388-14A-2083 Under what circumstances can DCS close an intergovernmental case, otherwise known as a case where the application for services was originally made to another state, tribe, territory or country?; and amending WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed?, 388-14A-2085 Under what circumstances may DCS ~~((deny))~~ keep a support enforcement case open despite a request to close ((a support enforcement case)) it?

388-14A-2090 Who ~~((is mailed))~~ receives notice ~~((of DCS intent to close))~~ when DCS closes a case?, 388-14A-2097 What happens to payments that come in after a case is closed?, 388-14A-2160 ~~((If my information is confidential, can))~~ On what authority does DCS ((report me to)) share my confidential information with a credit bureau?, 388-14A-3130 What happens if a ~~((parent))~~ party makes a timely request for hearing on a support establishment notice?, 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support?, 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support, 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment?, 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears?, 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children?, 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order?, 388-14A-7100 The division of child support may register an order from another state for enforcement or modification, 388-14A-7110 The division of child support may ~~((assess and collect))~~ enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state, 388-14A-7115 Are there special rules for a hearing on a notice seeking to ~~((assess and collect))~~ enforce interest on a support order?, 388-14A-7120 When does DCS update the interest ~~((assessed))~~ on a case for enforcement?, 388-14A-7305 How ~~((do I))~~ does a party, IV-D agency or jurisdiction ask ((DCS to do)) for a determination of controlling order?, 388-14A-7325 How does DCS notify the parties ~~((of its))~~ that a determination of the controlling order ((has been)) is going to be made?, and 388-14A-7335 What happens if someone objects to ~~((DCS' proposed))~~ a notice of support debt and registration which contains a determination of the presumed controlling order?

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 October 25, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 26, 2011.

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 October 25, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 11, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New sections and amended other sections in chapter 388-14A WAC to imple-

ment changes in the federal regulations concerning establishing and enforcing intergovernmental child support obligations.

For a list of section numbers and titles, see above.

Reasons Supporting Proposal: As part of its state plan under Title IV-D of the federal Social Security Act, DCS must adopt rules to implement changes in the Code [of] Federal Regulations regarding intergovernmental establishment and enforcement of child support obligations. Failure to adopt the rules could lead to a violation of the state plan requirements, which would jeopardize funding for the child support program and the TANF block grant. The federal rules being implemented in this rule-making order are 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2.

Note: After the initial notice of proposed rule making was filed, DCS determined that additional changes in chapter 388-14A WAC were necessary to implement the federal rules. This supplemental notice makes significant changes to the rules proposed under WSR 11-13-108.

Statutory Authority for Adoption: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310.

Statute Being Implemented: RCW 74.20A.310.

Rule is necessary because of federal law, 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2.

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

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

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

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

August 29, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2080 Once DCS opens a support enforcement case, under what circumstances can it be closed? ~~((Once the division of child support (DCS) starts providing support enforcement services under RCW 26.23.045 and chapter 74.20 RCW, the case must remain open, unless DCS determines that:))~~

(1) ~~((There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;))~~ The circumstances under which the division of child support (DCS) may close a case depend on whether the appli-

cation for services was made directly to DCS or to another governmental entity.

(2) ~~((The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;)) WAC 388-14A-2081 discusses closure of a case when one of the parties submitted an application for support enforcement services directly to DCS, which includes when DCS opened the case as the result of an application for public assistance in the state of Washington.~~

(3) ~~((The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:~~

- ~~(a) Institutionalized in a psychiatric facility;~~
- ~~(b) Incarcerated without possibility of parole; or~~
- ~~(c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.~~

~~(4) The applicant, agency or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;~~

~~(5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;~~

~~(6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;~~

~~(7) DCS is unable to contact the applicant, agency or recipient of services for at least sixty days;~~

~~(8) DCS documents failure to cooperate by the custodial parent (CP) or the initiating jurisdiction, and that cooperation is essential for the next step in enforcement;~~

~~(9) DCS cannot obtain a paternity order because:~~

- ~~(a) The putative father is dead;~~
- ~~(b) Genetic testing has excluded all putative fathers;~~
- ~~(c) The child is at least eighteen years old;~~
- ~~(d) DCS, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or~~
- ~~(e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.~~

~~(10) DCS, a court of competent jurisdiction or an administrative hearing determines that the recipient of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);~~

~~(11) DCS, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;~~

~~(12) DCS has provided locate only services in response to a request for state parent locator services (SPLS);~~

~~(13) The NCP is a citizen and resident of a foreign country, and:~~

- ~~(a) NCP has no assets which can be reached by DCS; and~~
- ~~(b) The country where NCP resides does not provide reciprocity in child support matters.~~

~~(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or~~

~~(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation)) WAC 388-14A-2083 discusses closure of an intergovernmental case, which is what we call a case where the application for services was made to the child support enforcement agency of another state, tribe, territory, country or political subdivision thereof, which then requested support enforcement services from DCS.~~

NEW SECTION

WAC 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS? When the application for services was made directly to the division of child support (DCS) by one of the parties, including when DCS opened the case as the result of an application for public assistance in the state of Washington, the case must remain open unless DCS determines that:

(1) There is no current support order, and the support debt owed by the noncustodial parent (NCP) is less than five hundred dollars, or cannot be enforced under Washington law;

(2) The NCP or putative (alleged) father is dead with no assets, income or estate available for collection;

(3) The NCP has no assets or income available for collection and is not able to provide support during the child's minority because of being:

- (a) Institutionalized in a psychiatric facility;
- (b) Incarcerated without possibility of parole; or
- (c) Medically verified as totally and permanently disabled with no evidence of ability to provide support.

(4) The applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(5) DCS has enough information to use an automated locate system, and has not been able to locate the NCP after three years of diligent efforts;

(6) DCS does not have enough information to use an automated locate system, and has not been able to locate the NCP after one year of diligent efforts;

(7) DCS is unable to contact the applicant or recipient of services for at least sixty days;

(8) DCS or the prosecutor documents failure to cooperate by the custodial parent (CP), and that cooperation is essential for the next step in enforcement;

(9) DCS cannot obtain a paternity order because:

- (a) The putative father is dead;
- (b) Genetic testing has excluded all putative fathers;
- (c) The child is at least eighteen years old;
- (d) DCS, the prosecutor, a court of competent jurisdiction or an administrative hearing determines that establishing paternity would not be in the best interests of the child in a case involving incest, rape, or pending adoption; or
- (e) The biological father is unknown and cannot be identified after diligent efforts, including at least one interview by DCS or its representative with the recipient of support enforcement services.

(10) DCS, the prosecutor, a court of competent jurisdiction or an administrative hearing determines that the recipient

of services has wrongfully deprived the NCP of physical custody of the child as provided in WAC 388-14A-3370(3);

(11) DCS, the prosecutor, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the CP;

(12) DCS has provided locate-only services in response to a request for state parent locator services (SPLS);

(13) The NCP is a citizen and resident of a foreign country, and:

(a) NCP has no assets which can be reached by DCS; and

(b) The country where NCP resides does not provide reciprocity in child support matters.

(14) The child is incarcerated or confined to a juvenile rehabilitation facility for a period of ninety days or more; or

(15) Any other circumstances exist which would allow closure under 45 C.F.R. 303.11 or any other federal statute or regulation.

NEW SECTION

WAC 388-14A-2083 Under what circumstances can DCS close a case where the application for services was originally made to another state, tribe, territory or country, otherwise known as an intergovernmental case? (1) When the application for services was originally made by a party to the child support enforcement agency of another state, tribe, territory, country or political subdivision thereof, which then requested support enforcement services from the division of child support (DCS), DCS keeps the case open until:

(a) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that its case is closed.

(b) The state, tribe, territory, country or political subdivision that received the application for services tells DCS that it no longer wants DCS to provide services.

(c) DCS documents failure to cooperate by the initiating jurisdiction, and that cooperation is essential for the next step in enforcement.

(2) DCS calls this type of case an "intergovernmental case."

(a) The state, tribe, territory, country or political subdivision thereof which referred the case to DCS is called the "initiating jurisdiction."

(b) In these cases, DCS is the "responding jurisdiction."

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2085 Under what circumstances may DCS ~~(deny)~~ keep a support enforcement case open despite a request to close ~~((a support enforcement case))~~ it? (1) The division of child support (DCS) may deny a request to close a support enforcement case when:

(a) There is a current assignment of support or medical rights on behalf of the children in the case;

(b) There is accrued debt under a support order which has been assigned to the state;

(c) Support or medical rights on behalf of the children have previously been assigned to the state; or

(d) The person who requests closure is not the recipient of support enforcement services ~~((or~~

~~(e) A superior court order requires payments to the Washington state support registry (WSSR))~~).

(2) If DCS is the responding jurisdiction in an intergovernmental case DCS cannot deny a request from the initiating jurisdiction to close the intergovernmental portion of a DCS case.

(3) If there is no current assignment of support or medical rights, DCS may close the portion of the case which is owed to the custodial parent (CP), but if there is accrued debt under a support order which has been assigned to the state, DCS keeps that portion of the case open.

~~((3))~~ (4) If a superior court order specifies that the non-custodial parent (NCP) must make payments to the WSSR, but the CP does not want support enforcement services, DCS ~~((keeps the case open as))~~ changes the case status to a payment services only (PSO) case, which means that:

(a) DCS provides payment processing and records maintenance, and

(b) DCS does not provide enforcement services.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2090 Who ~~((is mailed))~~ receives notice ~~((of DCS' intent to close))~~ when DCS closes a case?

(1) ~~((Sixty days before closing a case the division of child support (DCS) sends a notice of intent to close, advising the parties why DCS is closing the case.~~

~~(a) DCS does not send a notice when closing a case under WAC 388-14A-2080 (11) or (12).~~

~~(b) DCS does not provide sixty days' prior notice when closing a case under WAC 388-14A-2080(4))~~ The reason for case closure determines whether the division of child support (DCS):

(a) Sends a notice of intent to close;

(b) Sends a notice of case closure; or

(c) Notifies the other jurisdiction.

(2) DCS mails a notice of intent to close by regular mail to the last known address of the custodial parent (CP) and the noncustodial parent.

(3) ~~((In an interstate case, DCS mails the notice to the CP by regular mail in care of the other state's child support agency))~~ If DCS is closing a case under WAC 388-14A-2081, DCS sends a notice of intent to close, advising the parties why DCS is closing the case. DCS sends the notice sixty days before closing the case, except:

(a) DCS sends a notice of case closure but does not send a notice of intent to close when the applicant or recipient of nonassistance services submits a written request for closure, and there is no current assignment of medical or support rights;

(b) DCS notifies the initiating jurisdiction in an intergovernmental case that DCS has closed the case after the initiating jurisdiction requests case closure; and

(c) DCS does not send a notice of intent to close or a notice of case closure when:

(i) DCS, the prosecuting attorney, the department of social and health services, a court of competent jurisdiction or an administrative hearing determines that action to establish or enforce a support obligation cannot occur without a risk of harm to the child or the custodial parent (CP); or

(ii) DCS has provided locate-only services in response to a request for state parent locator services (SPLS).

(4) If DCS is the responding jurisdiction and is closing an ((interstate)) intergovernmental case because of noncooperation by the initiating jurisdiction, DCS ((also mails the notice to)) notifies the other ((state's)) jurisdiction's child support agency sixty days before closing the case.

(5) When DCS is the initiating jurisdiction in an intergovernmental case and DCS closes its case, DCS notifies the responding jurisdiction that DCS has closed its case and provides the reason for closure.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2097 What happens to payments that come in after a case is closed? After support enforcement services are terminated, the division of child support (DCS) returns support money to the noncustodial parent except if the case remains open as a payment services only (PSO) case as described in WAC 388-14A-2000(1).

(2) If DCS, as the initiating jurisdiction in an intergovernmental case, closed a case without notifying the responding jurisdiction, DCS must attempt to locate the custodial parent (CP) and disburse any payments the CP is entitled to receive.

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 WSR 06-06-076, filed 2/28/06, effective 3/31/06)

WAC 388-14A-2160 ((If my information is confidential, can)) On what authority does DCS ((report me to)) share my confidential information with a credit bureau? (1) ((When a consumer reporting agency, sometimes called a credit bureau, requests information regarding the amount of overdue support owed by a noncustodial parent (NCP), the division of child support (DCS) provides this information)) Under 42 USC §666(7), the division of child support (DCS) may report to consumer reporting agencies the name of any noncustodial parent (NCP) who is delinquent in support and the amount of overdue support owed by that parent. Consumer reporting agencies are sometimes also called credit bureaus.

(2) ((In addition to responding to requests for information by consumer reporting agencies)) Once DCS has reported an NCP to the credit bureaus, DCS ((reports to those agencies information regarding overdue support owed by an NCP. DCS then)) updates the information on a regular basis as long as DCS continues to enforce the support order, even after the NCP brings the account current.

(3) Before releasing information to the consumer reporting agency, DCS sends a written notice to the NCP's last

known address concerning the proposed release of the information ((to the NCP's last known address)).

(4) The notice gives the NCP ten days from the date of the notice to request a conference board under WAC 388-14A-6400 to contest the accuracy of the information. If the NCP requests a conference board, DCS does not release the information until a conference board decision has been issued.

(5) ((A noncustodial parent (NCP)) An NCP who disagrees with the information supplied by DCS to a consumer reporting agency or credit bureau may file a notice of dispute under the federal Fair Credit Reporting Act, 15 USC 1681.

(6) DCS reports to credit bureaus according to the requirements of federal IV-D program rules. In interstate or intergovernmental cases, DCS may report:

(a) As the responding jurisdiction; and

(b) As the initiating jurisdiction when the responding jurisdiction does not report.

AMENDATORY SECTION (Amending WSR 02-06-098, filed 3/4/02, effective 4/4/02)

WAC 388-14A-3130 What happens if a ((parent)) party makes a timely request for hearing on a support establishment notice? (1) A timely request for hearing is an objection made within the time limits of WAC 388-14A-3110. For late (or untimely) hearing requests, see WAC 388-14A-3135.

(2) If either ((parent)) party makes a timely request for hearing, the division of child support (DCS) submits the hearing request to the office of administrative hearings (OAH) for scheduling.

(3) OAH sends a notice of hearing by first class mail to all parties at their address last known to DCS, notifying each party of the date, time and place of the hearing. DCS, the noncustodial parent (NCP), and the custodial parent are all parties to the hearing.

(4) A timely request for hearing stops the support establishment notice from becoming a final order, so DCS cannot collect on the notice. However, in appropriate circumstances, the administrative law judge (ALJ) may enter a temporary support order under WAC 388-14A-3850.

(5) A hearing on an objection to a support establishment notice is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support? (1) When the division of child support (DCS) serves a notice under WAC 388-14A-3300 to advise a noncustodial parent (NCP) that DCS is enforcing a support order, DCS may serve a notice of support debt, a notice of support debt and registration, a notice of support owed, or any other appropriate notice as provided in this chapter.

(2) If the support order sets the amount of the support obligation in a sum certain amount, DCS may serve a notice

of support debt on the NCP as provided in RCW 74.20A.040 and WAC 388-14A-3304.

(3) If DCS is registering a support order or income-withholding order issued in another state, DCS may serve a notice of support debt and registration on the NCP, as provided in RCW 26.21A.500, 26.21A.540 and WAC 388-14A-7100.

(4) Under RCW 26.23.110, DCS may serve a notice of support owed on an NCP or a custodial parent (CP), as appropriate, if the underlying support order:

(a) Does not state the monthly support obligation as a fixed dollar amount stated in U.S. dollars;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both;

(c) Provides that the NCP is responsible for a portion of nonmedical expenses incurred on behalf of the child, but does not reduce the amount owed to a fixed dollar amount; or

(d) Provides that either the NCP or the custodial parent (CP) must provide medical support as provided under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) As of the effective date of this section, DCS does not serve a notice of support owed under RCW 26.23.110 to determine the NCP's proportionate share of any nonmedical expenses other than daycare or child care expenses incurred on behalf of the child(ren) covered by the order.

(6) The fact that an NCP or CP's request that DCS act on his or her claim for unreimbursed nonmedical expenses is rejected by DCS does not mean that the NCP or CP cannot pursue reimbursement of those expenses by proceeding in court.

(a) If a CP obtains a judgment for unreimbursed nonmedical expenses, DCS may enforce the judgment if the CP qualifies for services under WAC 388-14A-2000.

(b) If DCS served a notice of support owed to determine the NCP's proportionate share of nonmedical expenses at some time before the effective date of this section and either NCP or CP requests an annual review under RCW 26.23.110, DCS may continue to provide annual reviews for the support order which was the subject of the prior notice of support owed but only for the same nonmedical expenses addressed in the prior notice of support owed.

(7) See WAC 388-14A-3310 for the general rules for a notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed to:

(i) Determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation;

(ii) Implement an escalation clause or adjustment provision;

(iii) Convert a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars; or

(iv) Determine as a sum certain the NCP's proportionate share of daycare or child care expenses paid by the NCP.

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed to establish a parent's

share of medical expenses and/or medical support owed for the child or children covered by a support order.

(8) WAC 388-14A-3307 discusses how DCS proceeds when DCS decides that a determination of controlling order under chapter 26.21A RCW is required. Under that section, DCS may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

(9) WAC 388-14A-3315 provides that:

(a) When DCS serves a notice of support debt or a notice of support owed on the NCP, DCS notifies the CP and the payee under the order, if the CP is not the payee under the order; and

(b) When DCS serves a notice of support owed under WAC 388-14A-3312 on the CP, DCS notifies the NCP.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support. (1) The division of child support (DCS) may serve a notice of support debt and demand for payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the children in the case.

(c) When there are multiple current support orders for the same obligor and children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, or within sixty days of service of the notice outside of Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

~~(6) ((A notice of support debt and demand for payment served in another state becomes final according to WAC 388-14A-7200))~~ RCW 26.21A.515 controls the calculation of the debt on a notice of support debt and demand for payment.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) Following service of the notice of support debt and demand for payment on the NCP, DCS mails to the last known address of the CP and/or the payee under the order:

(a) A copy of the notice of support debt and demand for payment; and

(b) A notice to payee under WAC 388-14A-3315 regarding the payee's rights to contest the notice of support debt. The CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection ~~((9))~~ (8)(b) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection (6) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection ~~((8))~~ (7) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3305 What can I do if I disagree with a notice of support debt and demand for payment? Once the division of child support has served a notice of support debt and demand for payment, either party may disagree with the notice.

(1) If either party objects to the enforcement of a non-Washington support order, that party may request that DCS register that order under chapter 26.21A RCW. DCS then serves a notice of support debt and registration as provided in WAC ~~((388-14A-7110))~~ 388-14A-7100.

(2) If the noncustodial parent (NCP) objects to the amount of current support or the amount of support debt stated in the notice, the NCP may request a conference board under WAC 388-14A-6400.

(a) The custodial parent (CP) may participate in the conference board under this section.

(b) The CP may choose to convert the proceeding to an administrative hearing. The NCP may participate in a hearing held under this section.

(3) If the custodial parent objects to the amount of current support or the amount of support debt stated in the notice, the CP may request an administrative hearing. The NCP may participate in a hearing held under this section.

(4) See WAC 388-14A-3304 for a more full description of the hearing process on the notice of support debt and demand for payment.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3306 Does a notice of support debt and demand for payment result in a final determination of support arrears? (1) After service of a notice of support debt and demand for payment as provided in WAC 388-14A-3304, the final administrative order determines the support debt as of the date of the order, and:

(a) The debt determination is not a final determination under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

~~(b) ((Any party may request that a tribunal determine any amounts owed as interest on the support debt))~~ RCW 26.21A.515 controls in any computation and/or determination of accrued interest on arrearages under the support order.

(2) The final administrative order comes about by:

(a) Operation of law if nobody objects to the notice;

(b) Agreed settlement or consent order under WAC 388-14A-3600;

(c) Final conference board decision under WAC 388-14A-6400;

(d) Final administrative order entered after hearing or a party's failure to appear for hearing.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-3307 How does the division of child support proceed when there are multiple child support orders for the same obligor and children? When more than

one current child support order exists for the same obligor and children, the division of child support (DCS) may proceed as follows:

(1) When not acting as a responding jurisdiction, DCS decides whether or not a determination of controlling order is necessary, and which state has the authority to make a determination of controlling order (DCO) under UIFSA.

(2) The controlling order is the single order used for prospective enforcement and modification, determined according to the priority scheme set out in the Uniform Interstate Family Support Act (UIFSA).

(3) Using the criteria listed in RCW 26.21A.130, DCS ~~((decides))~~ may decide which child support order it should enforce and ~~((serves))~~ may serve a notice of support debt and demand for payment under WAC 388-14A-3304.

~~((2))~~ (4) ~~((If DCS decides that a determination of controlling order under chapter 26.21A RCW is required))~~ When a party objects to enforcement of the order selected for enforcement under subsection (1) of this section, or when the order that DCS decides to enforce is not the order presented by a party or another jurisdiction for enforcement of current support, DCS ((serves)) may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

~~((3))~~ (5) ~~((Upon request, DCS may do a determination of controlling order (DCO).))~~

~~((a) See))~~ WAC 388-14A-7305 ~~((for))~~ describes how ~~((you))~~ either party or the initiating jurisdiction can ask for a DCO.

~~((b) See))~~ (6) WAC 388-14A-7315 ~~((for))~~ describes how DCS decides whether ~~((or not))~~ to ~~((do))~~ deny a request for a DCO.

~~((4))~~ (7) If DCS ~~((does))~~ reviews the orders in response to a request for a DCO and decides that a Washington order is the presumed controlling order, DCS refers the case to superior court.

~~((5))~~ (8) If DCS ~~((does))~~ reviews the orders in response to a request for a DCO and decides that a non-Washington order is the presumed controlling order, DCS serves a notice of support debt and registration as provided in WAC 388-14A-7325.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order? (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) whenever it is necessary to establish a fixed dollar amount owed under a child support order that was entered in Washington or by any other tribunal. This section provides general information regarding the notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed on the NCP to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, including:

(i) The NCP's proportionate share of daycare or child care expenses incurred on behalf of the child(ren); and

(ii) Converting a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars, if necessary; and

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed on either parent to establish that parent's share of medical expenses and/or medical support owed for the child or children covered by a support order.

(2) The notice of support owed contains an initial finding, showing DCS' calculation of the fixed dollar amount of:

(a) The current and future support obligation;

(b) Any support debt owed; or

(c) Both amounts.

(3) The notice of support owed facilitates enforcement of the underlying support order by implementing the terms of the order, but it cannot modify the terms of the order.

(4) The reasons that DCS may serve a notice of support owed include, but are not limited to:

(a) The underlying support order sets a support obligation but does not state the monthly support obligation as a fixed dollar amount;

(b) The underlying support order sets a support obligation stated in foreign currency and DCS seeks to convert that amount using the current rate of exchange to fix the amount of support stated in U.S. dollars;

(c) DCS is implementing the adjustment or escalation provision of a court order;

~~((e))~~ (d) The support order provides that the NCP is responsible for paying for a portion of daycare or child care expenses incurred on behalf of the child(ren), but does not reduce the amount owed to a fixed dollar amount. DCS serves the notice of support owed to determine the NCP's proportionate share of those expenses; or

~~((d))~~ (e) The support order provides that either the NCP or the CP must provide medical support as required under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) Because of the different purposes for which DCS may serve a notice of support owed under RCW 26.23.110, DCS has developed two separate forms to use for the notice of support owed:

(a) The basic form used by DCS to establish a fixed dollar amount owed by an NCP under an existing child support order is called the notice of support owed.

(b) DCS developed a special form called the "notice of support owed - Medical support" which is used only for the following purposes:

(i) To notify an obligated parent of the obligation to pay a portion of the premium for health insurance provided by the other parent or state of Washington; or

(ii) To determine a fixed dollar amount for uninsured medical expenses incurred on behalf of the children and to demand payment of the obligated parent's proportionate share when a support order requires the obligated parent to pay a specific percentage of uninsured medical expenses.

(6) For the purposes of this chapter, the term "notice of support owed" includes "notice of support owed" and "notice of support owed - Medical support."

(7) DCS serves a notice of support owed on the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(8) WAC 388-14A-3315 provides that, when DCS serves a notice of support owed on one party, DCS notifies the other party to the support order by sending a form called the notice to payee, and encloses a copy of the notice that was served.

(a) After service on the NCP, DCS mails a notice to payee to the CP and to the payee under the order, if the CP is not the payee under the order.

(b) After service on the CP, DCS mails a notice to payee to the NCP.

(9) In a notice of support owed, DCS includes:

(a) The information required by RCW 26.23.110;

(b) Any provision or factors contained in the underlying order regarding how to calculate the monthly support or the amounts claimed for medical support;

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice; and

(d) Notice of the right to request an annual review of the order or a review on the date given in the order for an annual review, if any. WAC 388-14A-3330 describes the procedures for the annual review of a notice of support owed.

(10) A notice of support owed fully and fairly informs the parties of the rights and responsibilities in this section.

(11) After service of a notice of support owed, the recipient of the notice (which could be either the CP or the NCP, as appropriate,) must make all support payments required by the notice to the Washington state support registry (WSSR). DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(12) The need to serve a notice of support owed does not require DCS to cease all enforcement actions on a case. At any time, DCS may enforce:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or a prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(13) A notice of support owed becomes final and subject to immediate income withholding and enforcement as provided in WAC 388-14A-3316.

(14) An objection or request for hearing on a notice of support owed may be timely or untimely:

(a) WAC 388-14A-3317 discusses what happens if a parent makes a timely request for hearing; and

(b) WAC 388-14A-3318 discusses what happens if a parent makes an untimely request for hearing.

(15) WAC 388-14A-3320 provides general information regarding an administrative hearing on a notice of support owed.

(16) WAC 388-14A-3330 provides information regarding the annual review of a notice of support owed.

(17) For the purposes of this section and WAC 388-14A-3311 through 388-14A-3330, the term "payee" includes

"physical custodian," "custodial parent," or "party seeking reimbursement."

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7100 The division of child support may register an order from another state for enforcement or modification.

(1) A support enforcement agency, or a party to a child support order or an income-withholding order for support issued by a tribunal of another state or jurisdiction, may register the order in this state for enforcement pursuant to chapter 26.21A RCW.

(a) At the option of the division of child support (DCS), the support order or income-withholding order may be registered with the superior court pursuant to RCW 26.21A.505 or it may be registered with the administrative tribunal according to subsection (2) of this section. Either method of registration is valid.

(b) A support order or income-withholding order issued in another state or jurisdiction is registered when the order is filed with the registering tribunal of this state.

(c) DCS may enforce a registered order issued in another state or jurisdiction in the same manner and subject to the same procedures as an order issued by a tribunal of this state.

(d) DCS may assess and collect interest on amounts owed under support orders entered or established in a jurisdiction other than the state of Washington as provided in WAC 388-14A-7110.

(e) DCS may notify the parties that it is enforcing a non-Washington support order using the notice of support debt and demand for payment under WAC 388-14A-3304 or using the notice of support debt and registration as provided in this section and in WAC 388-14A-7110. Either method of notice is valid.

(2) DCS must give notice to the nonregistering party when it administratively registers a support order or income-withholding order issued in another state or jurisdiction. DCS gives this notice with the Notice of Support Debt and Registration (NOSDR).

(a) The notice must inform the nonregistering party:

(i) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(ii) That if a party wants a hearing to contest the validity or enforcement of the registered order, the party must request a hearing within twenty days after service of the notice on the nonregistering party within Washington state. If the nonregistering party was served with the notice outside of Washington state, the party has sixty days after service of the notice to request a hearing to contest the validity or enforcement of the registered order;

(iii) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted;

(iv) Of the amount of any alleged arrearages, including interest, if interest is being assessed under WAC 388-14A-7110; and

(v) Whether DCS has made a determination of controlling order under chapter 26.21A RCW, as described in WAC 388-14A-7325.

(b) The notice must be:

(i) Served on the nonregistering party by certified or registered mail or by any means of personal service authorized by the laws of the state of Washington; and

(ii) Served on the registering party by first class mail at the last known address; and

(iii) Accompanied by a copy of the registered order and any documents and relevant information accompanying the order submitted by the registering party.

(c) The effective date of a request for hearing to contest the validity or enforcement of the registered order is the date DCS receives the request.

(3) A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state or jurisdiction may register the order in this state according to RCW 26.21A.540 through 26.21A.550.

(a) The order must be registered as provided in subsection (1)(a) if the order has not yet been registered.

(b) A petition for modification may be filed at the same time as a request for registration, or later. The petition must specify the grounds for modification.

(c) DCS may enforce a child support order of another state or jurisdiction registered for purposes of modification, as if a tribunal of this state had issued the order, but the registered order may be modified only if the requirements of RCW 26.21A.550 are met.

(4) Interpretation of the registered order is governed by RCW 26.21A.515.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7110 The division of child support may ~~((assess and collect))~~ enforce interest on amounts owed under support orders entered or established in a jurisdiction other than Washington state. (1) The division of child support (DCS) may accept an interstate request to ~~((assess and collect))~~ enforce interest when:

(a) The request is from:

(i) Another state's IV-D agency;

(ii) An Indian tribe;

(iii) A foreign country which has entered into a reciprocal agreement with the United States of America or with the state of Washington; or

(iv) A custodial parent (CP) or noncustodial parent (NCP) who resides outside of Washington state who has filed a petition under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

(b) The party requesting that DCS ~~((assess and collect))~~ enforce interest provides a calculation of the interest claimed which has been certified by a IV-D agency or a certified public accountant (CPA); and

(c) The support order was entered or established in a jurisdiction other than Washington state.

(2) When a foreign support order has been submitted for enforcement under UIFSA, DCS may, at its option, either:

(a) Use the notice of support debt and demand for payment to ~~((assess and collect))~~ enforce interest on an out-of-state support order. See WAC 388-14A-3304 for the rules regarding the notice of support debt and demand for payment; or

(b) Use a notice of support debt and registration to ~~((assess and collect))~~ enforce interest on the foreign order. See WAC 388-14A-7100 for the rules regarding registration of a foreign order.

(3) When an out of state order has been submitted for registration for enforcement and modification under UIFSA, DCS uses a notice of support debt and registration to ~~((assess and collect))~~ enforce interest on the out of state order. See WAC 388-14A-7100 for the rules regarding registration of a foreign support order.

(4) Any hearing held on a notice of support debt and registration which includes a claim for interest is conducted in accordance with WAC 388-14A-7125 and 388-14A-7115.

(a) WAC 388-14A-7135 describes the procedures for confirmation of the registered order.

(b) WAC 388-14A-7135 describes the effect of confirmation of the registered order.

(5) At any time after the notice of support debt and registration becomes a final administrative order, DCS may update the amount of interest as provided in WAC 388-14A-7120.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7115 Are there special rules for a hearing on a notice seeking to ~~((assess and collect))~~ enforce interest on a support order? (1) When the division of child support serves a notice of support debt and demand for payment or a notice of support debt and registration under WAC 388-14A-7110(2) and the notice becomes the subject of a hearing, this section applies to a determination of interest.

(2) The calculation of the amount of interest which has been certified by a IV-D agency or a CPA must be accepted as evidence at a hearing on a notice of support debt and demand for payment or on a notice of support debt and registration.

(a) Such certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is incorrect.

(3) A party challenging the certified calculation may challenge the calculation for one or more of the following reasons:

(a) The amount of principal is incorrect because credit was not given for payments made;

(b) The amount of principal is incorrect because credit was given for payments which were not actually made; or

(c) The interest calculation was not properly done according to the law of the state issuing the order.

(4) If the administrative law judge (ALJ) finds that the party challenging the interest calculation has shown that the amount of principal is incorrect, the ALJ:

(a) Enters an order stating the correct amount of principal;

(b) Orders the party which submitted the original interest calculation to:

(i) Recalculate or have recalculated the interest based on the new principal amount; and

(ii) Submit the new certified calculation to the ALJ within a reasonable amount of time; and

(c) After receiving the new certified calculation, enters an order determining the amount of debt, including interest, for the period claimed in the notice.

(5) If the ALJ orders a new certified calculation, DCS may enforce any amounts of principal the ALJ found to be due and owing under the support order while the administrative order under subsection (4)(c) of this section is pending.

(6) A claim that the interest calculation was not properly done must be supported by an interest calculation which is certified by a IV-D agency or a certified public accountant (CPA). The ALJ then determines which calculation is best supported by the evidence.

(7) The division of child support does not perform certified interest calculations for use in a hearing under this section.

AMENDATORY SECTION (Amending WSR 05-07-059, filed 3/11/05, effective 4/11/05)

WAC 388-14A-7120 When does DCS update the interest ((assessed)) on a case for enforcement? (1) When the division of child support (DCS) accepts an interstate case for ((assessment)) enforcement of interest under WAC 388-14A-7110(1), DCS may, at any time after service of a notice of support debt and registration or a notice of support debt and demand for payment, update the amount of interest ((assessed)) to be enforced on the case.

(2) To notify the parties to the order that DCS has updated the amount of interest, DCS uses a form called the ((Updated Interest Calculation Letter)) interest enforcement letter.

(a) The ((updated)) interest ((calculation)) enforcement letter is based upon ((a calculation of interest which has been certified by a)) the annual notification of accrued interest from the IV-D agency or an updated interest calculation from a certified public accountant (CPA).

(b) DCS sends the ((updated)) interest ((calculation)) enforcement letter to the noncustodial parent (NCP), by first class mail to the NCP's last known address.

(3) The ((updated)) interest ((calculation)) enforcement letter ((advises)) may advise the NCP of:

(a) The new, updated amount of interest owed for the arrears period; and

(b) The updated total amount of support owed, including interest.

(4) An NCP who objects to an ((updated)) interest ((calculation)) enforcement letter ((may request a conference board under WAC 388-14A-6400 to dispute the terms of the letter

(5) The calculation of the amount of interest which has been certified by a IV-D agency or CPA must be accepted as

evidence at a conference board on an updated interest calculation letter.

(a) The certified calculation is prima facie evidence of the amount of interest owed by the NCP.

(b) Any party challenging the certified calculation has the burden of proving that the amount of interest claimed is ~~incorrect~~) must contact the IV-D agency or the CPA who did the calculation to dispute the amount of interest claimed.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7305 How ((do I)) does a party, IV-D agency or jurisdiction ask ((DCS to do)) for a determination of controlling order? (1) When there are multiple current support orders covering the same obligor and the same children, a party to a support order may request that the division of child support (DCS) make a determination of controlling order under the Uniform Interstate Family Support Act, chapter 26.21A RCW.

(2) When another state's IV-D agency or another jurisdiction has identified that there are multiple support orders in existence and DCS has personal jurisdiction over both of the parties to the orders, the IV-D agency or jurisdiction may request a determination of controlling order from DCS.

(3) A request for a determination of controlling order may be made at any time, unless there has already been a determination of controlling order for the same obligor and children.

((3)) (4) DCS can provide a form which contains all the required elements for a request for determination of controlling order. A request for a determination of controlling order:

(a) Must be in writing;

(b) Must contain copies of any child support orders known to the requesting party. DCS waives this requirement if DCS has a true copy of the order on file; and

(c) ((State the reason the requesting party thinks DCS is enforcing the wrong)) Must identify the order that the requesting party believes should be the controlling order.

((4)) (5) A request for determination of controlling order does not constitute a petition for modification of a support order.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7325 How does DCS notify the parties ((of its)) that a determination of the controlling order is going to be made? (1) When the division of child support (DCS) decides that a determination of controlling order is required, or when a party, IV-D agency or jurisdiction asks for a determination of controlling order, DCS reviews the multiple child support orders for the same obligor and children to determine which order should be enforced.

(a) If DCS decides that the order that should be enforced is a Washington order, ((we immediately)) DCS refers the matter to the superior court for a determination of controlling order proceeding under chapter 26.21A RCW.

(b) If ((we)) DCS decides that the order that should be enforced is an order which was not entered in the state of

Washington, DCS follows the procedures set out in subsections (2) through (4) of this section.

(2) DCS serves a notice of support debt and registration (~~((NOSDR))~~) as provided in WAC 388-14A-7100. DCS serves the (~~((NOSDR))~~) notice of support debt and registration on the obligor, the obligee, and on all identified interested parties. The (~~((NOSDR))~~) notice of support debt and registration includes a determination of controlling order.

(3) DCS serves the notice of support debt and registration on (~~(the nonrequesting))~~) a party who did not request the determination of controlling order by certified mail, return receipt requested, or by personal service.

(4) DCS serves the notice on the (~~((requesting))~~) party who requested the determination of controlling order and on any other identified interested parties by first class mail to the last known address.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-7335 What happens if someone objects to (~~((DCS' proposed))~~) a notice of support debt and registration which contains a determination of the presumed controlling order? (1) If any party, IV-D agency or jurisdiction objects to the (~~((proposed))~~) determination of presumed controlling order issued under WAC 388-14A-7325, that objection must be in writing and signed under penalty of perjury. The division of child support (DCS) provides an objection form with the notice of support debt and registration.

(2) (~~((The))~~) An objection to the determination of presumed controlling order must contain:

(a) The reason the party, IV-D agency or jurisdiction objects (~~((to the determination of controlling order))~~). Examples of reasons to object include, but are not limited to:

(i) There is another order that was not considered in making the determination;

(ii) The alleged controlling order has been vacated, suspended or modified by a later order, which is attached to the objection;

(iii) The issuing tribunal lacked personal jurisdiction over the nonpetitioning party;

(iv) The order was obtained by fraud; or

(v) Any other legal defense available under chapter 26.21A RCW.

(b) A copy of the order which the party, IV-D agency or jurisdiction believes should be the controlling order, if that order was not included with the notice.

(c) A statement of facts in support of the (~~((party's))~~) objection.

(~~((2))~~) (3) When DCS receives an objection to the proposed determination of controlling order, DCS refers the objection to the prosecuting attorney or attorney general to bring an action for determination of controlling order under RCW 26.21A.130 in the superior court.

WSR 11-19-009
PROPOSED RULES
FOREST PRACTICES BOARD

[Filed September 7, 2011, 3:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-14-038.

Title of Rule and Other Identifying Information: Notice of forest practices to affected Indian tribes (WAC 222-20-120) and western Washington riparian management zones (WAC 222-30-021).

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, (360) 902-1400, on January 3, 2012, at 6 p.m.; at the Department of Natural Resources, 713 East Bowers, Ellensburg, (509) 925-8510, on January 5, 2012, at 6 p.m.

Date of Intended Adoption: February 14 or 15, 2012.

Submit Written Comments to: Patricia Anderson, DNR Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, e-mail forest.practicesboard@dnr.wa.gov, fax (360) 902-1428, by January 6, 2012.

Assistance for Persons with Disabilities: Contact forest practices division at (360) 902-1400, by December 20, 2011, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify language and to resolve issues with the rule's landowner-tribe meeting requirement.

Reasons Supporting Proposal: This rule language was developed and supported by the timber/fish/wildlife cultural resources roundtable.

Statutory Authority for Adoption: RCW 76.09.040.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Sherri Felix, 1111 Washington Street S.E., Olympia, (360) 902-1446; Implementation: Marc Engel, 1111 Washington Street S.E., Olympia, (360) 902-1390; and Enforcement: Darin Cramer, 1111 Washington Street S.E., Olympia, (360) 902-1088.

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

Small Business Economic Impact Statement

The forest practices board (board) is proposing to amend WAC 222-20-120 Notice of forest practices to affected Indian tribes. The proposed amendments fit the criteria for "significant legislative rules" in the Administrative Procedure Act (RCW 34.05.328).¹ Before adopting significant legislative rules agencies are required, in part, to do the following:

- Determine the rule is needed to achieve the general goals and specific objectives of statute;
- Analyze alternatives to rule making and the consequences of not adopting the rule;
- Determine that the probable benefits of the rule are greater than its probable costs, taking into account

both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented; and

- Determine that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the goals and objectives.

Those requirements are fulfilled in this preliminary economic analysis.

GOALS AND OBJECTIVES

The goal of amending WAC 222-20-120 is to establish an improved process for forest landowners to meet their obligations related to contacting tribes and planning for cultural resource protection.

The Forest Practices Act (chapter 76.09 RCW) lists policies associated with maintaining a viable forest products industry consistent with public resource protection. The act declares it is in the public interest to create and maintain rules that, among many other goals, "... foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state ..."²

The proposed rule amendment promotes cooperative relationships between forest landowners and tribes.³ It also clarifies the opportunities that tribes have to work with landowners to protect cultural resources of value to them, and it provides certainty for landowners that their obligations can be met within forest practices application (FPA) time limits.⁴ The rule proposal, therefore, achieves the Forest Practices Act policy stated above by helping to maintain the forest products industry while promoting relationships and coordination among forest landowners and tribes.

CONTEXT

The proposal is a recommendation from the timber/fish/wildlife cultural resources roundtable. The roundtable is a multicaucus group whose participants are representatives of individual tribes, large and small forest landowners, and state agency staff representing the department of archaeology and historic preservation (DAHP) and the department of natural resources' (DNR) forest practices division and forest resources and conservation division.

Part of the roundtable's purpose is to provide insight to the forest practices board on cultural resources issues affecting forest practices and provide consensus rule-making recommendations for the board's consideration.⁵ In regard to WAC 222-20-120, in the past couple of years the roundtable has received input from tribes, landowners, DAHP and DNR that the process in current rule does not provide clear procedures. The board is now considering the draft rule proposal that DNR staff presented to the board at its May 10, 2011, meeting on behalf of the roundtable.⁶

WAC 222-20-120 was first adopted in 1987 to implement measures in the timber/fish/wildlife agreement to:

*... accommodate tribal concerns (related to cultural resources), while providing landowners with the opportunity to resolve any conflicts in a timely and cooperative manner. These measures will also preserve the anonymity of these designated sites which is a large concern to the affected tribes.*⁷

The intent was, and still is, for landowners to meet with tribes within FPA approval time limits with the objective of

agreeing on a plan for protecting cultural resources.⁸ The rule adopted at the time, and as it exists today, is as follows:

WAC 222-20-120 Notice of forest practices to affected Indian tribes.

(1) The department shall notify affected Indian tribes of all applications of concern to such tribes, including those involving cultural resources, identified by the tribes.

(2) Where an application involves cultural resources the landowner shall meet with the affected tribe(s) with the objective of agreeing on a plan for protecting the archaeological or cultural value. The department may condition the application in accordance with the plan.

(3) Affected Indian tribes shall determine whether plans for protection of cultural resources will be forwarded to the department of archaeological and historic preservation (DAHP).

The major problems with the current rule language are:

- The implication that landowners cannot fulfill the requirement to meet with tribes if communication does not take place; and
- The implication that DNR cannot approve FPAs unless the landowner meets with the tribe.

This has caused difficulty for landowners, tribes, and DNR. There are instances where landowners have contacted tribes as prescribed by the rule and have not received a return communication from a tribe. The tribe may not have any concerns with the proposed activities, but the current rule does not address what landowners should do when there is no response from a tribe. DNR must receive documentation that landowner-tribe communications took place in order to approve the landowner's application.⁹

DNR reports it has disapproved, and landowners have withdrawn, FPAs based on the lack of a response from a tribe, although this has occurred on only a small proportion of FPAs. (Forest practices application review system (FPARS) records show in the years 2005 through 2010, only 343 out of 30,023 FPAs, or 1.1 percent, included proposed activities in the location of a cultural site.¹⁰) But when a disapproval or withdrawal does occur due to the lack of a response from a tribe it can be costly for landowners. This is discussed in the "cost-benefit analysis" to follow.

PROPOSED RULE

The proposed change to WAC 222-20-120 creates a clearer FPA process, clarifies terminology, and eliminates language that imposes requirements on tribes. A clear process is accomplished through a proposed new subsection (3). It offers alternative means by which landowners can fulfill their obligations and DNR will consider that the landowner-tribe meeting requirement is met:

(3) The department will consider the requirements in subsection (2) complete if prior to the application decision due date:

(a) The landowner meets with the tribe(s) and notifies the department that a meeting took place and whether or not there is agreement on a plan. The department shall confirm the landowner's information with the tribe(s); or

(b) The department receives written notice from the tribe(s) that the tribe(s) is declining a meeting with the landowner; or

(c) *The tribe(s) does not respond to the landowner's attempts to meet and the landowner provides to the department:*

(i) *written documentation of telephone or email attempts to meet with the tribe's designated cultural resources contact for forest practices, and*

(ii) *a copy of a certified letter with a signed return receipt addressed to the tribe's cultural resources contact for forest practices requesting a meeting with the tribe; or*

(d) *The department receives other acceptable documentation.*

In other words, DNR can approve an FPA if one of the alternative means (a) through (d) is carried out, as long as there are no other problems with the FPA.

The proposed rule also:

- Eliminates language imposing requirements on the tribes.
- Adds clarity to two phrases in the current rule. "Applications of concern" is replaced with "applications in geographic areas of interest that have been identified by such tribes," and "including those involving cultural resources" is replaced with "including those areas that may contain cultural resources."

COST-BENEFIT ANALYSIS

Description of Costs: The proposed rule would create practically no additional cost, if any, on those required to comply with it. Inherent in both the current and proposed rules are costs for:

- Landowners to contact tribes;
- Both landowners and tribes to communicate if tribes choose to respond to landowners' attempts to do so;
- Both landowners and tribes to create a plan for cultural resource protection if tribes choose to discuss a plan; and
- Landowners to notify DNR that such meetings and planning did or did not take place.

The only new cost impact from the proposed rule is extremely minor. The scenario in subsection (3)(c) would result in the minor cost of providing a copy of a certified letter requesting a meeting with the tribe and a signed receipt. There would be no change in costs associated with scenarios described in subsections (3)(a) and (b) because they do not represent a change from the current process. The scenario described in subsection (3)(d), "the department receives other acceptable documentation," cannot be evaluated for new costs to landowners.

Description of Benefits: The benefits of the proposal primarily go to forest landowners whose forest practices proposals are on lands that intersect with cultural resources. The proposal creates a clear pathway for landowners to carry out a good faith effort to solicit a response from tribes and receive an approved FPA from DNR if there is no response. Without this pathway, landowners who do not receive a response from a tribe do not receive an approved FPA and cannot carry out proposed forest practices activities within their scheduled timeframe.

Landowners can lose income when an FPA is disapproved or withdrawn due to the lack of documentation of the landowner-tribe meeting. This loss of income can occur when landowners are not allowed to sell their timber within a particular window of economic opportunity; stumpage values can change or scheduled operators and equipment may not be available outside the landowner's planned timeframe.

The benefit of the proposed rule for landowners, therefore, is the prevention of lost income that can occur if landowners do not receive a response from tribes in spite of their efforts to do so. The proposed rule provides certainty for landowners that their obligations regarding the landowner-tribe meeting can be met within their FPA time limits and their activities can take place within their scheduled timeframe.

The rule proposal also benefits tribes. Certain tribes have expressed concern that the current rule creates the perception of tribes as regulators, which is not the case. The proposed rule explicitly states that the meeting is at the discretion of the tribes.

Comparison of Benefits and Costs: For this analysis, it is reasonable to conclude that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs.

LEAST BURDENSOME ALTERNATIVE ANALYSIS

RCW 34.05.328 (1)(e) requires agencies to determine, after considering alternative versions of the rule, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives of the statute the rule implements.¹¹ Alternative ways to address the problems with WAC 222-20-120 are listed below. The board is proposing Alternative 3, which is considered the least burdensome alternative for those required to comply with it.

Alternative 1 - Eliminate WAC 222-20-120: This is not a viable solution. The rule is needed to promote cooperative relationships between forest landowners and tribes, which is a policy of the Forest Practices Act; it facilitates landowner-tribal communications when forest practices activities intersect with cultural resources.

Alternative 2 - Add the phrase "at the tribe's discretion" to the meeting requirement sentence in subsection (2): Subsection (2) of the rule requires the landowner-tribe meeting where an FPA is within a tribe's geographic area of interest and contains cultural resources. Adding language to explicitly state that this meeting is discretionary for tribes would make the rule less burdensome than the current rule. The landowner could receive an approved FPA even if a tribe decides not to meet. If the tribe responds that it does not want to meet, the landowner can receive an approved application. However, this is not the preferred alternative because if the tribe does not respond to the landowner's request to meet, the landowner cannot provide documentation to DNR for the FPA.

Alternative 3 - Preferred alternative. Add the phrase "at the tribe's discretion" to the meeting requirement sentence, and provide alternative means for landowners to fulfill the meeting requirement: The proposed rule is the least burdensome alternative for forest landowners and tribes, because it includes the concept of tribal discretion and sets in rule a

variety of scenarios by which DNR will consider the landowner-tribe meeting requirement completed.

SMALL BUSINESS IMPACTS

The Regulatory Fairness Act (chapter 19.85 RCW) requires state agencies to prepare a small business economic impact statement (SBEIS) for proposed rules that will impose more than minor costs on businesses. The purpose of the SBEIS is to look at how a rule might impact small businesses. When these impacts are identified the agency must try to find ways to reduce those impacts.

As stated under "description of costs," the only new costs, if any, for landowners resulting from the rule proposal would be extremely minor. The rule does not meet the threshold of imposing more than minor costs on businesses and therefore an SBEIS is not required.

SUMMARY

The benefits of the proposed rule are greater than the costs for those required to comply with it. The proposed rule imposes practically no additional costs, if any, to the costs of complying with the current rule. It benefits both forest landowners and tribes. Landowners are assured closure in their efforts to coordinate with tribes with the objective of agreeing on a plan for protecting cultural resources. Language is revised to be explicit that tribal involvement is discretionary.

The proposed rule is the least burdensome of three alternatives considered for those required to comply with it. Not changing the rule is the most burdensome for landowners and is not acceptable to tribes that are reviewing FPAs. The alternative to only make the meeting with tribes discretionary does not provide a clear pathway for landowners to carry out a good faith effort to solicit a response from tribes. The forest practices board's preferred alternative provides both the explicit statement that a meeting is at the tribes' discretion, and a clear pathway for landowners to meet their obligations.

The proposed rule does not meet the threshold of imposing more than minor costs on businesses, and therefore an SBEIS is not required.

¹The board is also proposing to correct references to laws pertaining to historic archaeological resources in WAC 222-30-021 (1)(c)(ii)(A). Those amendments do not qualify as significant legislative rules because they do not change the effect of that section; they are not, therefore, included in this analysis.

²RCW 76.09.010 (2)(i).

³"Forest landowners" or "landowners" in this document means those persons responsible for the conduct of forest practices activities, including managers of public and private forest lands.

⁴Application time limits are explained in WAC 222-20-020.

⁵The purpose, membership, and other information about the timber/fish/wildlife cultural resources roundtable can be seen in its charter; go to http://www.dnr.wa.gov/Publications/bc_tfw_crc_charter_final.pdf.

⁶Background information on the draft rule can be found in the file labeled, "20-120 Rule Making-Felix.pdf" at http://www.dnr.wa.gov/Publications/bc_fp_materials_20110510.pdf.

⁷Timber/fish/wildlife agreement, 1987, p. 38. http://www.dnr.wa.gov/Publications/fp_tfw_agreement_19870217.pdf.

⁸WAC 222-20-020 describes application time limits.

⁹Often landowners must contact more than one tribe. This depends on how many tribes have previously selected the geographic area of the landowner's FPA in the forest practices application review system administered by the department of natural resources. The singular "tribe" is used in this document, but this can also mean more than one tribe depending on the situation.

¹⁰The percentage of FPAs identified as located in areas with cultural sites varied from a low 0.6 percent of the total number of FPAs in 2005 and 2007, to a high of 2.1 percent in 2010.

¹¹The related goals are explained under the heading, "goals and objectives" in this document.

A copy of the statement may be obtained by contacting Patricia Anderson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98506, phone (360) 902-1413, fax (360) 902-1428, e-mail forest.practicesboard@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Patricia Anderson, Department of Natural Resources, P.O. Box 47012, Olympia, WA 98506, phone (360) 902-1413, fax (360) 902-1428, e-mail forest.practicesboard@dnr.wa.gov.

August 10, 2011

B. Moran
Chair

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

WAC 222-20-120 Notice of forest practices that may contain cultural resources to affected Indian tribes. (1) The department shall notify affected Indian tribes of all applications in geographic areas of ~~((concern to))~~ interest that have been identified by such tribes, including those ~~((involving))~~ areas that may contain cultural resources ~~((identified by the tribes)).~~

(2) Where an application ~~((involves))~~ is within a tribe's geographic area of interest and contains cultural resources the landowner, at the tribe's discretion, shall meet with the affected tribe(s) prior to the application decision due date with the objective of agreeing on a plan for protecting the archaeological or cultural value. ~~((The department may condition the application in accordance with the plan.))~~

(3) ~~((Affected Indian tribes shall determine whether plans for protection of cultural resources will be forwarded to the department of archaeological and historic preservation (DAHP).))~~ The department will consider the requirements in subsection (2) of this section complete if prior to the application decision due date:

(a) The landowner meets with the tribe(s) and notifies the department that a meeting took place and whether or not there is agreement on a plan. The department shall confirm the landowner's information with the tribe(s); or

(b) The department receives written notice from the tribe(s) that the tribe(s) is declining a meeting with the landowner; or

(c) The tribe(s) does not respond to the landowner's attempts to meet and the landowner provides to the department:

(i) Written documentation of telephone or e-mail attempts to meet with the tribe's designated cultural resources contact for forest practices; and

(ii) A copy of a certified letter with a signed return receipt addressed to the tribe's cultural resources contact for forest practices requesting a meeting with the tribe; or

(d) The department receives other acceptable documentation.

(4) The department may condition the application in accordance with the plan.

AMENDATORY SECTION (Amending WSR 09-18-032, filed 8/25/09, effective 9/25/09)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

meets the shade requirements of WAC 222-30-040 or has a seventy-five foot buffer of trees at least forty feet tall.

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

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

- Conifer trees larger than twenty inches dbh shall not be harvested;

- Not more than ten percent of the conifer stems greater than eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

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

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

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct post-harvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of one hundred fifty conifer trees greater than eight inches dbh per acre.

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

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

(ii) **Harvest options.**

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

No inner zone management RMZ widths for Western Washington

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

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

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

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

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of seventy-five feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed fifty-seven.

Option 1. Thinning from below.

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

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

- Harvest is not permitted within thirty feet of the core zone for streams less than or equal to ten feet wide and harvest is not permitted within fifty feet of the core zone for streams greater than ten feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;

- A minimum of twenty conifers per acre, with a minimum twelve inch dbh, will be retained in any portion of the inner zone where even-age harvest occurs. These riparian leave trees will be counted towards meeting applicable stand requirements. The number of riparian leave trees cannot be reduced below twenty for any reason.

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

- If (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ten trees per acre.

Option 2. Leaving trees closest to water.

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

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

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

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

(B) When the stream-adjacent road basal area calculated in (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive

credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ten trees per acre.

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

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

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

Outer zone riparian leave tree requirements

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

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

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

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

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be eight inches dbh or greater and represen-

tative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

- (I) Seeps and springs;
- (II) Forested wetlands;
- (III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;
- (IV) Areas where riparian leave trees may provide windthrow protection;
- (V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological ((or historical)) sites ((registered with)) or historic archaeological resources as defined in RCW 27.53.030;

(VII) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)((g))(f); or

((VII)) (VIII) Sites containing evidence of Native American cairns, graves or glyptic records as provided for in chapters 27.44 and 27.53 RCW. See WAC 222-16-050 (1)(f).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) At least fifty percent of a Type Np Waters' length must be protected by buffers on both sides of the stream (2-

sided buffers). Buffered segments must be a minimum of one hundred feet in length. If an operating area is located more than five hundred feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than one thousand feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b)(i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

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

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

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

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

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

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

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

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

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associ-

ated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

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

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

WSR 11-19-051
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed September 14, 2011, 11:28 a.m.]

Continuance of WSR 11-18-003.

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

Title of Rule and Other Identifying Information: WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): Port of Grays Harbor Commission Chambers, 111 South Wooding Street, Aberdeen, WA 98520, on October 13, 2011, at 9:30 a.m.

Date of Intended Adoption: October 13, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The location of the public hearing has been changed.

September 14, 2011

Peggy Larson

Executive Director

WSR 11-19-072
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed September 16, 2011, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-047.

Title of Rule and Other Identifying Information: Chapter 308-56A WAC, Certificates of title—Motor vehicles, etc., to include but not limited to WAC 308-56A-500 Definitions.

Hearing Location(s): Department of Licensing, Conference Room 303, 1125 Washington Street S.E., Olympia, WA 98507, on November 3, 2011, at 11:00 a.m.

Date of Intended Adoption: November 4, 2011.

Submit Written Comments to: Debra Then, P.O. Box 9037, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98501-9037, e-mail dthen@dol.wa.gov, fax (360) 570-3706, by October 20, 2011.

Assistance for Persons with Disabilities: Contact Debra Then by October 20, 2011, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is to make the rules clearer and to clarify and correct the definition regarding impossible to affix front license plate.

Reasons Supporting Proposal: Providing clarity in the definition of "impossible" and correcting the RCW reference assists Washington state patrol in using this RCW for evaluating applications for exception to the requirement to affix a front license plate to a vehicle.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: Chapters 46.12 and 46.16A RCW.

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

Name of Proponent: Melissa VanGorkom, government and media relations, Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Debra Then, 1125 Washington Street S.E., Olympia, WA, (360) 902-4094; Implementation and Enforcement: Eric Andersen, 1125 Washington Street S.E., Olympia, WA, (360) 902-4045.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.06.328 [34.05.328] (5)(b)(iv), this change is only to clarify definition but does not change the actual effect of the rule.

September 10, 2011

Ben T. Shomshor

Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-113, filed 9/22/09, effective 10/23/09)

WAC 308-56A-500 Definitions. The following definitions apply to terms used in chapters 46.12 and 46.16A RCW and chapter 308-56A WAC:

(1) "Affidavit in lieu of title" is a written declaration confirming the certificate of (~~ownership~~) title is unavailable, lost, stolen, destroyed or mutilated. The affidavit in lieu of title may be used to release interest in the vehicle. The signature of the owner completing the affidavit in lieu of title must be notarized or certified as described in WAC 308-56A-270.

~~(2) ("Affidavit of loss" is a written statement confirming the certificate of ownership, registration certificate, validation tab or decal has been lost, stolen, destroyed or mutilated. The affidavit of loss release of interest form may be used to release interest in the vehicle and transfer gross weight license for that vehicle to a new owner. The signature of the owner completing the affidavit of loss release of interest must be notarized or certified as described in WAC 308-56A-270.~~

~~(3))~~ "Affixed" means attached.

~~((4))~~ (3) "Brands" means a permanent notation on the electric vehicle record which prints on the certificate of

~~((ownership))~~ title and vehicle registration certificate that records a circumstance or condition involving a vehicle.

~~((5))~~ (4) "Brands incident date" is the date that a brand was first applied to a vehicle. For states/jurisdictions participating in the National Motor Vehicle Title Information System (NMVTIS), it's the date the brand was first reported. For all states or jurisdictions, it is established by using the date the current title was issued. Brands on Washington records prior to the effective date of this rule will reflect a brand incident date equal to the date the last Washington certificate of ~~((ownership))~~ title was issued.

~~((6))~~ (5) "Certificate of ~~((ownership))~~ title" (also referred to as "certificate of ~~((title))~~ ownership" or "title") is a legal document indicating proof of ownership and will establish a fact or sustain a judgment unless contradictory evidence is produced. A certificate of ~~((ownership))~~ title may be a document other than a title when a title document is not issued by a jurisdiction. For example, for Canadian vehicles, the certificate of ~~((ownership))~~ title is the registration.

~~((7))~~ (6) "Comment" means an indication on the certificate of ~~((ownership))~~ title, vehicle title or registration application, or vehicle registration certificate that relates to tax liability, type of ownership, title transaction type or ~~((a))~~ previous or current condition of the vehicle.

~~((8))~~ (7) "Commercial parking company" means any business directly engaged in providing vehicle parking upon property owned or controlled by the business and approved for public parking of vehicles.

~~((9))~~ (8) "Current license plate registration" means the current registration or one that has been expired less than one year.

~~((10))~~ "Department" means the same as described in RCW 46.04.162.

~~((11))~~ (9) "Department temporary permit" is a permit issued temporarily in lieu of ~~((permanent))~~ registration and license plates when required documentation is unavailable.

~~((12))~~ (10) "Electronic/electronically filing" is a method to transmit information to the department that may include, but is not limited to, the use of the internet or facsimile.

~~((13))~~ (11) "Involuntary divestiture" means a change in vehicle ownership without the registered owner's involvement.

~~((14))~~ (12) "Impossible ~~((to affix))~~" as used in RCW ~~((46.12.240))~~ 46.16A.200, means that there ~~((is))~~ was nothing made by the manufacturer ~~((to include, but not limited to, a bracket or the bumper of the vehicle))~~ for the originally manufactured vehicle which would allow the license plate to be affixed to the vehicle in the manner prescribed in RCW ~~((46.12.240))~~ 46.16A.200.

~~((15))~~ (13) "Joint tenancy with rights of survivorship" (JTWROS) means two or more people who own a vehicle in joint tenancy with the right to own individually if one of them dies.

~~((16))~~ (14) "Jurisdiction code" means an abbreviation used by the department that indicates state, province, district, or country.

~~((17))~~ "Legal owner" means the same as described in RCW 46.04.270.

~~((18))~~ (15) "Lien holder" means a person or entity that has a legal right or interest in another's property until a debt or duty that it secures is satisfied.

~~((19))~~ "Market value threshold amount" is the amount assigned to vehicles which includes a motor vehicle amount as defined in RCW 46.12.005 is required.

~~((20))~~ "Natural person" means a human being.

~~((21))~~ (16) "Not eligible for road use" (NEFRU) means a vehicle that does not meet Federal Motor Vehicle Safety standards, other federal or state standards for public road use as adopted, applied, and enforced by the Washington state patrol described in RCW 46.37.005.

~~((22))~~ (17) "A declaration under penalty of perjury" means a statement signed by the applicant to the effect - "I declare under penalty of perjury under the laws of the state of Washington that the information I have provided on this form is true and correct." Anyone who knowingly makes a false statement may be guilty of a crime under state law.

~~((23))~~ "Person" means the same as described in RCW 46.04.405.

~~((24))~~ (18) "Personal representative" means:

(a) An individual appointed by the court; or

(b) An individual named in the last will and testament and confirmed by the court to manage the estate of a deceased person.

Personal representative may also include executor, administrator, special administrator, and guardian or limited guardian and special representative as defined in RCW 11.02.005(1).

~~((25))~~ (19) "Registered owner" means the same as described in RCW 46.04.460.

~~((26))~~ "Security interest" means a property interest created by agreement or by operation of law to secure performance of an obligation (repayment of a debt).

~~((27))~~ (20) "Security interest holders" means in this instance, the same as "lien holder" as defined in subsection ~~((18))~~ (15) of this section.

~~((28))~~ "Secured party" means in this instance the same as "lien holder" as defined in subsection (18) of this section.

~~((29))~~ (21) "Standard brand" is a brand found on the brands list maintained by the National Motor Vehicle Title Information System (NMVTIS) program.

~~((30))~~ (22) "Transferee" means a person to whom a vehicle is transferred, by purchase, gift, or any means other than by creation of a security interest, and any person who, as agent, signs an odometer disclosure statement for the transferee, when applicable.

~~((31))~~ (23) "Transferor" means a person who transfers ownership in a vehicle by sale, gift, or any means other than by creation of a security interest and any person who, as agent, signs an odometer disclosure statement for the transferor, when applicable.

~~((32))~~ (24) "Unique brand" means a brand issued by a state that is not participating in the National Motor Vehicle Title Information System (NMVTIS) program and does not appear on the brands list maintained by NMVTIS.

~~((33))~~ (25) "~~((Vehicle seller's))~~ Report of sale" is a document as required by RCW 46.12.650 or electronic record transaction that protects the seller of a vehicle from certain criminal and civil liabilities arising from use of the vehicle by

another person after the vehicle has been sold or a change of ownership has occurred.

~~((34) A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.~~

~~(35))~~ (26) "Washington vehicle licensing office" means an office that is operated by the department or an agent or subagent appointed under RCW 46.01.140 for the purpose of carrying out the vehicle titling and registration provisions in Title 46 RCW.

WSR 11-19-076
PROPOSED RULES
BUILDING CODE COUNCIL
[Filed September 16, 2011, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-09-067 and 10-09-065.

Title of Rule and Other Identifying Information: Amends chapters 51-50 and 51-54 WAC to modify rules regarding smoke alarm systems in I-4 child care centers.

Hearing Location(s): Jefferson Building, First Floor Conference Room, 1500 Jefferson Street, Olympia, WA 98507, on November 18, 2011, at 10:00 a.m.

Date of Intended Adoption: November 18, 2011.

Submit Written Comments to: Kristyn Clayton, Council Chair, State Building Code Council, P.O. Box 41449, Olympia, WA 98504-1449, e-mail SBCC@ga.wa.gov, fax (360) 586-5366, by November 18, 2011.

Assistance for Persons with Disabilities: Contact Peggy Bryden by November 4, 2011, TTY (360) 753-7427 or (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to provide additional safety measures for certain child care centers that serve children from birth to age thirty months, WAC 51-50-0907 and 51-54-0900 (Section 907).

Reasons Supporting Proposal: The office of the state fire marshal proposed amending the rules to increase safety for very young children in I-4 occupancy group child care settings, for consistency with licensing requirements.

Statutory Authority for Adoption: RCW 19.27.074.

Statute Being Implemented: Chapter 19.27 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: Proposed rules will contribute to safer conditions in child care centers for very young children by requiring that the smoke alarm system be connected with the occupant notification system, thus allowing faster egress during a fire emergency.

Name of Proponent: State building code council and the office of the state fire marshal, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne McCaughan, P.O. Box 41449, Olympia, WA 98504-1449, (360) 407-9279; and Enforce-

ment: Office of the State Fire Marshal, P.O. Box 42600, Olympia, WA 98504-2600, (360) 596-3900.

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

Small Business Economic Impact Statement

Executive Summary: This report is focused solely on I-4 facilities, which currently make up a relatively small percentage of the population among licensed childcare business providers. These facilities accept children from birth to thirty months (2 1/2 years old). The Washington department of early learning (DEL) is responsible for the licensing and regulation of these facilities. According to current data, there are twenty-three of these facilities licensed in the state, with an average capacity of fifteen to sixteen children.¹ Although other licensed facilities may accept children in this age group, there is no accurate way to assess how many of those facilities have been deemed as an I-4 occupancy category for that separate area. The state fire marshal's office estimates that there are approximately twenty to thirty permit applications per year for I-4 childcare facility occupancies.

The 2009 Fire Code and Building Code, Section 907/ Fire Alarm and Detection Systems establishes requirements for fire alarm systems and related components for new buildings and structures. For all Group I occupancies, the requirements include a manual fire alarm system that activates the occupant notification system. For Group I-1, I-2 and I-3, the requirements also include an automatic smoke detection system that activates the occupant notification system. Group I-4 child care centers is not currently covered under this section requiring automatic smoke detection components. The proposed rule would modify the existing requirement for automatic smoke detection components that activate the occupant notification system to include the I-4 child care centers.

Impact on Small Business: The proposed rules would result in some slight cost increases to child care businesses which build new buildings that are classified as I-4. Remodeling projects at existing facilities could also trigger the requirement, depending on the scope and nature of the project. The cost would depend on the size of the facility, the system design, and the number of alarms and other equipment needed. It is estimated that the additional smoke alarm requirements would add approximately \$900 to the cost of the currently required manual fire alarm system of approximately \$7500. These estimates are based on a hypothetical 1900 sq. ft. new facility.² For existing I-4 centers there would be no cost, as the requirements would not be retroactive.

The impact on business would be neutral overall, with some positive benefits for alarm installation companies in instances where new or remodeled facilities are located. There would be no cost to current child care establishments, unless they choose to remodel or build new facilities.

Section I: Introduction/Compliance with the Proposed Rules.

How Will the Proposed Rules Compare to Current Rule Requirements? The proposed rules regarding installation of automatic smoke detection and full manual fire alarm systems in I-4 childcare settings will modify the Washington State Building Code and Fire Code.

Under the current rules, compliance with the Building Code (chapter 51-50 WAC) and Fire Code (chapter 51-54 WAC) Section 907 Fire Alarm and Detection Systems is required as follows:

- ◆ According to Section 907.2 in both codes an approved fire alarm system "shall be provided in new buildings and structures..."
- ◆ Existing facilities would not be affected unless they choose to remodel those facilities or construct new buildings.

Chapter 2/Definitions/Occupancy Classifications of the 2009 IFC, a Washington state amendment pertaining to child care facilities sets out the following definition:

Child Care Facility. Child care facilities that provide supervision and personal care on less than a twenty-four hour basis for more than five children 2 1/2 years of age or less shall be classified as Group I-4.

Exceptions:

1. A child day care facility that provides care for more than five but no more than one hundred children 2 1/2 years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

2. Family child day care homes licensed by Washington state for the care of twelve or fewer children shall be classified as Group R-3.

Similarly, in Chapter 3/Use and Occupancy Classification of the 2009 IBC, a Washington state amendment to Section 308.5/Group I-4 day care facilities, defines a child care facility as follows:

308.5.2 Child care facility. A facility that provides supervision and personal care on a less than twenty-four hour basis for more than five children 2 1/2 years of age or less shall be classified as Group I-4.

Exceptions:

1. A child day care facility that provides care for more than five but no more than 100 children 2 1/2 years or less of age, where the rooms in which the children are cared for are located on the level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

2. Family child day care homes licensed by DEL for the care of twelve or fewer children shall be classified as Group R-3.

Who Is Required to Comply with the Proposed Rules? Under the current rules, if childcare facilities are located on a level of exit discharge, they are classified as Group E in both the Fire Code and the Building Code, and the proposed rules would not affect them. Similarly, if the childcare facilities are located in a private home they are classified as Group R-3. Thus, the I-4 classification is limited to those situations where care is provided on a level other than the level of exit discharge, and/or where care is provided in non-residential settings.

Adherence with the proposed rules would only be required for new construction of I-4 facilities, or for remodeling of existing facilities that are classified as I-4. The effective date of the proposed rules for new I-4 classified facilities

would be by July 1, 2012, after the next session of the Washington state legislature, pending the outcome of any modifications adopted during that session.

To comply with these rules, owners of new or remodeled I-4 childcare occupancies will need to:

- ◆ Assess how many smoke alarms are needed;
- ◆ Determine installation methods and contract for appropriate services;
- ◆ Budget for the installation of the smoke alarm systems;
- ◆ Order and pay for smoke alarms, keep records, and ensure proper maintenance;
- ◆ Educate staff and hold necessary drills.

Section II: Compliance Costs for Washington Businesses.

Alarm System Cost: Alarm costs to meet the new requirements would be incremental costs based on the size of the system. For an entire system that includes all requirements of the current rules, plus the cost of the smoke alarms in the proposed rules the estimated total is \$8,639, including the following components:

1	Fire alarm panel
1	Lot of programming
1	Heat
8	Smokes (assuming that everything above the drop ceiling is properly sprinklered)
4	Sprinkler points (waterflow, tampers, etc.)
3	Pulls
7	Horn/strobes
1	Exterior bell/strobe
1	Remote annunciator
1	Lot of engineering (plans/submittals)
1	Lot of permits (fire and electrical)
1	Pretest
1	Final test
1	Lot of wire at about thirty cents a foot (expensive right now)

The cost of the system without the smoke alarm requirements would be \$7,751. The incremental cost of adding the smoke alarms is \$888. This estimate is based on a model 1900 sq. ft. new facility and reflects the cost to install the system, and includes all labor related costs, equipment, supplies, and taxes (see footnote 2, below).

Section III: Analysis of Proportionate Impact on Small Businesses

Small Businesses Impacted by Alarm Rules		
TYPE OF BUSINESS	NUMBER AFFECTED	ANTICIPATED IMPACTS
I-4 childcare centers	0 to 30 ³	Slight to minor - additional cost for new smoke alarm requirements in new facilities.
Alarm systems - electric/installation	0 to 30 ⁴	Neutral to positive - installation of smoke alarm systems in new construction or remodeling projects.

The impact on small businesses compared to the largest businesses in the state will not be disproportionate.

- The impact on the childcare industry will be very slight, i.e., minor.
- The impact on the alarm industry will be minor, but positive.

Section IV: Small Business Involvement and Impact Reduction Efforts.

Actions Taken to Reduce the Impact of the Rule on Small Businesses: As written, the proposed rules would have minor impacts on small businesses in the childcare and alarm industries; no specific action was required to mitigate these potential impacts.

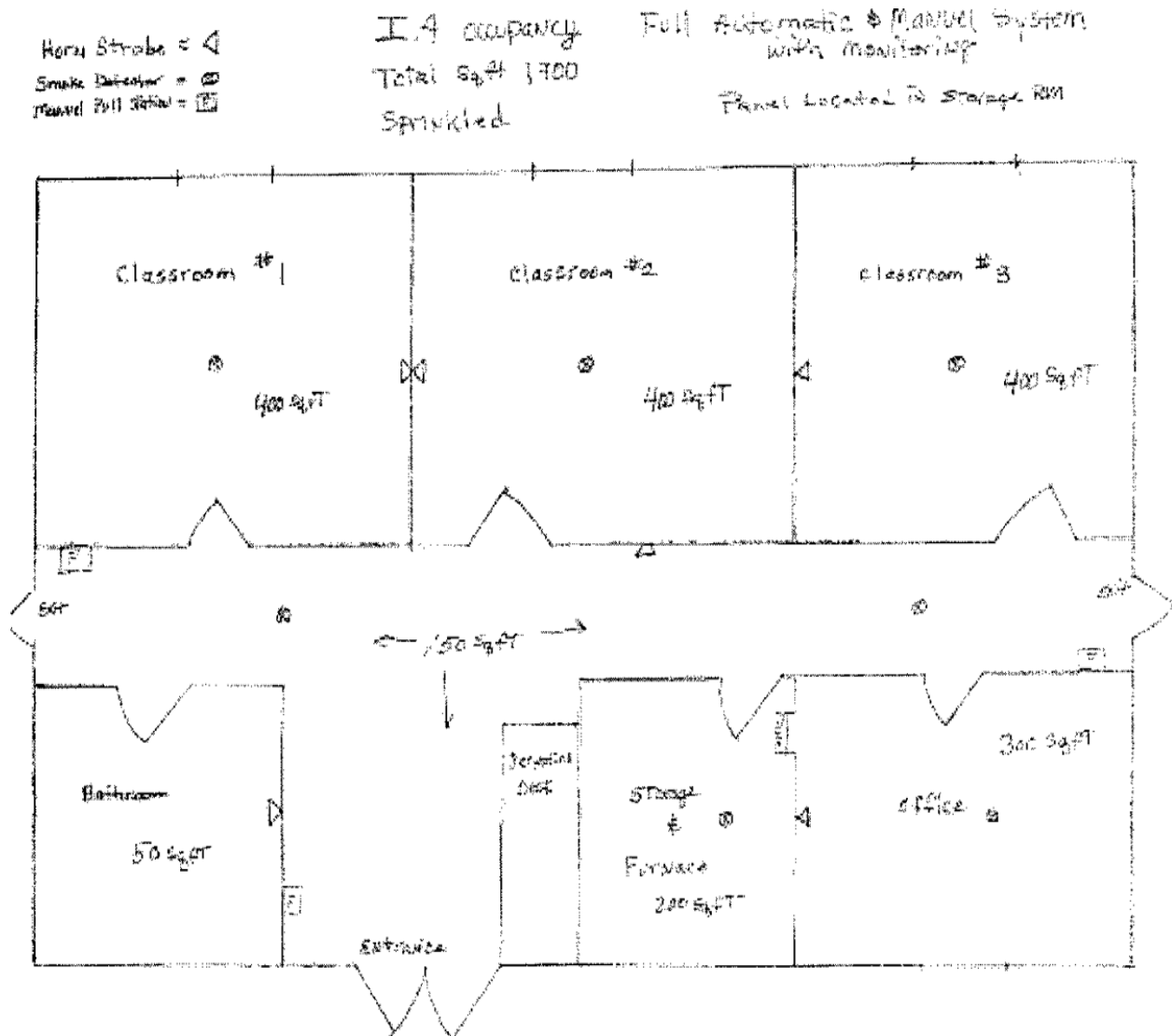
Involvement of Small Business in the Development of the Proposed Rules: The Fire Code Technical Advisory Group members brought expertise in fire and emergency

response; the alarm industry was consulted by the proponent to obtain estimated cost impacts.

Section V: Jobs Created or Lost as a Result of These Rules.

These rules are unlikely to impact job creation, as they will not result in additional contracts for alarm installation. They will simply gain a few hours of additional work when a contract is signed for installation of a system in new I-4 construction. For remodeling projects, there may be only a need to add the smoke alarms required under the current rules to an already existing system. This would not result in additional jobs, but would require a short-term contract to upgrade the system by a qualified alarm technician. These proposed rules would not have a significant impact on the alarm industry and would not affect employment rates in the construction industry. For the childcare industry the impact on jobs would be neutral, with no loss or gain anticipated as a result of these proposed rules.

APPENDIX 1: Plan for Model 1900 sq. ft. I-4 Childcare Facility



¹ Washington department of early learning, 7/18/11, WA Childcare Centers data spreadsheet: Licensed and Exempt.

² Per Pacific Fire & Security, Inc., Seattle, WA, 8/2/11 Estimate assumed total cost for the alarm system in a new facility to be \$8,639 including \$7,751 to meet current requirements and an additional \$888 to meet the requirements under the proposed rules.

³ Dependent on the number of permit applications approved for new 1-4 facilities.

⁴ Dependent on the number of contracts established to install system components in new or remodeled 1-4 facilities.

A copy of the statement may be obtained by contacting Joanne McCaughan, P.O. Box 41449, Olympia, WA 98504-1449, phone (360) 407-9279, fax (360) 586-5366, e-mail joanne.mccaughan@ga.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not listed in this section as one of the agencies required to comply with this statute.

September 16, 2011
Kristyn Clayton
Chair

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

[F] 907.2.6 Group I. A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS: 1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

[F] 907.2.6.4 Group I-4 child care facilities. An automatic smoke detection system that activates the occupant notification system in accordance with Sections 907.6 through 907.6.2.3.2 shall be provided and installed in accordance with NFPA 72.

[F] 907.2.8 Group R-1. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in Sections 907.2.8.1 through 907.2.8.4.

[F] 907.2.8.4. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units ~~(-In a building where a tenancy exists, the tenant shall maintain~~

~~the CO alarm as specified by the manufacturer including replacement of the batteries)) within which fuel-fired appliances are installed, and in sleeping units that have attached garages.~~

[F] 907.2.8.4.1 Existing sleeping units. Existing sleeping units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011,))~~ January 1, 2013.

[F] 907.2.8.4.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.9 Group R-2. Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

[F] 907.2.9.3. Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~(-In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries)) within which fuel-fired appliances are installed and in dwelling units that have attached garages.~~

[F] 907.2.9.3.1 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011,))~~ January 1, 2013.

907.2.9.3.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

[F] 907.2.10 Group R-3. Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

[F] 907.2.10.1 Carbon monoxide alarms. For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~(-In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries)) within which fuel-fired appliances are installed and in dwelling units that have attached garages.~~

[F] 907.2.10.2 Existing dwelling units. Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011,))~~ January 1, 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

[F] 907.2.10.3 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034

and shall be installed in accordance with this code and the manufacturer's installation instructions.

Reviser's note: The brackets and enclosed material in the text of 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 10-24-059, filed 11/29/10, effective 7/1/11)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

ALERT SIGNAL. See Section 402.1.

ALERTING SYSTEM. See Section 402.1.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:

1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required by the building code.
2. Group E Occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.1.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m²).
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).
4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m²).

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.

7. A hand held (portable) fire extinguisher is in every Group R fire area.

SECTION 906—PORTABLE FIRE EXTINGUISHERS

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including, but not limited to, laboratories, computer rooms and generator rooms, where required by the fire code official.

SECTION 907—FIRE ALARM AND DETECTION SYSTEMS

907.2.6 Group I. A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1 through 907.2.6.4.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.5.2 are not exceeded.
2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

907.2.6.4 Group I-4 child care facilities. An automatic smoke detection system that activates the occupant notification system in accordance with Sections 907.6 through 907.6.2.3.2 shall be provided and installed in accordance with NFPA 72.

~~((F))~~ **907.2.8 Group R-1.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-1 occupancies as required in this section and Section 907.2.8.4.

~~((F))~~ **907.2.8.4((=)) Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in sleeping units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

~~((F))~~ **907.2.8.4.1 Existing sleeping units.** Existing sleeping units shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

~~((F))~~ **907.2.8.4.2 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL

2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

~~((H))~~ **907.2.9 Group R-2.** Fire alarm systems, smoke alarms and carbon monoxide alarms shall be installed in Group R-2 occupancies as required in Sections 907.2.9.1 through 907.2.9.3.

~~((H))~~ **907.2.9.1.1 Group R-2 boarding homes.** A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

~~((H))~~ **907.2.9.3 Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

~~((H))~~ **907.2.9.3.1 Existing dwelling units.** Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1, 2013.

907.2.9.3.2 Alarm requirements. Single station carbon monoxide alarms shall be listed as complying with UL 2034 and shall be installed in accordance with this code and the manufacturer's installation instruction.

~~((H))~~ **907.2.10 Group R-3.** Carbon monoxide alarms shall be installed in Group R-3 occupancies as required in Sections 907.2.10.1 through 907.2.10.3.

~~((H))~~ **907.2.10.1 Carbon monoxide alarms.** For new construction, an approved carbon monoxide alarm shall be installed ~~((by January 1, 2011,))~~ outside of each separate sleeping area in the immediate vicinity of the bedroom in dwelling units ~~((In a building where a tenancy exists, the tenant shall maintain the CO alarm as specified by the manufacturer including replacement of the batteries))~~ within which fuel-fired appliances are installed, and in sleeping units that have attached garages.

~~((H))~~ **907.2.10.2 Existing dwelling units.** Existing dwelling units within which fuel-fired appliances exist or that have attached garages shall be equipped with carbon monoxide alarms by ~~((July 1, 2011))~~ January 1 2013.

EXCEPTION: Owner-occupied Group R-3 residences legally occupied prior to July 1, 2010.

~~((H))~~ **907.2.10.3 Alarm requirements.** Single station carbon monoxide alarms shall be listed as complying with UL

2034 and shall be installed in accordance with this code and the manufacturer's installation instructions.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 708.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 708.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

SECTION 915 ALERTING SYSTEMS

915.1 General. An approved alerting system shall be provided in buildings and structures as required in chapter 4 and this section, unless other requirements are provided by another section of this code.

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

915.2 Power source. Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."

EXCEPTION: Systems which do not require electrical power to operate.

915.3 Duration of operation. The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.

915.4 Combination system. Alerting system components and equipment shall be allowed to be used for other purposes.

915.4.1 System priority. The alerting system use shall take precedence over any other use.

915.4.2 Fire alarm system. Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.

915.4.2.1 Signal priority. Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.

915.4.2.2 Temporary deactivation. Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.

915.4.2.3 Supervisory signal. Deactivation of fire alarm audible and visual notification signals shall cause a supervi-

sory signal for each notification zone affected in the fire alarm system.

915.5 Audibility. Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 915.6.

915.6 Visibility. Visible and textual notification appliances shall be permitted in addition to alert signal audibility.

WSR 11-19-080
PROPOSED RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed September 19, 2011, 1:52 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, on November 15, 2011, at 9:00 a.m.

Date of Intended Adoption: November 17, 2011.

Submit Written Comments to: Mark Buford, Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by November 15, 2011, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Margarita Smith by November 8, 2011, (360) 428-1617 ext. 215.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To readopt specific rule sections to ensure that they refer to most recent versions of chapters 173-400 and 173-401 WAC. Also to adopt the General Order provisions under WAC 173-400-560 by reference to allow the NWCAA to issue General Orders.

Amendatory Sections

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES.

- Delete WAC 173-400-560 from the list of sections excluded from adoption (i.e., adopt WAC 173-400-560 by reference).
- Update effective dates in NWCAA 104.1 and 104.2.
- Readopt to ensure that the references to chapters 173-400 and 173-401 WAC and WAC 173-400-116 are to the most recent versions.

SECTION 200 - DEFINITIONS and SECTION 301 - TEMPORARY SOURCES.

- No changes except to readopt to ensure that the reference to WAC 173-400-720 is to the most recent version.

SECTION 300 - NEW SOURCE REVIEW.

- No changes except to readopt to ensure that the references to chapter 173-401 WAC and WAC 173-400-720 are to the most recent versions.

SECTION 305 - PUBLIC INVOLVEMENT, SECTION 321 - EXEMPTIONS FROM REGISTRATION, and SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP).

- No changes except to readopt to ensure that the reference to chapter 173-401 WAC is to the most recent version.

Reasons Supporting Proposal: The NWCAA regulation references many rules written by other agencies (e.g., EPA, Washington department of ecology). When external rules are referenced, the version that is incorporated is that as of the date of adoption of the NWCAA regulation. If an external rule is modified, by ecology, for instance, the version of the state rule referenced in the NWCAA regulation remains that as of the date of NWCAA adoption. This causes confusion because both the previous version as referenced in the NWCAA regulation and the new version both apply. As such, the NWCAA is updating the references in various sections of the regulation to the most recent versions of the external rules. Specifically, sections of chapters 173-400 and 173-401 WAC were updated by ecology as part of the rule adoption on August 10, 2011, to bring the rule into compliance with EPA regulations which defer for a period of three years the consideration of CO₂ emissions from bioenergy and other biogenic sources when determining whether a stationary source meets the PSD and Title V applicability thresholds.

Statutory Authority for Adoption: Chapter 70.94 RCW.
Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

September 19, 2011

Mark Buford

Assistant Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-20 issue of the Register.

WSR 11-19-081
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed September 19, 2011, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-097.

Title of Rule and Other Identifying Information: WAC 180-51-050 High school credit—Definition.

Hearing Location(s): Educational Service District #112, 2500 N.E. 65th Avenue, Vancouver, WA 98661-6812, on November 9, 2011, at 1:00 p.m.

Date of Intended Adoption: November 10, 2011.

Submit Written Comments to: Loy McColm, Washington State Board of Education, P.O. Box 47206, 600 Washington Street, Olympia, WA 98504-7206, e-mail loy.mccolm@k12.wa.us, fax (360) 586-2357, by November 4, 2011.

Assistance for Persons with Disabilities: Contact Loy McColm, (360) 725-6027, by November 2, 2011, TTY (360) 664-3631 or (360) 725-6027.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments: (1) Remove from the definition of a high school credit the requirement to include one hundred fifty hours of planned instructional activities; (2) substitute a nontime-based definition of a credit and clarifies that this definition is related to: (a) Successful completion of course work; and (b) proficiency/competency based credit for knowledge or skills gained outside of a public school classroom setting; (3) eliminates the provision providing for high school credit for courses taken in grades seven and eight and instead references RCW 28A.230.090 (which proscribes the circumstances under which a district can award credit for courses taken prior to high school); and (4) eliminates the requirement for the state board of education (SBE) to notify the state board for community and technical colleges (SBCTC) and the higher education coordinating board (HECB) of any school or school district awarding credit for proficiency/competency.

Reasons Supporting Proposal: Deletion of the one hundred fifty hours from the definition of WAC 180-51-050 and substitution of a nontime-based definition for credit provides for the award of high school credit unrelated to any specific number of hours of instruction. The language currently in WAC 180-51-050 providing for high school credit for courses taken in grades seven and eight is inconsistent with the language in RCW 28A.230.090. The amendment is intended to insure that high school credit is granted to a student meeting the requirements of RCW 28A.230.090. Deletion of the requirement for the SBE to notify SBCTC and the HECB regarding the award of credit for proficiency/competency is based on the fact that no authority requires such reporting and this requirement has not been implemented in recent years.

Statutory Authority for Adoption: RCW 28A.230.090.

Statute Being Implemented: RCW 28A.230.090.

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

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

Name of Agency Personnel Responsible for Drafting: Loy McColm, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027; Implementation and Enforcement: Ben Rarick, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027.

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

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

September 19, 2011

Ben Rarick

Executive Director

AMENDATORY SECTION (Amending WSR 05-19-105, filed 9/20/05, effective 10/21/05)

WAC 180-51-050 High school credit—Definition. As used in this chapter the term "high school credit" shall mean:

(1) Grades nine through twelve or the equivalent of a four-year high school program, (~~and grades seven and eight under the provisions of~~) or as otherwise provided in RCW 28A.230.090(4) ((and (5))):

(a) (~~One hundred fifty hours of planned instructional activities approved by the district;~~) Successful completion, as defined by written district policy, of courses taught to the state's essential academic learning requirements (learning standards). If there are no state-adopted learning standards for a subject, the local governing board, or its designee, shall determine learning standards for the successful completion of that subject; or

(b) Satisfactory demonstration by a student of (~~clearly identified competencies established pursuant to a process defined in written district policy. Districts are strongly advised to confirm with the higher education coordinating board that the award of competency-based high school credit meets the minimum college core admissions standards set by the higher education coordinating board for admission into a public, baccalaureate institution~~) proficiency/competency, as defined by written district policy, of the state's essential academic learning requirements (learning standards).

(2) College and university course work. At the college or university level, five quarter or three semester hours shall equal 1.0 high school credit: Provided, That for the purpose of this subsection, "college and university course work" means course work that generally is designated 100 level or above by the college or university.

(3) Community/technical college high school completion program - Diploma awarded by community/technical colleges. Five quarter or three semester hours of community/technical college high school completion course work shall equal 1.0 high school credit: Provided, That for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(4) Community/technical college high school completion program - Diploma awarded by school district. A minimum of .5 and a maximum of 1.0 high school credit may be awarded for every five quarter or three semester hours of community/technical college high school completion course work: Provided, That for purposes of awarding equivalency credit under this subsection, college and university high school completion course work includes course work that is

designated below the 100 level by the college and the course work is developmental education at grade levels nine through twelve or the equivalent of a four-year high school program. (See also WAC 180-51-053)

(5) Each high school district board of directors shall adopt a written policy for determining the awarding of equivalency credit authorized under subsection (4) of this section. The policy shall apply uniformly to all high schools in the district.

(6) Each high school district board of directors shall adopt a written policy regarding the recognition and acceptance of earned credits. The policy shall apply to all high schools in the district. The policy may include reliance on the professional judgment of the building principal or designee in determining whether or not a credit meets the district's standards for recognition and acceptance of a credit. The policy shall include an appeal procedure to the district if it includes reliance on the professional judgment of the building principal or designee.

(7) A student must first obtain a written release from their school district to enroll in a high school completion program under subsection (3) of this section if the student has not reached age eighteen or whose class has not graduated.

~~((8) The state board of education shall notify the state board for community and technical colleges and the higher education coordinating board of any school or school district that awards high school credit as authorized under subsection (1)(b) of this section.))~~

WSR 11-19-084
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 20, 2011, 9:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-065.

Title of Rule and Other Identifying Information: Chapter 296-200A WAC, Contractor certificate of registration renewals—Security—Insurance.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on October 27, 2011, at 10:00 a.m.

Date of Intended Adoption: November 22, 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 5 p.m. on October 27, 2011.

Assistance for Persons with Disabilities: Contact Sally Elliott by October 15, 2011, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will update the contractor registration rules in response to:

- Chapter 15, Laws of 2011 (ESHB 1055), which changes the time period for a contractor to appeal an infraction from twenty to thirty days.

- Chapter 301, Laws of 2011 (SSB 5067), which allows the program to send certified mail by other methods that can be tracked or the delivery can be confirmed.

The contractor registration rules will be amended to be consistent with statute by:

- Changing the contractor appeal period from twenty to thirty days.
- Amending requirements to send correspondence via certified mail to include other methods by which mail can be tracked or the delivery can be confirmed.
- Updating the definition of infraction to include the notice of assessment.
- Adding a new section to clarify when the notice of infraction and notice of assessment become final and the department may begin collection activity on past due accounts.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 18.27 RCW, chapter 15, Laws of 2011 (ESHB 1055), and chapter 301, Laws of 2011 (SSB 5067).

Statute Being Implemented: Chapter 18.27 RCW, chapter 15, Laws of 2011 (ESHB 1055), and chapter 301, Laws of 2011 (SSB 5067).

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, Implementation and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined they do not require a small business economic impact statement because the proposed rules are in response [to] the passage of ESHB 1055 and SSB 5067 (see RCW 19.85.025 referencing exemptions listed under RCW 34.05.310 (4)(c)).

A cost-benefit analysis is not required under RCW 34.05.328. The department considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined they do not require a cost-benefit analysis because the proposed rules are in response [to] the passage of ESHB 1055 and SSB 5067 (see exemptions, RCW 34.05.328 (5)(b)(iii)).

September 20, 2011

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 09-10-079, filed 5/5/09, effective 6/5/09)

WAC 296-200A-015 What terms do I need to know to understand this chapter? For the purposes of this chapter, the following terms and definitions are important:

"**Administrative law judge**" is any person appointed by the chief administrative law judge (as defined in RCW

34.12.020(2)) to preside at a notice of infraction appeal hearing convened under chapter 18.27 RCW and this chapter.

"Appeal bond" is a certified check or money order in the amount prescribed under RCW 18.27.250 made payable to the Washington state department of labor and industries.

"Appeal hearing" is any proceeding in which an administrative law judge is empowered to determine legal rights, duties or privileges of specific parties on behalf of the director.

"Applicant" is any person, firm, corporation or other entity applying to become a registered contractor according to chapter 18.27 RCW and this chapter. Applicant includes all principal officer(s), members, partners of a partnership, firm, corporation, or other entity named on the application.

"Citation" means the same as "infraction."

"Compliance inspector" refers to the departmental staff responsible for investigating potential violations of chapter 18.27 RCW and this chapter.

"Consultant" means any person, individual, firm, agent or other entity who directs, controls or monitors construction activities for a property owner. A general contractor registration is required. A licensed professional acting in the capacity of their license is exempt from registration.

"Contractor compliance chief" refers to the person designated by the director to address all policy and technical issues related to chapter 18.27 RCW and this chapter.

"Department" refers to the department of labor and industries.

"Developer" means any person, firm, corporation or other entity that undertakes:

- The subdivision or development of land for residential purposes; or
- The construction or reconstruction of one or more residential units.

A general contractor registration is required.

"Director" refers to the director of the department of labor and industries or the director's designee acting in the place of the director.

"Final judgment" means any money that is owed to a claimant as a result of court action against or settlement with a contractor and/or contractor's bond or assigned savings account with the department or any money that is owed the department as a result of a contractor's unsuccessful appeal of an infraction. Final judgment also includes any penalties assessed against the contractor and owed the department as a result of an infraction or notice of correction that has not been appealed, final tax warrants or any delinquent fees or penalties due.

"Final tax warrant" is a document used by the department to establish the debt of a tax payer.

"Infraction" means a violation of chapter 18.27 RCW and this chapter as cited by the chief contractor compliance inspector or the department's construction compliance inspectors. The notice of infraction also serves as a notice of assessment.

"Mobile/manufactured home dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles and licensed as required under chapter 46.70 RCW.

"On-premise sign" means a sign at a permanent place of business or a sign placed at a job location while the registered contractor is working at the site. A sign left at a work site after a contractor has left is not an "on-premise" sign and must contain the registered contractor's registration number.

"Property management company" means any person, firm or other entity that in the pursuit of a property management business advertises, bids/offers, or performs construction, maintenance or repair services with their own employees on property not owned by the property management company. A general contractor registration is required.

"Renewal" or **"renewed"** means the renewal of a contractor's registration before it expires.

"Reinstatement" or **"reinstated"** means the reinstatement of a contractor's registration after the registration has expired, or has been suspended, or been revoked.

"Reregistration" or **"reregister"** means an update to a contractor's registration because of business structure change.

"Secured contractor" is a contractor who has complied with RCW 18.27.040 by assigning to the department a savings account held in a Washington state bank, or by filing with the department a surety bond.

"Security" is a savings account held in a Washington state bank and assigned to the department in lieu of a surety bond.

"Unregistered contractor" means a person, firm, corporation or other entity working as a contractor without being registered in compliance with chapter 18.27 RCW and this chapter.

"Unsatisfied final judgment" means a judgment that has not been satisfied either through payment, court approved settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

AMENDATORY SECTION (Amending WSR 09-10-079, filed 5/5/09, effective 6/5/09)

WAC 296-200A-040 What can cause the suspension of a contractor's registration? (1) A contractor's registration will be suspended if the following impairments, cancellations, noncompliance, or errors occur:

- (a) A surety bond or other security has an unsatisfied final judgment against it or becomes otherwise impaired.
- (b) A surety bond is canceled.
- (c) An insurance policy is expired, canceled, revoked or the insurer is withdrawn from the insurance policy.
- (d) The contractor has an unsatisfied final judgment against it under chapter 18.27 RCW and this chapter.
- (e) The department has notice that the contractor is a sole proprietor or an owner, principal, or officer of a registered contractor that has an unsatisfied final judgment against it for work within the scope of chapter 18.27 RCW and this chapter.

(f) The program has been notified that the contractor has outstanding debt owed to the department for work performed under this chapter, such as industrial insurance premiums owed for workers' hours or penalties for violation of chapter 18.27 RCW and this chapter.

(g) The department is notified that the contractor has been certified by the department of social and health services

as a person who is not in compliance with a support order as provided in RCW 74.20A.320.

(h) The department finds that the contractor has provided false or misleading information or has otherwise been registered in error.

(i) The contractor fails to comply with a penalty payment plan agreement.

(j) The contractor has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service conditional scholarship.

(k) The contractor does not maintain an active and valid unified business identifier number with the department of revenue.

(l) The contractor does not provide the department with updated information or forms as necessary to validate their information.

(2) The contractor's registration will be automatically suspended on the effective date of the impairment or cancellation. The department must mail a notice of the suspension to the contractor's last recorded address with the contractor registration program (~~(by certified mail and first class mail)~~) within two days after suspension.

(3) A contractor must not advertise, offer to do work, submit a bid, or perform any work as a contractor while its registration is suspended. To continue to operate as a contractor while its registration is suspended is a violation of chapter 18.27 RCW and subject to infractions.

(4) The department shall not deny an application or suspend a registration because of an unsatisfied final judgment if the applicant's or registrant's unsatisfied final judgment was determined by the director to be the result of the fraud or negligence of another party.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-065 What procedures must be followed when surety bonds and/or other securities approved by the department become impaired? (1) Once the department has been notified that the surety bond or other security approved by the department has been impaired by a final judgment or reduced by payment to an amount less than is required by WAC 296-200A-030, the contractor's registration will automatically be suspended and the department will (~~(send)~~) mail a letter to the contractor (~~(by certified mail and first class mail)~~) within two days.

(2) Once the unsatisfied final judgment has been satisfied, the contractor may reapply according to the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-080 How is a suit filed against a contractor? (1) A civil suit against a contractor must be filed in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. Unless the suit is filed in a superior court, the department will not be able to direct payment on an unsatisfied final judgment against a secured contractor.

(2) Notice that a suit has been filed (a summons and complaint) against a contractor, the contractor's bond, and/or the contractor's deposit must be exclusively delivered to the department by registered or certified mail to: P.O. Box 44450, Olympia, Washington 98504-4450 or by any delivery requiring notice of receipt to: 7273 Linderson Way S.W., Tumwater, WA 98501. The notice must be addressed to the department and must include three copies of the summons and complaint filed against the contractor, the contractor's bond and/or the contractor's deposit. The person filing the suit must pay a fifty-dollar service fee to the department.

(3) The summons and complaint against a contractor must include the following information:

(a) The name of the contractor exactly as it appears in the contractor's registration file;

(b) The contractor's business address;

(c) The names of the owners, partners or officers of the contractor if known; and

(d) The contractor's registration number.

(4) If the suit joins a bonding company, the summons and complaint should also include:

(a) The name of the bonding company that issued the contractor's bond;

(b) The bond number; and

(c) The effective date of the bond.

(5) If the suit is against a contractor using an assigned account in lieu of a bond, the complaint must also include:

(a) The name of the institution where the assigned account is held;

(b) The account number; and

(c) The date the assigned account was opened.

(6) Service is not considered complete until the department receives the documents in Tumwater with the fifty-dollar fee and three copies of the summons and complaint.

(7) Within two days of receiving a summons and complaint, the department must (~~(transmit)~~) mail a copy of the summons and complaint to the registrant at the address listed on the registrant's application or at their last known address provided to the department and to the registrant's surety. (~~(Under the definition for "service" as described in RCW 18.27.010(11) as related to mailing of summons and complaints under RCW 18.27.040 the requirement of "return receipt" will be fulfilled by use of the United States Postal Service "tracking and confirming" web site data.)~~)

(8) The department will return a summons and complaint without it being served, if the department cannot readily identify either the contractor or bonding company being sued, if the action did not arise under chapter 18.27 RCW, or if the fee and three copies of the summons and complaint are not received.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-305 How does the department notify registered contractors about unregistered subcontractors they have employed? (1) Unless a general contractor or its representative has been given written notification by the department that a subcontractor they have employed, who was registered when employed, has subsequently become

unregistered, it is not unlawful for the general contractor to employ that subcontractor. (See RCW 18.27.020(3).)

(2) To comply with RCW 18.27.020(3), the department, when feasible, will issue a written "notice of unregistered subcontractors" to a general contractor or its representative.

(3) A "notice of unregistered subcontractor" issued under this section must be personally served on the general contractor named in the notice by the department's compliance inspectors or must be ~~((served by certified mail directed))~~ mailed to the general contractor named in the notice.

(4) If the general contractor named in the notice is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If the notice is personally served upon an employee and the department is able to obtain the general contractor's address, the department must ~~((send))~~ mail a copy of the notice ~~((by certified mail))~~ to the general contractor within four days of service.

(5) A "notice of unregistered subcontractor" **is not** a notice of infraction.

(6) A "notice of unregistered subcontractor" is not required to issue an infraction to a contractor for employing a subcontractor that was unregistered, suspended or expired at the time they were hired by the general contractor.

If no signed contract between the contractor and the unregistered subcontractor exists, the first date of work performed by the subcontractor will be used as the hire date.

(7) If, after receiving the "notice of unregistered subcontractor," the general contractor continues to employ the subcontractor in question, it will be liable for an infraction under RCW 18.27.200.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-320 How can a notice of infraction be served? (1) A notice of infraction is served when the notice of infraction is issued personally or mailed to the contractor named in the notice or to an employee of the contractor named by the compliance inspector issuing it ~~((, or when sent by certified mail with "return receipt" requested))~~.

(2) If the notice of infraction is personally served and the person served does not know the contractor's name or address, the department does not need to mail a copy of the infraction to the contractor; however, the notice remains in force.

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-340 How does a contractor appeal a notice of infraction? (1) Under RCW 18.27.250 a contractor may appeal a notice of infraction by:

(a) Filing the notice of appeal with the department within ~~((twenty))~~ thirty calendar days of service of the infraction on-site or within ~~((twenty))~~ thirty calendar days of the postmark date of the infraction served through the mail, whichever is earlier; and

(b) Stating the basis for the appeal of the infraction in their written request; and

(c) Including a certified check or money order in the amount of two hundred dollars as a bond on the appeal.

(2) Each notice of infraction required a separate two hundred dollar appeal bond.

(3) These time frames apply to the issuance of the infraction for all violations of chapter 18.27 RCW.

If the ~~((twentieth))~~ thirtieth calendar day falls on a holiday or weekend, receipt will be accepted up to the next business day.

NEW SECTION

WAC 296-200A-345 What happens if a contractor fails to appeal a notice of infraction and assessment? If a contractor fails to appeal a notice of infraction and assessment within the required time frame, the notice of infraction and assessment becomes final and binding and payment is due. If the department does not receive payment, collections action will be taken, which may include additional penalties and interest.

WSR 11-19-085
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 20, 2011, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-066.

Title of Rule and Other Identifying Information: Chapter 296-400A WAC, Plumber certification rules.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on October 27, 2011, at 9:00 a.m.

Date of Intended Adoption: November 22, 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 5 p.m. on October 27, 2011.

Assistance for Persons with Disabilities: Contact Sally Elliott by October 15, 2011, at yous235@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The plumber certification program's budget and projected revenue indicate a fee increase is necessary to help cover the cost of ongoing services of the program. The plumber certification program was given the authority by 2ESHB 1087, which passed the 2011 legislature, to increase fees to cover the program's expenditures. Due to a projected revenue shortfall of \$60,000 for fiscal year 12, the program will need to increase fees 8.6 percent. Therefore, the department needs to increase plumber certification fees above the fiscal growth factor to cover the expenditures.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 18.106 RCW and 2011 2ESHB 1087.

Statute Being Implemented: Chapter 18.106 RCW and 2011 2ESHB 1087.

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: Rich Ervin, Tumwater, Washington, (360) 902-5571; Implementation and Enforcement: Jose Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. L&I is exempt from preparing a small business economic impact statement under RCW 19.85.025 referencing RCW 34.05.310 (4)(f), since the

purpose of this rule making is to set and adjust fees authorized by the passed statute.

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) because rule making is setting and adjusting fees authorized by the passed statute.

September 20, 2011

Judy Schurke

Director

AMENDATORY SECTION (Amending WSR 10-06-051, filed 2/24/10, effective 4/1/10)

WAC 296-400A-045 What fees will I have to pay? The following are the department's plumbers nonrefundable fees: Fees related to journeyman and specialty plumber certification:

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Examination application	Per examination	\$((139.90)) <u>151.90</u>
Domestic pump specialty application fee*****	Per application	\$((139.90)) <u>151.90</u>
Reciprocity application*	Per application	\$((139.90)) <u>151.90</u>
Trainee certificate**	One year or when hours are updated	\$((41.70)) <u>45.20</u>
Temporary permit (not applicable for backflow assembly maintenance and repair specialty)	120 days	\$((69.50)) <u>75.40</u>
Journeyman or residential specialty certificate renewal or 1st card***	Two years	\$((112.00)) <u>121.60</u>
Domestic pump specialty plumber certificate renewal or 1st card***	Three years	\$((168.10)) <u>182.50</u>
Backflow assembly maintenance and repair specialty certificate renewal or 1st card***	Two years	\$((77.30)) <u>83.90</u>
Medical gas endorsement application	Per application	\$((51.50)) <u>55.90</u>
Medical gas endorsement renewal or 1st card***	Two years	\$((77.00)) <u>83.60</u>
Medical gas endorsement examination fee****		See note below.
Medical gas endorsement training course fee*****		See note below.
Domestic pump specialty examination fee****		See note below.
Reinstatement fee for residential and journeyman certificates		\$((224.60)) <u>243.90</u>
Reinstatement fee for backflow assembly maintenance and repair specialty certificates		\$((129.20)) <u>140.30</u>
Reinstatement fee for domestic pump		\$((336.30)) <u>365.20</u>
Replacement fee for all certificates		\$((18.90)) <u>20.50</u>
Refund processing fee		\$((30.10)) <u>32.60</u>
Unsupervised trainee endorsement		\$((30.10)) <u>32.60</u>
Inactive status fee		\$((30.10)) <u>32.60</u>
Honorary plumbing certification		\$((120.00)) <u>130.30</u>
Certified letter fee/verification of licensure		\$((30.10)) <u>32.60</u>

<u>Type of Fee</u>	<u>Period Covered by Fee</u>	<u>Dollar Amount of Fee</u>
Documents copied from a plumber's file		\$2.00 per page maximum copy charge \$30.00
Continuing education new course fee*****		\$((181-90)) <u>197.50</u>
Continuing education renewal course fee*****		\$((90-80)) <u>98.60</u>
Continuing education classes provided by the department		\$12 per continuing education training hour \$8 per continuing education training hour for correspondence and internet courses

- * Reciprocity application is only allowed for applicants that are applying work experience toward certification that was obtained in state(s) with which the department has a reciprocity agreement. The reciprocity application is valid for one year.
- ** The trainee certificate shall expire one year from the date of issuance and must be renewed on or before the date of expiration. Trainee update fee required when hours are submitted outside of renewal period.
- *** This fee applies to either the original issuance or a renewal of a certificate. If you have passed the plumbers certificate of competency examination or the medical gas piping installer endorsement examination and paid the certificate fee, you will be issued a plumber certificate of competency or a medical gas endorsement that will expire on your birth date.
The two-year renewal of a Medical Gas Piping Installer Endorsement shall include a continuity affidavit verifying that brazing work has been performed every six months during the renewal cycle.
- **** This fee is paid directly to a nationally recognized testing agency under contract with the department. It covers the cost of preparing and administering the written competency examination and the materials necessary to conduct the practical competency examination required for the medical gas piping system installers endorsement or the domestic pump or pump and irrigation examination. **This fee is not paid to the department.**
- ***** This fee is paid directly to a training course provider approved by the department, in consultation with the state advisory board of plumbers. It covers the cost of providing training courses required for the medical gas piping system installer endorsement. **This fee is not paid to the department.**
- ***** This fee is for a three-year period or code cycle.
- ***** The domestic pump specialty application is valid for one year.

WSR 11-19-092
PROPOSED RULES
DEPARTMENT OF
NATURAL RESOURCES
 [Filed September 20, 2011, 11:54 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 11-15-062.

Title of Rule and Other Identifying Information: Rule amendment for WAC 332-24-221 Specific rules for burning that requires a written burning permit.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on October 28, 2011, at 1:00 p.m.; and at the Institute for Extended Learning, Colville Center, Dominion Room, 985 South Elm, Colville, WA 99114, on October 31, 2011, at 1:00 p.m.

Date of Intended Adoption: December 1, 2011.

Submit Written Comments to: Darrel Johnston, P.O. Box 47037, Olympia, WA 98504-7037, e-mail dnrburnfee@dnr.wa.gov, fax (360) 902-1757, by October 31, 2011, by no later than 4:30 p.m.

Assistance for Persons with Disabilities: Contact Darrel Johnston by October 19, 2011, TTY (360) 902-1125 or (360) 902-1300.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The objective of the proposed rule making is to comply to the maximum extent possible with the statutory direction in RCW 70.94.-

6534 that the department of natural resources (DNR) shall set burning permit fees at a level necessary to cover the costs of the silvicultural burning program. DNR is proposing to increase permit fees by \$80.00 plus \$0.50 per ton of debris to be burned, as authorized in 2ESHB 1087 passed by the 2011 Washington state legislature. DNR's ability to comply fully with statutory direction is limited to the fee increase level authorized in 2ESHB 1087. WAC 332-24-221 will be amended to reflect the maximum fee increase authorized by the legislature and to remove the one year term limit on burn permits. The fee increase will apply to all permits issued by DNR for burning on DNR protected lands and to federal burning conducted under the DNR smoke management plan.

Reasons Supporting Proposal: The Washington State Clean Air Act (RCW 70.94.6534) directs DNR to set burn permit fees by rule at the level necessary to cover the costs of its burning program after receiving recommendations on such fees from the public. Current burn permit fees cover approximately eighteen percent of program costs. Increasing permit fees as authorized by the 2011 Washington state legislature allows DNR to comply to the maximum extent possible with the statutory direction in RCW 70.94.6534.

Statutory Authority for Adoption: RCW 70.94.6534. The 2011 legislature, in 2ESHB 1087, authorized DNR to increase permit fees by up to \$80.00 plus \$0.50 per ton of debris to be burned.

Statute Being Implemented: RCW 76.04.205 and 70.-94.6534.

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

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Darrel Johnston, 1111 Washington Street S.E., Olympia, WA, (360) 902-1300.

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

Small Business Economic Impact Statement

OBJECTIVES: DNR is proposing a rule change to the forest protection rule WAC 332-24-221 which would increase silvicultural burn permit fees as authorized by the 2011 state legislature in 2ESHB 1087.

The objective is to comply to the maximum extent possible with the statutory direction in RCW 70.94.6534 to set permit fees at a level necessary to cover the costs of the silvicultural burning program. DNR's ability to comply fully with this direction is limited to the level authorized in 2ESHB 1087.

CONTEXT:

Existing Silvicultural Burn Program: Through authority provided in Washington's forest protection laws (RCW 76.04.205) and Clean Air Act (RCW 70.94.6534), DNR is responsible for regulating burning of forest debris on forestlands where DNR provides fire protection. DNR accomplishes this through implementation of regulatory rules (chapter 332-24 WAC) and the smoke management plan (SMP). The SMP was developed in collaboration with small forest landowners, large forest landowners, federal land man-

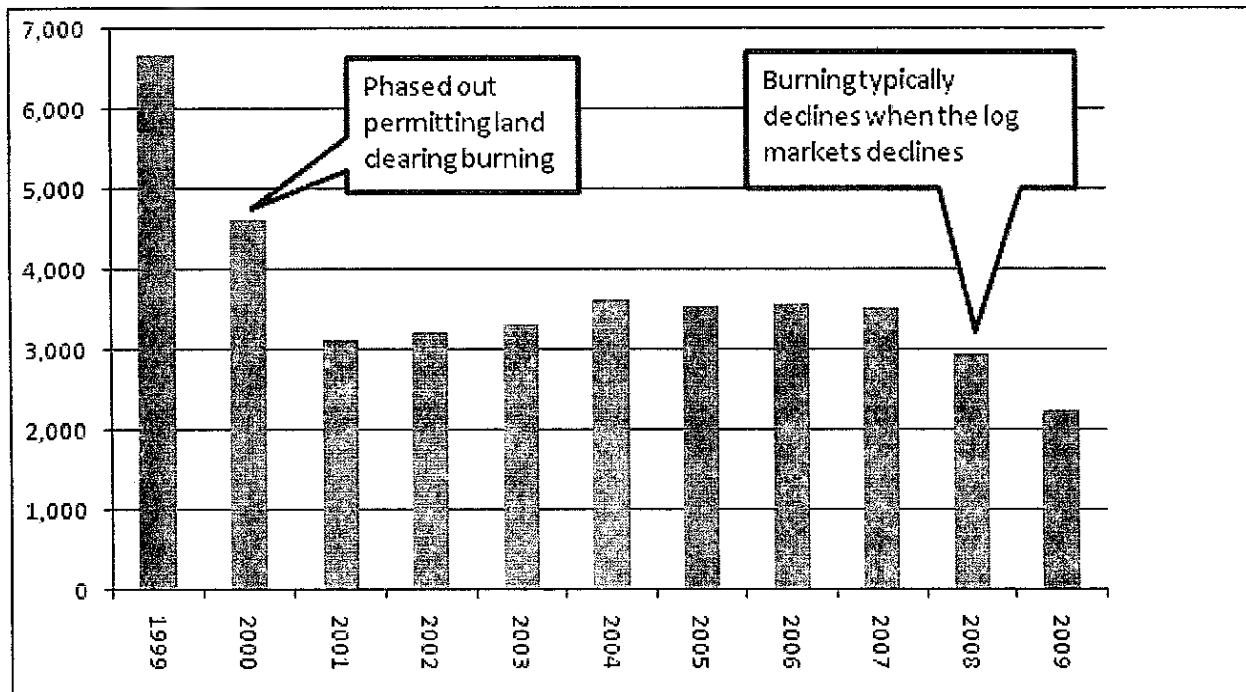
agers, and the department of ecology and provides for a limited burning program that protects human health and safety from the effects of outdoor burning while allowing the use of fire under controlled conditions to maintain healthy forests and meet land management needs.

The current silvicultural burn program involves the following:

- DNR region staff to issue and comply permits following on-site review of proposed burns, providing fire prevention and safety education and permit conditioning to mitigate fire escape and nuisance smoke.
- DNR smoke management staff responsible for daily approval/denial of large burns based on SMP criteria and overview of SMP implementation.
- Technology (meteorological models, burn permit database, web-based telephony system) used in evaluating daily burn approvals, tracking and reporting of smoke emissions, and burner notification of fire safety and air quality burn bans.
- Program administration.

The number of silvicultural burn permits issued has declined since 1999 due largely to the phasing out of DNR-issued land clearing burn permits and more recently due to reduced timber harvest as a result of declining log prices (see **Figure 1**). The number of burn permits fell to a new low in fiscal year (FY) 2009. In FY 2010, two thousand two hundred thirteen burn permits were issued, about the same number as in FY 2009.

Figure 1. Number of Silvicultural Burn Permits by Year, 1999-2009



Existing Silvicultural Burn Permit Fees: The state Clean Air Act directs DNR to set permit fees at a level necessary to cover the costs of the program after receiving comments from the public. Although federal land management agencies are not required to secure permits prior to silvicultural burns (federal land is not under DNR fire protection), the federal Clean Air Act requires that these agencies follow the SMP requirements related to smoke management and payment of fees.

At the time fees were first authorized in 1991, DNR and the forest fire advisory board determined that the cost of the program was approximately \$80 for a permit to burn one hundred tons or less of forest debris (the minimum permit size). The decision was made to implement a sliding fee structure based on the tonnage permitted, with the minimum fee initially set at \$20 for a permit of one hundred tons or less. The intent was to raise fees over time to eventually cover the full cost of the program.

This strategy was compromised in 1993, when Initiative 601 became law and limited any fee increases to a factor based on the rate of inflation and population growth. Each year from 1995 to 1999, fees were raised at the allowed rate without making significant progress toward the statutory direction to recover the full costs of the program through fees. With inflation relatively low over the last several years (and therefore the amount that fees could be increased annually also being low), DNR has not increased permit fees since 1999. Under WAC 332-24-221, the current fee for a one hundred ton or less burn permit is \$25.50 and as shown in **Figure 2** for amounts over one hundred tons. Although the schedule lists fees in five hundred ton increments up to ten thousand tons, the largest permit issued to a nonfederal landowner in FY 2010 was for one thousand four hundred sixty tons, at a fee of \$651.

Figure 2. Current Silvicultural Burn Permit Fee Schedule (WAC 332-24-221)

<u>Tons</u>		<u>Current Fee</u>
0	100	\$25.50
101	500	127
501	1,000	391
1,001	1,500	651

Figure 2. Current Silvicultural Burn Permit Fee Schedule (WAC 332-24-221)

<u>Tons</u>	<u>Current Fee</u>	
1,501	2,000	914
2,001	2,500	1,175
2,501	3,000	1,438
3,001	3,500	1,697
3,501	4,000	1,959
4,001	4,500	2,222
4,501	5,000	2,483
5,001	5,500	2,746
5,501	6,000	3,007
6,001	6,500	3,271
6,501	7,000	3,532
7,001	7,500	3,794
7,501	8,000	4,056
8,001	8,500	4,318
8,501	9,000	4,580
9,001	9,500	4,843
9,501	10,000	5,102
10,001		5,365 plus \$0.50/ton for tons over 10,000

Figure 3 shows burn permit fees collected in FY 2010 by landowner type. A total of \$127,891 was received under the program. Federal agencies paid \$31,064 of this total representing their share of the program's smoke management implementation under the SMP. DNR does not provide fire protection to federal lands and therefore does not issue burn permits or regulate federal burning for fire protection and safety, all of which are additional costs incurred by DNR in permitting burns on DNR protected lands. To address this, the SMP provides for cost allocation among burner groups resulting in a lower fee for federal burning when compared to burning conducted on DNR protected lands. Since federal burners are not issued permits, the following description of FY 2010 fees will summarize the permits issued to nonfederal landowners.

Figure 3. Burn Permit Fees for FY 2010 by Landowner Type

<u>Landowner Type</u>	<u># of Parties</u>	<u># of Permits</u>	<u>Tons</u>	<u>Amount of Fees</u>	<u>Tons/Permit</u>	<u>Fees/Permit</u>	<u>Fees/Ton</u>
Industrial	33	491	94,140	\$49,272.50	192	\$100.35	\$0.52
Other Private	67	77	4,757	\$2,978.50	62	\$38.68	\$0.63
Individuals	1,372	1,393	22,872	\$36,739.50	16	\$26.37	\$1.61
Non-Federal Public Agency	22	125	13,976	\$7,836.50	112	\$62.69	\$0.56
Non-Federal Total	1,494	2,086	135,745	\$96,827.00	65	\$46.42	\$0.71
Federal Public Agency	8	145		\$31,064.10			
TOTAL	1,502	2,231		\$127,891.10			

Of the nonfederal landowners, one thousand four hundred ninety-four different parties were issued two thousand eighty-six permits to burn 135,745 tons of forest debris and paid \$96,827 in permit fees. The "average" permit was issued for sixty-five tons at a fee of \$46.42 per permit or \$0.71 per ton.

Thirty-three large industrial forestland owners were issued twenty-four percent of the permits, accounting for sixty-nine percent of the tonnage and fifty-one percent of the total fees paid. Sixty-seven other private parties (small forestry-related businesses, land holding companies, outdoor recreation organizations, etc.) were issued four percent of the permits, accounting for four percent of the tonnage and three percent of the total fees. A total of one thousand three hundred seventy-two individuals (individual persons, couples, or family trusts) were issued sixty-seven percent of the permits, accounting for seventeen percent of the tonnage and thirty-eight percent of the total fees. Finally, twenty-two nonfederal public agencies were issued six percent of permits, accounting for ten percent of the tonnage and eight percent of the total fees.

In FY 2010, the \$127,891 collected in burn permit fees funded approximately eighteen percent of the program's annual \$700,000 cost. To meet the direction in the state Clean Air Act to set permit fees at a level necessary to cover the costs of the program, the legislature authorized DNR in 2ESHB 1087 to increase current permit fees by up to \$80.00 plus \$0.50 per ton for each ton of material burned in excess of one hundred tons. The increase authorized by the legislature is anticipated to generate \$364,500 in fees, which is eighty-seven percent of the \$420,000 funding level considered to be needed to deliver a minimal burn program.

PROPOSED RULE: The proposed rule change would increase burn permit fees by the legislatively authorized amount of up to \$80.00 plus \$0.50 per ton for each ton of material burned in excess of one hundred tons, as shown in **Figure 4**.

Figure 4. Proposed Revision to Burn Permit Fee Schedule (WAC 332-24-221)

<u>Tons</u>		<u>Current Fee</u>	<u>New Fee</u>
0	100	\$25.50	\$105.50
101	500	127	357
501	1,000	391	846
1,001	1,500	651	1,356
1,501	2,000	914	1,869
2,001	2,500	1,175	2,380
2,501	3,000	1,438	2,893
3,001	3,500	1,697	3,402
3,501	4,000	1,959	3,914
4,001	4,500	2,222	4,427
4,501	5,000	2,483	4,938
5,001	5,500	2,746	5,451
5,501	6,000	3,007	5,962
6,001	6,500	3,271	6,476
6,501	7,000	3,532	6,987
7,001	7,500	3,794	7,499
7,501	8,000	4,056	8,011
8,001	8,500	4,318	8,523

<u>Tons</u>		<u>Current Fee</u>	<u>New Fee</u>
8,501	9,000	4,580	9,035
9,001	9,500	4,843	9,548
9,501	10,000	5,102	10,057
10,001		5,365	10,395 plus \$0.50/ton for tons over 10,000

SMALL BUSINESS IMPACTS: A small business economic impact statement (SBEIS) is required by the Regulatory Fairness Act (chapter 19.85 RCW) to consider the impacts on small businesses of administrative rules adopted by state agencies. The statute defines small businesses as those with fifty or fewer employees. To determine whether the proposed rule will have a disproportionate cost impact on small businesses, the impact statement compares the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

In this analysis, it is assumed that the number of permits to be issued annually in the future will be the same as the number issued in FY 2010 (two thousand eighty-six to non-federal parties and one thousand nine hundred sixty-one to private parties) and therefore the FY 2010 data will be used as representative of future years. On one hand, the number of burn permits should increase when cyclical timber markets recover and the volume of timber harvest increases. On the other hand, it is expected that increased utilization of forest debris for biomass will limit increases in numbers of burn permits issued when log markets improve. Also the higher burn permit fees will likely act to reduce the number of permits requested.

Small Business Analysis: Burning permits issued to one thousand three hundred seventy-two individual landowners account for ninety-two percent of all permits issued. Some of these individual landowners are appropriately considered to be "businesses" as they are managing and harvesting timber on their property for income producing purposes and need burning permits as part of their timber harvest activity. However, most individuals obtaining burn permits are not "businesses" in the normal sense in that their properties are not being managed for income producing purposes but rather their need to burn silvicultural debris is incidental to their noneconomic use and enjoyment of their properties, such as thinning and removal of forest understory to mitigate wildfire threat to existing structures.

Because of the ambiguity of treating individual landowners as "businesses" to meet the intent of the SBEIS, the required analysis will be done both including and excluding the one thousand three hundred seventy-two individual landowners. Both analyses will exclude all public agencies since they are not private businesses. The one hundred private organizations which include industrial forest landowners, smaller forestry-related businesses, land holding companies, outdoor recreation organizations, etc., are included in both analyses as businesses.

The Regulatory Fairness Act at RCW 19.85.040 states that one or more of the following measures are to be used as a basis for comparing costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

Cost per employee is used for the analysis below since there is no applicable data available for the other two measures.

Figure 5 shows the small business impact analysis including all one thousand four hundred seventy-two private

burn permittees as businesses. The "ten percent of businesses that are the largest business [businesses] required to comply with the proposed rule" is comprised of all one hundred private firms and organizations plus forty-seven individuals. These one hundred forty-seven permittees (ten percent of one thousand four hundred seventy-two) have an average of 31.7 employees. This is based on the one hundred firms and organizations having an average of 46.0 employees each (derived from available employment data for thirty-nine of these one hundred parties) and forty-seven individuals having an average of 1.5 employees each (see below).

Figure 5. Comparison of Impact to Small Businesses [Businesses] Versus Largest 10% of Businesses Including Individuals

Group of Permittees	# of Permittees	# of Permits	Current Fees	Proposed Fees	Fee Increase	Fee Increase per Party	# of Employees	Average # of Employees	Fee Increase per # of Employees
10% Largest	147	636	\$55,203	\$156,708	\$101,505	\$691	4,667	31.7	\$21.75
90% Smallest	1,325	1,325	\$33,788	\$139,788	\$106,000	\$80	1,988	1.5	\$53.33
	1,472	1,961	\$88,991	\$296,496	\$207,505	\$141	6,655	4.5	\$31.18

The individual permittees are considered to be households of individuals or couples (or family trusts) with an average of 1.5 persons each. The average fee increase per employee for the small businesses outside the largest ten percent (all one thousand three hundred twenty-five are "small businesses" since they all have under fifty employees) is \$53.33 as compared with \$21.75 for the ten percent of businesses that are the largest businesses. Therefore, this analysis determines that the proposed rule will have a disproportionate cost impact on small businesses.

Figure 6 shows the results of the small business impact analysis excluding the one thousand three hundred seventy-two individual permittees. The comparison is based on the thirty-nine out of one hundred firms and organizations for

which there is employment data available. It is assumed that the thirty-nine fairly represents the one hundred. Four parties (ten percent of thirty-nine) represent the ten percent of businesses that are the largest businesses and they have an average fee increase per employee of \$2.41 (or \$1.32 under the multiple-unit permit scenario¹). Four additional parties have over fifty employees each and are therefore not considered to be small businesses for this analysis. The remaining thirty-one parties which have less than fifty employees each represent the small businesses in this analysis and they have an average fee increase per employee of \$71.53 (or \$42.98 under the multiple-unit permit scenario). Therefore, this analysis also determines that the proposed rule will have a disproportionate cost impact on small businesses.

Figure 6. Comparison of Impact to Small Businesses [Businesses] Versus Largest 10% of Businesses For Business [Businesses] with Employment Data Available, Excluding Individuals

Group	# of Businesses	Average # of Employees	Average # of Permits	Average Current Fees	Average Proposed Fees	Average Fee Increase	Fee Increase per # of Employees
Top 10%	4	231	7	\$191	\$749	\$558	\$2.41
Over 50 Employees/Not in Top 10%	4	100	31	\$2,791	\$7,997	\$5,206	\$52.06
Under 50 Employees	31	15	7	\$573	\$1,653	\$1,080	\$71.53
Total	39	46	9	\$762	\$2,211	\$1,449	\$31.53

Reducing Costs for Small Businesses: RCW 19.85.030 and [19.85].040 address an agency's responsibility in rule making to consider how costs may be reduced for small businesses, based on the extent of disproportionate impact on the small businesses. The statute states that "if the agency determines it cannot reduce the costs imposed by the rule on small businesses, the agency shall provide a clear explanation of why it has made that determination."

The only way to significantly reduce the disproportionate cost impact on small businesses would be to lower the fee increase on the permits with the least tonnage (up to one hundred tons) significantly below the \$80 increment proposed in the rule change and authorized by the legislature. For illustrative purposes, if in an attempt to avoid the disproportionate cost impact on small businesses the least tonnage permit fee was raised from \$25.50 to only \$45.50 instead of to the pro-

posed \$105.50 and all the larger tonnage permits remained at the proposed fee levels, approximately \$100,000 less in fees would be collected. Absent additional funding from another source, DNR would need to develop a process to prioritize permit requests, resulting in the reduced availability of burning as a management tool to address fire hazard abatement, silvicultural, and forest health needs. If a permit prioritization process was instituted, some landowners would not be able to obtain a permit when needed and would incur increased costs to use alternative methods in meeting land management goals. These may include hauling away the material, leaving it lie in place, or piling it up on the property. Another factor justifying the disproportionate cost impact on small business is simply the fact that DNR's cost to process and administer a permit is roughly the same regardless the amount of tonnage covered by the permit.

Estimated Number of Jobs Created or Lost: RCW 19.85.040 (2)(d) requires that the SBEIS include "an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

As shown in **Figure 5**, the total fee increase on private parties is \$207,505 but it is spread across one thousand four hundred seventy-two different parties. Because of the relatively low absolute magnitude of the amount of fee increases on any single party, it is very improbable that any jobs would be lost directly. Those parties faced with the proposed \$80 increase on the smallest tonnage permits will simply absorb the cost or elect not to get a permit to burn. Ten large industrial forest landowners would incur total fee increases over \$1,000 each under the proposed rule, but for eight of those the cost is less than \$100 per employee (and it is \$271 and \$810 per employee for the other two firms). Therefore, it is reasonable to conclude that no jobs will be lost as a result of compliance with the proposed rule.²

¹ Under the current burn permit program, DNR requires one permit for each burn unit (site or location). Some parties, especially large industrial forest landowners, have many burn units each year and therefore needed to acquire several permits each year. As the proposal to increase the fee schedule was working its way through the legislative process, DNR agreed with large industrial forest landowners to implement a new multiunit permit under which all proposed burn units within a DNR region during the year could be placed under one permit.

² If the \$207,505 total fee increase was incurred by one or only a few forestry and logging firms (rather than being spread across one thousand four hundred seventy-two parties) and that firm or those few firms reduced their total output by the total amount of \$207,505, then approximately 3.6 jobs would be lost in the state based on the 17.30 total jobs per \$1 million final demand multiplier for the forestry and logging sector as specified in the 2002 Washington input-output model.

A copy of the statement may be obtained by contacting Darrel Johnston, 1111 Washington Street S.E., P.O. Box 47037, Olympia, WA 98504-7037, phone (360) 902-1300, fax (360) 902-1757, e-mail darrel.johnston@dnr.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Darrel Johnston, 1111 Washington Street S.E., P.O. Box 47037, Olympia, WA 98504-7037, phone (360) 902-1300, fax (360) 902-1757, e-mail darrel.johnston@dnr.wa.gov.

September 16, 2011
Randy Acker
Deputy Supervisor

AMENDATORY SECTION (Amending WSR 99-12-085, filed 6/1/99, effective 7/2/99)

WAC 332-24-221 Specific rules for burning that requires a written burning permit. Persons not able to meet the requirements of WAC 332-24-205 and 332-24-211 must apply for a written burning permit through the department. In addition to the rules outlined in WAC 332-24-205, the following are additional requirements for written permits:

- (1) ~~Written burning permits will be in effect for one year from the validation date, unless suspended or revoked.~~
- (2) Fees for written burning permits will be charged and collected pursuant to chapter 70.94 RCW and shall be ~~(twenty-five)~~ one hundred five dollars fifty cents for under

one hundred tons of consumable debris; and for burns one hundred tons of consumable debris and greater as follows:

Consumable Debris		Fee schedule
100	- 500 tons	\$(127) <u>357</u>
501	- 1,000 tons	((394)) <u>846</u>
1,001	- 1,500 tons	((654)) <u>1,356</u>
1,501	- 2,000 tons	((944)) <u>1,869</u>
2,001	- 2,500 tons	((1,175)) <u>2,380</u>
2,501	- 3,000 tons	((1,438)) <u>2,893</u>
3,001	- 3,500 tons	((1,697)) <u>3,402</u>
3,501	- 4,000 tons	((1,959)) <u>3,914</u>
4,001	- 4,500 tons	((2,222)) <u>4,427</u>
4,501	- 5,000 tons	((2,483)) <u>4,938</u>
5,001	- 5,500 tons	((2,746)) <u>5,451</u>
5,501	- 6,000 tons	((3,007)) <u>5,962</u>
6,001	- 6,500 tons	((3,271)) <u>6,476</u>
6,501	- 7,000 tons	((3,532)) <u>6,987</u>
7,001	- 7,500 tons	((3,794)) <u>7,499</u>
7,501	- 8,000 tons	((4,056)) <u>8,011</u>
8,001	- 8,500 tons	((4,318)) <u>8,523</u>
8,501	- 9,000 tons	((4,580)) <u>9,035</u>
9,001	- 9,500 tons	((4,843)) <u>9,548</u>
9,501	- 10,000 tons	((5,102)) <u>10,057</u>
10,001	+ tons	((5,365)) <u>10,395</u> <u>plus \$0.50 per</u> <u>ton for tons over</u> <u>10,000</u>

For purposes of this section, consumable debris is the amount of debris that the department determines will be consumed by the proposed burning.

~~((3))~~ (2) Written burning permits are not considered valid unless all of the following conditions apply:

(a) The written permit has been signed by the applicant agreeing to follow all requirements of chapter 332-24 WAC, the smoke management plan in effect at the time of the burning, and any additional terms and conditions specified by the department in writing; and

(b) The required permit fee has been secured or paid according to approved department procedures; and

(c) The person doing the burning has the permit in possession while burning and is complying with all terms and conditions of such permit, the smoke management plan in effect at the time of the burning, and all applicable portions of chapter 332-24 WAC.

~~((4))~~ (3) Permits are written only for the burn site and fuel quantity ~~((that is presented at the time of the inspection))~~ represented to the department on the permit application. Addition of fuel(;) or changing the burn site, after the ~~((site inspection has been made))~~ permit application has been submitted to the department, is prohibited unless a new ~~((inspection is made))~~ permit application is submitted and ~~((an))~~ any added permit fee is paid, if required.

WSR 11-19-094
PROPOSED RULES
DEPARTMENT OF HEALTH
 [Filed September 20, 2011, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-03-021.

Title of Rule and Other Identifying Information: Chapter 246-296 WAC, Drinking water state revolving fund loan program.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98504, on October 25, 2011, at 9:00 a.m.

Date of Intended Adoption: November 1, 2011.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47822, Olympia, WA 98504-7822, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2253, by October 25, 2011.

Assistance for Persons with Disabilities: Contact Theresa Phillips by October 11, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to include new federal requirements for water systems to obtain a drinking water state revolving fund (DWSRF) loan. The changes are necessary to establish eligibility requirements for public water systems to receive a loan for funding infrastructure improvements. The changes include establishing criteria for principal forgiveness; green projects; and restructuring, which may include ownership and management changes, and consolidation of water systems. In addition, the proposed rules improve clarity and simplify language.

Reasons Supporting Proposal: The federal appropriations bill under section 1452 of the Safe Drinking Water Act includes new criteria for water systems to obtain a DWSRF loan. These changes are necessary to comply with the new federal requirements, continue the DWSRF loan program, and maintain primacy with the Environmental Protection Agency.

Statutory Authority for Adoption: RCW 70.119A.170.

Statute Being Implemented: RCW 70.119A.170.

Rule is necessary because of federal law, Federal Safe Drinking Water Act, H.R. 1452.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3147; Implementation and Enforcement: Kristin Bettridge, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3166.

No small business economic impact statement has been prepared under chapter 19.85 RCW. 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 Theresa Phillips, Department of Health, P.O. Box

47822, Olympia, WA 98504-7822, phone (360) 236-3147, fax (360) 236-2252, e-mail theresa.phillips@doh.wa.gov.

September 20, 2011

Mary C. Selecky

Secretary

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-010 Purpose and scope. The purpose of this chapter is to:

(1) ~~((Define regulatory requirements for the provision of financial assistance to public))~~ Establish a funding program for public water system infrastructure improvements that increase a public water ((systems provided by the drinking water state revolving fund (DWSRF);

(2) Ensure the state's public drinking water supplies are) system's ability to provide safe and reliable drinking water and improve public health protection;

~~((3) Ensure funding is available to eligible))~~ (2) Establish eligibility criteria for public water systems to ((finance infrastructure costs associated with providing safe and reliable drinking water)) receive funding including, but not limited to, proper operation, management, and maintenance consistent with federal DWSRF capacity requirements;

~~((4) Ensure the department of health utilizes))~~ (3) Provide additional financial assistance to eligible disadvantaged communities;

(4) Use a portion of the EPA capitalization grant for set-aside activities ((in accordance with the)) according to federal ((rule)) law;

~~((5) Ensure public water systems receiving funding are properly operated, managed, and maintained consistent with DWSRF capacity requirements;~~

~~((6) Ensure permanent institutions exist))~~ Establish that sound financial practices and ongoing oversight are in place to manage ((funds for public water system needs)) the DWSRF in perpetuity; ((and

~~((7) Define))~~ (6) Establish requirements for public water systems to receive a DWSRF loan including, but not limited to, planning requirements; being resource efficient, sustainable, and environmentally sound; and

(7) Establish the responsibilities of the department ((of health (DOH);)), the ((public works)) board ((board;)), and ((the board's agent, the department of community, trade and economic development (CTED))) commerce, for administering the DWSRF loan program.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-020 Definitions, abbreviations, and acronyms. ~~((("Act" means the Federal Safe Drinking Water Act (SDWA).))~~ The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Affordability" means a community's ability to pay for rate increases that result from a DWSRF loan project.

(2) **"Application"** means ~~((a DWSRF loan application submitted to DOH for DWSRF assistance))~~ the DWSRF loan request form provided by the department.

(3) **"Application package"** means ~~the DWSRF loan application form(s), requirements, terms of assistance, and related information ((jointly developed and published))~~ created by ((DOH)) the department, the board, and ((the board's agent, CTED)) commerce.

~~((**"Binding commitment"** means a legal obligation by the state to an assistance recipient that defines the terms and the timing for assistance under this chapter.))~~ (4) **"Board"** means the ~~((state of))~~ Washington state public works board.

(5) **"Borrower"** means the ~~((entity or individual))~~ person that has ((the)) legal and financial responsibility for the DWSRF loan.

~~((**"Certification/certify"** means documentation signed by the loan recipient that specific requirements or standards have been or will be met.~~

"Change orders" means a formal document that alters specific conditions of the original construction contract document including a change in the scope of work, contract price, construction methods, construction schedule, change in location, size, capacity, or quality of major equipment.

~~**"Community water system"** means any Group A public water system that regularly serves fifteen or more year-round residential connections, or twenty-five or more year-round residents for one hundred eighty or more days per year.~~

~~**"Construction documents"** means construction documents developed and approved under WAC 246-290-120.)~~

(6) **"Capitalization grant"** means an award by EPA of funds to a state for the DWSRF and other purposes as authorized in Section 1452 of the SDWA.

(7) **"Commerce"** means the Washington state department of commerce.

(8) **"Construction completion report"** means a form provided by ~~((DOH to the applicant required to be))~~ the department and completed for each specific construction project to document:

(a) Project construction in accordance with chapter 246-290 WAC and general standards of engineering practice(-);

(b) Physical capacity changes;

(c) Satisfactory test results; and

(d) The completed form ~~((must be))~~ is stamped with an engineer's seal, and signed(-) and dated by a professional engineer.

~~((**"Cross cutting authorities"** means federal or state laws and authorities that apply to projects or activities receiving federal or state assistance.~~

~~**"CTED"** means the department of community, trade and economic development.~~

~~**"Debt obligation"** means a legal obligation or liability to pay something to someone else.)~~

(9) **"Default"** means failure to meet a financial obligation such as a DWSRF loan payment.

(10) **"Department"** means the Washington state department of health.

(11) **"Disadvantaged community"** means the service area of a proposed project within a public water system where ~~((at least fifty-one))~~ the project will result in:

(a) Water rates that are more than one and one-half percent of the ~~((customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development.~~

~~**"Distressed county"** means a county that is designated by the Washington state employment security department as distressed.~~

~~**"DOH"** means the department of health.)~~ MHI of the service area; or

(b) Restructuring, when one or more public water systems are having financial difficulties.

(12) **"DWSRF (drinking water state revolving fund ((DWSRF)))"** means the program ~~((established to))~~ that meets the requirements of RCW 70.119A.170 to administer ((the)) federal funds and other funds deposited in ((the)) a dedicated account ((authorized)) used to finance public water system infrastructure(-) improvements and drinking water program activities(-, and to meet the applicable requirements of RCW 70.119A.170).

(13) **"DWSRF loan"** means an agreement between commerce and the borrower in which the DWSRF provides funds for eligible assistance and the borrower agrees to repay the principal sum, applicable interest, and DWSRF loan fee to the DWSRF.

(14) **"DWSRF loan fee"** means a nonrefundable fee that is charged on all DWSRF loans, including DWSRF loans for which all or part of the principal is forgiven.

(15) **"Ecology"** means the Washington state department of ecology.

(16) **"Eligible public water system"** means a Group A community public water ~~((systems, both))~~ system, either privately ((and)) or publicly owned, ((and)) or a nonprofit Group A noncommunity public water system((-).

(17) **"EPA"** means the United States Environmental Protection Agency.

(18) **"Green project"** means a public water system infrastructure improvement project that includes water efficiency, energy efficiency, or environmental innovations as follows:

(a) Water efficiency projects use improved technologies and practices to deliver equal or better service with less water, including preventing water loss and reducing customer demand to protect water resources;

(b) Energy efficiency projects use improved technologies and practices to reduce energy consumption or produce cleaner energy for use in water treatment;

(c) Environmentally innovative projects use new or innovative approaches to manage water resources in a more environmentally sustainable way. Projects that are considered environmentally innovative include those that:

(i) Prevent or remove pollution;

(ii) Help a community adapt to climate change through water resource protection programs; or

(iii) Result in other proven, sustainable environmental benefits.

(19) **"Group A public water system"** means a public water system ~~((that))~~ providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act, P.L. 104-182, Section 101(b).

A Group A public water system is further defined as a community or noncommunity public water system.

(a) "Community public water system" means any Group A public water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five people year-round more than one hundred eighty days per year, as defined in chapter 246-290 WAC.

(b) "Noncommunity public water system" means a Group A public water system that is not a community public water system. Noncommunity public water systems are further defined as:

(i) "Nontransient noncommunity public water system" means a public water system that serves ~~((fifteen))~~ twenty-five or more ~~((residential connections, or))~~ of the same non-residential people for one hundred eighty or more days within a calendar year.

(ii) "Transient noncommunity public water system" means a public water system that serves:

(A) Twenty-five or more different people ~~((per))~~ each day for sixty or more days ~~((per))~~ within a calendar year~~((:))~~;

(B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or

(C) One thousand or more people for two or more consecutive days within a calendar year.

(20) "Group B public water system" means a public water system that ~~((serves less))~~ is not a Group A public water system. A public water system is classified as a Group B public water system if it serves fewer than fifteen ~~((residential))~~ service connections, and ~~((less))~~;

(a) Fewer than twenty-five people ~~((per day))~~; or ~~((serves))~~

(b) Twenty-five or more people per day for less than sixty ~~((or fewer))~~ days per year provided the public water system does not serve one thousand or more people for two or more consecutive days.

(21) "Individual water supply system" means any water system that is not subject to ~~((the state board of health drinking water regulations;))~~ chapter 246-290 ~~((WAC;))~~ or ~~((chapter))~~ 246-291 WAC ~~((, providing))~~; and provides water to either one single-family residence, or to a system with four or fewer connections, all of which serve residences on the same farm.

(22) "IUP (intended use plan ~~((HUP)))~~" means the federally required document prepared each year by the ~~((state which identifies))~~ department identifying the intended uses of the DWSRF funds ~~((in the DWSRF))~~ and ~~((describes))~~ describing how those uses support the DWSRF goals ~~((of the DWSRF))~~.

~~((HUD))~~ means the United States Department of Housing and Urban Development.

"Loan" means an agreement between the DWSRF and the assistance recipient through which the DWSRF provides funds for eligible assistance and the recipient agrees to repay the principle sum to the DWSRF.) (23) "MHI (median household income)" means the midpoint in the range of household incomes in the project's service area. Half of the

households in a service area have higher incomes than the MHI, and half have lower incomes.

(24) "Multiple benefit" means projects ~~((improvements))~~ that address more than one type of health risk.

~~((Noncommunity water system" means a Group A public water system that is not a community water system.))~~

(25) "Municipality" means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

(26) "NEPA" means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

(27) "Nonprofit organization" means ~~((a system))~~ an entity that has a federal tax exempt status identification number.

~~((Nontransient noncommunity system" means a Group A noncommunity water system that serves twenty-five or more of the same people per day for one hundred eighty or more days per year.))~~ (28) "Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

(29) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(30) "Principal forgiveness" means that a reduction of up to fifty percent of the total loan amount is not required to be paid back by the borrower. Principal forgiveness is applied when the project is complete.

(31) "Project report" means a ~~((project report developed and approved))~~ department-approved document the borrower or borrower's agency develops under ~~((chapter 246-290))~~ WAC 246-290-110.

(32) "Public water system" means any public water system~~((;))~~ providing water for human consumption through pipes or other constructed conveyances, excluding water systems serving only one single-family residence and water systems with four or fewer connections, all of which serve residences on the same farm~~((;~~

~~((Purveyor" means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person, or other entity owning or operating a public water system. Purveyor also means the authorized agents of such entities)). This includes:~~

(a) Collection, treatment, storage, and distribution facilities under control of the owner, or owner's authorized agent, primarily used in connection with the public water system; and

(b) Collection or pretreatment storage facilities not under the control of the owner, or owner's authorized agent, but primarily used in connection with the public water system.

(33) "Receivership" means the voluntary or involuntary transfer of ownership and operation of a public water system according to chapter 7.60 RCW and RCW 43.70.195.

(34) "Regional benefit" means project improvements that affect more than one public water system.

(35) "Restructuring" means changing public water system ~~((operation, management and/or))~~ ownership, including, but not limited to:

~~((1) Mergers))~~ (a) Consolidation of two or more existing public water systems into a single public water system;

~~((2) Voluntary transfer of))~~ (b) Transfer of ownership; or

~~((3))~~ (c) Receivership ((involuntary transfer of operation and/or ownership)).

(36) "SDWA (Safe Drinking Water Act ((SDWA)))" means ~~((the Federal Safe Drinking Water Act))~~ Public Law 93-523, including all amendments.

(("Satellite management agency (SMA)")) means a person or entity that is approved by the department of health to own or operate public water systems on a regional or county-wide basis, without the necessity for a physical connection between such systems. SMA's are regulated under chapter 246-295 WAC.)) (37) **"SEPA"** means the State Environmental Policy Act under chapter 43.21C RCW.

(38) "Set-aside" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities ~~((as authorized in))~~ under Section 1452 of the SDWA, to fund new programs, and for other drinking water program activities.

(("Significant noncomplier (SNC)")) means a water system that is violating or has violated department rules and the violations may create or have created an imminent or a significant risk to human health.

~~**"Small water system management program (SWSMP)"** means a small water system management program developed and approved under WAC 246-290-105.))~~

(39) "SERP (state environmental review process ((SERP)))" means the NEPA-like environmental review process ((conducted on all DWSRF projects that ensures compliance)) adopted by Washington state to comply with ((state and federal environmental)) the requirements of 40 CFR 35.3140. SERP combines the SEPA review ((through a National Environmental Policy Act (NEPA)-like process)) with additional elements to comply with federal requirements.

(("State match")) means funds equaling at least twenty percent of the amount of the federal capitalization grants the state must deposit into the DWSRF loan fund including the necessary match for set asides.)) (40) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

(41) "Sustainable" means able to continue a benefit into the future as a result of appropriate public water system design, processes, operations, governance, and maintenance.

(42) "SWSMP (small water system management program)" means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

(43) "System capacity" means ~~((the))~~ a public water system's operational, technical, managerial, and financial capability to achieve and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

(44) "Transfer of ownership" means to ~~((convey))~~ change legal ownership of a public water system from one person ((or entity)) to another.

(("Transient noncommunity system")) means a Group A noncommunity water system that serves:

~~(1) Twenty-five or more different people per day during sixty or more days per year;~~

~~(2) Twenty-five or more of the same people per day for less than one hundred eighty days per year and during more than fifty-nine days per year; or~~

~~(3) One thousand or more people for two or more consecutive days.~~

~~**"Water facilities inventory form (WFI)"** means the DOH form summarizing each public water system's characteristics.))~~ (45) **"Water right"** means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

(46) "WFI (water facilities inventory)" means a department form summarizing a public water system's characteristics.

(47) "WSP (water system plan ((WSP)))" means a ~~((water system plan developed))~~ document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and ((approved under WAC 246-290-100)) federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-030 Administration. (1) ~~((DOH))~~ The department, the board, and ((CTED)) commerce shall jointly administer the DWSRF program.

(2) ~~((DOH is responsible for))~~ The department shall:

(a) ~~((Administering))~~ Apply for and receive the ((federal)) DWSRF grant from EPA;

(b) ~~((Determining and managing))~~ Manage the use of DWSRF set-aside funds for ((drinking water program)) regulatory purposes and technical assistance ((purposes)) to public water systems as authorized under the SDWA; ((and))

(c) ~~((Developing prioritized))~~ Annually develop ranking values for the criteria under WAC 246-296-130 by assigning the highest value to proposed projects that resolve the most significant public health problems;

(d) Provide guidance to public water systems before the yearly application cycle begins;

(e) Publish the ranking values in the funding application package;

(f) Determine public water system and project eligibility for DWSRF loans;

(g) Develop lists of proposed projects for DWSRF ((financial assistance)) loans in priority order;

(h) Present lists of proposed projects to the board; and

(i) Submit the IUP to EPA.

(3) The department shall include the following information in the IUP:

(a) The DWSRF loan fee account;

(b) The current fee; and

(c) The account balance.

~~(4) The board (is responsible for the final selection of) shall select projects to receive DWSRF ((financial assistance)) funding.~~

~~((4) CTED, the board's administrative agent, is responsible for managing DWSRF project loans)) (5) Commerce shall:~~

~~(a) Act as the board's administrative agent;~~

~~(b) Require borrowers to comply with the terms of their DWSRF loan agreements;~~

~~(c) Manage DWSRF loan finances, including fiscal tracking and billing; and~~

~~(d) Verify that accounting, audit, and fiscal procedures conform to applicable federal government regulations.~~

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-040 Use of funds by the state. (1) The ~~((DWSRF))~~ department may ~~((be used for))~~ use the following funds to carry out the purposes of the DWSRF:

~~((1) To accept and retain funds from)) (a) Capitalization grants provided by the federal government((;));~~

~~(b) State matching funds appropriated ((in accordance with)) under RCW 70.119A.170((,- payments of));~~

~~(c) Principal and interest((,- fees;)) payments;~~

~~(d) DWSRF loan fees; and~~

~~(e) Any other funds earned and deposited((;)).~~

~~(2) ((To)) The department may use these funds to:~~

~~(a) Finance DWSRF loans for ((the)) planning, design, and((/or)) construction ((costs)) of public water system infrastructure ((needed to facilitate compliance with the)) projects that will address or prevent violations of applicable federal, state, and local drinking water ((standards)) requirements;~~

~~((3) To)) (b) Finance ((the)) reasonable costs ((incurred by DOH)) for the department, the board, and ~~((CTED in the administration of))~~ commerce to administer the DWSRF program; ~~((or~~~~

~~(4) To)) and~~

~~(c) Fund set-aside activities authorized in categories (b) through (e) of Section 35.3535 of the SDWA, including ((b));~~

~~(i) DWSRF program administration ((and technical assistance, (e) small systems));~~

~~(ii) Technical assistance((,-(d))) specific to small public water systems;~~

~~(iii) State drinking water program management((;)); and ((e))~~

~~(iv) Local assistance and other state programs.~~

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-050 ((Establishing)) DWSRF loan terms ((of assistance)). ~~((DWSRF loans shall be provided at or below market rate interest levels. Loans may be made for the useful life of the improvement or for a maximum of twenty years. The assistance recipient shall begin repayment of the principal and interest no later than one year after project completion. A project is complete when operations are initiated or are capable of being initiated. Disadvantaged communities may receive a loan for up to thirty years at an~~

~~interest rate established at or below market interest rates as long as the loan does not exceed the useful life of the project. The board is responsible for establishing terms that secure the debt and maintain a financially sound revolving loan fund in perpetuity. Specific rates and contract terms shall be published in the annual application package.)) (1) The board may approve a DWSRF loan for a project that will not serve a disadvantaged community at or below market interest rates for a maximum of twenty years from project completion.~~

~~(2) The board may approve a DWSRF loan for projects that will serve disadvantaged communities:~~

~~(a) At an interest rate set at or below market interest rates for up to thirty years, as long as the DWSRF loan does not exceed the useful life of the project; or~~

~~(b) That qualifies for principal forgiveness for up to fifty percent of the principal DWSRF loan amount.~~

~~(3) The borrower shall begin repaying the principal and interest no later than one year after the project is complete.~~

~~(4) A project is considered complete when the department approves the construction completion report.~~

~~(5) The department and the board shall:~~

~~(a) Set terms that secure repayment of the debt and maintain a financially sound DWSRF program in perpetuity; and~~

~~(b) Publish specific rates and contract terms in the annual application package.~~

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-060 Establishing a DWSRF loan fee, loan fee account, and loan fee uses. ~~((The board shall establish the terms of a loan fee and assess the fee to each project loan. The loan fee amount is to be established on an annual basis to ensure adequate funding is available to maintain administration of the DWSRF in perpetuity. The loan fee is eligible to be covered by the loan. The amount of the loan fee shall be published in the annual application package. Loan fees shall be deposited into and retained in a dedicated loan fee account and shall only be used for program administration activities unless the board and DOH jointly determine that the loan fee account balance exceeds program administration needs, then a portion of or all of the funds may be transferred to the project loan account to be used for project loans. Information on the loan fee account, including the current fee and account balance, shall be included in the intended use plan. The board and DOH are responsible for jointly determining the amount of the loan fee account funds to be used for current and future program administration.)) (1) The department and board shall:~~

~~(a) Establish the terms of a DWSRF loan fee; and~~

~~(b) Annually set the DWSRF loan fee amount.~~

~~(2) The board shall set the DWSRF loan fee for each project.~~

~~(3) The DWSRF loan amount may include the DWSRF loan fee.~~

~~(4) The department and board shall determine the amount of DWSRF loan fee account funds to be used for program administration.~~

~~(5) The department and commerce shall use DWSRF loan fees only for program administration activities.~~

(6) Commerce shall deposit and retain DWSRF fees in a dedicated DWSRF loan fee account.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-070 Eligible projects and project-related costs ((eligible for assistance from the fund)). (1) Projects ((and project-related costs)) eligible for ((assistance from the DWSRF program)) a DWSRF loan include those that:

(a) Address ((violation of applicable federal, state, and local drinking water standards);

(b) Prevent future)) or prevent violations of applicable federal, state, and local drinking water ((standards)) requirements; ((or

(e)) (b) Replace aging infrastructure ((if needed)) to ((maintain compliance or further)) help a public water system comply with applicable federal, state, and local drinking water requirements to improve public health protection ((goals of applicable federal, state, and local));

(c) Improve system capacity of a public water system to help assure sustainable drinking water ((standards)); or

(d) Promote increased water or energy efficiency, green projects, or innovation that will improve environmental sustainability and protect public health.

(2) Specific ((projects and)) project-related costs eligible for ((assistance)) a DWSRF loan include those that:

(a) ((Are)) Improve a public water system's treatment, transmission, distribution, source, or storage ((projects));

(b) ((Consolidate)) Restructure water supplies or public water systems that have system capacity difficulties;

(c) Retroactively finance municipal projects that:

(i) Are for ((treatment of)) surface water((-GWI(-)) treat-ment;

(ii) Address groundwater under the direct influence of surface water((+));

(iii) Address volatile organic or inorganic chemicals((-; inorganic chemicals, or are projects that)); or

(iv) Are required by department or EPA order;

(d) Acquire real property if ((it is integral to a project)) needed to meet or maintain compliance ((or further)) with regulations or increase public health protection ((and the property is being acquired from a willing seller));

(e) ((Finance)) Pay for planning or design ((costs)) that is directly related to a DWSRF eligible project((s));

(f) Finance the costs ((incurred by)) of restructuring for a publicly owned public water system((s-associated with restructuring of systems));

(g) Acquire, build, or ((rehabilitate)) repair reservoirs, including clear wells, that are part of the treatment process and located on the same property ((where)) as the treatment facility ((is located)); ((or))

(h) Acquire, build, or ((rehabilitate)) repair distribution reservoirs; or

(i) Are associated with a department-approved green project.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-080 Ineligible projects and project-related costs ((not eligible for assistance from the fund)). Projects and project-related costs that are not eligible for assistance from the DWSRF program include:

(1) ((Acquisition, construction, or rehabilitation of)) Acquiring, building, or repairing dams or raw water reservoirs;

(2) ((Acquisition of)) Acquiring water rights, except if the water rights are owned by a public water system that is being acquired ((through consolidation)) by restructuring;

(3) Laboratory ((fees)) costs for monitoring;

(4) Operation and maintenance ((expenses)) costs;

(5) Projects needed primarily for fire protection;

(6) Projects needed primarily to serve future population growth;

(7) ((Costs incurred by privately owned systems associated with restructuring systems;

(8)) Projects that have received assistance from the national set-aside for Indian tribes and Alaska native villages under Section 1452(i) of the SDWA;

((9)) (8) Projects for an individual water supply system or a Group B public water system unless the public water system is being ((consolidated)) restructured into a Group A public water system((-Consolidation may be accomplished by extending a water line from an existing Group A system or by creating a new Group A system under WAC 246-296-120; or)) under WAC 246-296-110; and

((10)) (9) Projects that are solely for the purpose of installing service meters.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-090 Public water system eligibility requirements. (1) Public water systems eligible for ((assistance from the fund)) a DWSRF loan include:

(a) Publicly and privately owned community public water systems, ((excluding)) except those public water systems not eligible for ((assistance from the fund)) a DWSRF loan under WAC 246-296-100; and

(b) Noncommunity public water systems owned by a nonprofit organization.

(2) Public water systems not eligible for ((assistance from the fund)) a DWSRF loan include:

(a) Noncommunity public water systems owned by a for-profit organization;

(b) State-owned public water systems;

(c) Federally owned or regulated public water systems; ((or))

(d) Group B public water systems, unless restructuring; and

(e) Public water systems lacking the ((technical, financial, and managerial capability)) system capacity to ((ensure compliance)) comply with all applicable federal, state, and local drinking water ((standards)) requirements, unless:

(i) The ((assistance)) project will ((ensure)) bring the public water system into compliance; and

~~(ii) The owner(s and operators) of the public water system((s)) agrees to ((undertake feasible)) reasonable and appropriate changes in operation and management to ((ensure)) stay in compliance ((in the future)).~~

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-100 ((Minimum)) DWSRF loan eligibility and application requirements ((to be eligible for assistance from the fund)). To be eligible for ((assistance from the fund)) a DWSRF loan, an applicant((s are responsible for)) shall:

(1) ~~((Demonstrating)) Document that the public water system has the ((technical, financial, and managerial capability)) system capacity to ((ensure)) stay in compliance with applicable federal, state, and local drinking water ((standards)) requirements, unless ((the assistance will ensure compliance and the owners, managers, and operators of the systems agree to undertake feasible changes to ensure compliance over the long term;)):~~

~~(a) The funding will bring the public water system into compliance; and~~

~~(b) The owner of the public water system agrees to reasonable and appropriate changes to stay in compliance.~~

(2) ~~((Having)) Before applying for a DWSRF loan, have a ((DOH)) current department-approved WSP or SWSMP ((containing)) that:~~

~~(a) Includes the proposed project; and ((addressing))~~

~~(b) Addresses any ((capacity-related deficiencies prior to execution of a loan contract)) difficulties with system capacity;~~

(3) ~~((Being in compliance)) Comply with ((applicable)) federal, state, and local drinking water ((standards)) requirements or a variance under WAC 246-290-060, unless the ((use of the DWSRF assistance)) DWSRF loan will ((ensure)) fund projects that result in public water system compliance;~~

~~(4) ((Being in compliance)) Comply with ((DOH)) any department or EPA orders;~~

~~(5) ((Having)) Install a source meter on each source ((or installing source)) if meters ((as a part of the project)) are not already installed;~~

~~(6) ((Having)) Install service meters on all service((s or installing)) connections if meters ((on all services as part of)) are not already installed within the project area, unless ((one of the following exceptions apply)):~~

~~(a) The project is for a transient noncommunity public water system;~~

~~(b) The project is for a mobile home park with a source or master meter;~~

~~(c) The project is for an apartment building or complex with a source or master meter; or~~

~~(d) The department determines that ((the cost of the meters is prohibitive for the DWSRF project as a whole and waiving the meter requirement is necessary to move the project forward and promote priority public health issues;)) installing meters is:~~

~~(i) Prohibitive for the DWSRF project as a whole; and~~

~~(ii) Waiving the meter requirement is necessary to award a DWSRF loan for a project to resolve high priority public health problems.~~

~~(7) ((Ensuring)) Have no outstanding fees or penalties ((are)) owed to ((DOH unless an appeal of the imposition of those penalties is pending;)) the department.~~

~~(8) ((Demonstrating)) Provide documentation that the project ((conforms to state)) has sufficient water rights ((laws; and~~

~~(9) Assuring that the project is consistent with local land use plans and policies)) as determined by ecology.~~

~~(9) Comply with the requirements of WAC 246-296-120(1).~~

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-110 Requirements for using DWSRF to create a new Group A public water system. ~~((Projects that)) (1) The department may award a DWSRF loan to create a new Group A public water system ((are eligible for assistance from the fund)) that will meet the requirements under chapter 246-290 WAC when the project is complete if:~~

~~((1) Upon completion of the project, the system conforms to the rules regarding Group A community water systems promulgated under chapter 246-290 WAC;~~

~~(2)) (a) The project ((addresses existing)) resolves high priority public health problems ((with serious risks)) caused by unsafe drinking water(;~~

~~(3) The project is limited in scope to the specific geographic area affected by contamination and the project is for the purpose of resolving existing public health problems associated with individual wells or surface water sources, or the project is limited in scope to the service area of the systems being consolidated and the project is for the purpose of creating a new regional system by consolidating existing water systems;~~

~~(4) The applicant gives)) provided by an individual well or surface water source. The project is limited in scope to the geographic area directly affected by contamination; or~~

~~(b) The project creates a new regional community public water system by restructuring existing systems that have system capacity difficulties. The project is limited in scope to the service area of the public water systems being restructured.~~

~~(2) The applicant shall submit documentation with the application required in WAC 246-296-120(1) to show that:~~

~~(a) The applicant gave the public and potentially affected parties at least sixty days notice ((to the public and potentially affected parties)) prior to submitting the DWSRF loan application to the department. At a minimum, ((notice must include posting of)) the applicant shall post a legal notice of the intent to create a new public water system in the local newspaper;~~

~~((5)) (b) The applicant ((has)) considered alternative solutions to address the problems;~~

~~((6)) (c) The project is a cost-effective solution to the public health problems being addressed; and~~

~~((7))~~ (d) The project is intended to protect public health, and not ~~((solely))~~ primarily to accommodate future population growth.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-120 Annual DWSRF loan application responsibilities. Annual DWSRF loan application responsibilities are established as follows:

(1) Applicants shall ~~((develop and))~~ submit a ~~((DWSRF assistance))~~ completed application package to ~~((DOH))~~ the department on or before the due date ~~((defined))~~ in the application package.

(2) ~~((DOH responsibilities are to))~~ The department shall:

(a) Determine the eligibility of the project;

(b) Rank the project using the ranking criteria established under WAC 246-296-130;

(c) ~~((Develop))~~ Create a prioritized list of eligible projects ~~((eligible for assistance))~~ in order of public health significance;

(d) Develop an ~~((intended use plan))~~ IUP by:

(i) Publishing a draft ~~((intended use plan))~~ IUP for public review and comment ~~((for a period of thirty days))~~; and

(ii) Amending the ~~((plan))~~ IUP, if necessary, after considering ~~((the))~~ public comments ~~((received;))~~.

(e) Submit a capitalization grant application, including the final ~~((intended use plan))~~ IUP, to EPA for review and approval;

(f) Revise the ~~((intended use plan))~~ IUP if EPA ~~((requests))~~ requires changes; and

(g) ~~((If necessary;))~~ Provide for administrative review and dispute resolution ~~((in accordance with))~~ under WAC 246-296-160.

(3) The ~~((board's responsibilities are to))~~ board shall:

(a) Determine ~~((the financial capability and readiness to proceed of))~~ if each applicant with a project on the prioritized ~~((list))~~ IUP is financially capable and ready to proceed, using the ~~((risk assessment))~~ criteria ~~((established))~~ under WAC 246-296-140;

(b) ~~((Make the final selection of))~~ Select projects on the IUP to receive assistance from the fund ~~((in accordance with))~~ using the criteria ~~((established))~~ under WAC 246-296-140; and

(c) ~~((If necessary;))~~ Provide for administrative review and dispute resolution ~~((in accordance with))~~ of departmental or board decisions under WAC 246-296-160.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-130 Project priority rating and ranking criteria. ~~((+))~~ The department shall, at a minimum, consider the following ~~((criteria are considered when prioritizing))~~ to assign points, and rate and rank proposed projects ~~((for DWSRF financial assistance))~~:

~~((a))~~ Priority criteria:

~~((i))~~ (1) Criteria for risk categories and points based on:

(a) Type and significance of public health ~~((risk to be addressed))~~ problems the project will resolve;

~~((ii))~~ Compliance status and need (b) If the project is needed to bring the public water system into compliance with federal, state, and local drinking water ~~((standards))~~ requirements; ~~((and~~

~~((iii))~~ (c) Current compliance status; and

(d) Affordability on a per household basis, determined by comparing the community's average water rate to the MHI in the community's service area, for a community public water system(s).

~~((b))~~ Supporting criteria:

(i) Type of project;

(ii) Restructuring;

~~((iii))~~ (2) Additional points based on the type of project being proposed, if the project:

(a) Is to restructure a public water system;

(b) Creates a sustainable regional public health benefit;

~~((iv))~~ Multiple benefit;

~~((v))~~ Consistency (c) Has multiple benefits that are sustainable;

(d) Is consistent with the Growth Management Act as determined by commerce;

~~((vi))~~ Installation of (e) Is financially sustainable;

(f) Qualifies as a green project;

(g) Serves a disadvantaged community; or

(h) Results in service meters on existing services not currently metered ~~((; and~~

(vii) Size of population affected by the project.

(2) Values for these criteria shall be developed annually by DOH to ensure projects that resolve the most significant health risks receive the highest values. The values shall be made available to the public in advance of the application cycle and shall be published in the DWSRF application package).

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-140 Final project selection criteria.

When awarding a DWSRF loan to a public water system, the board shall consider, at a minimum, ~~((consider the following in assessing the risk associated with the application))~~ the applicant's ability to:

(1) ~~((Ability to))~~ Repay the DWSRF loan;

(2) ~~((Ability to))~~ Provide adequate security in case of DWSRF loan default; and

(3) ~~((Readiness to proceed or the ability of the applicant to))~~ Promptly ~~((commence))~~ begin the project.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-150 DWSRF loan conditions. (1) A borrower~~((s must))~~ shall comply with all applicable laws, regulations, and requirements.

(2) A DWSRF loan~~((s shall include conditions to ensure compliance with the following:~~

(a) All agreement must address applicable federal, state, and local laws, orders, regulations, and permits; including, but not limited to ~~((; procurement, discrimination, labor, job safety, and drug-free environments, state and federal and women-owned-business regulations. A current list of cross-~~

cutting authorities shall be contained in the application package;

~~(b) Maintenance of);~~

(a) Procurement;

(b) Nondiscrimination;

(c) Labor;

(d) Job safety;

(e) National Historic Preservation Act;

(f) Drug-free environments; and

(g) State and federal disadvantaged business regulations, such as those designed to help minority and women-owned businesses.

~~(3) A borrower shall maintain accounting records ((in accordance with-)) that conform to generally accepted government accounting standards(("- These standards are defined as, but not limited to, those contained in the)) issued by the Comptroller General of the United States ((General Accounting Office (GAO) publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions"), available at <http://www.gao.gov/yellowbook>;~~

~~((e) Demonstration of applicant's)) (4) A borrower shall document its legal ability to:~~

(a) Provide a dedicated source of revenue; and

(b) Guarantee the repayment of ((their obligations to)) the ((fund)) DWSRF loan from that dedicated source. Dedicated sources of revenue ((could be special assessments, general taxes, or general obligation bonds, revenue bonds, user charges, rates, fees, or other sources; and

(d) Submission of)) may include:

(i) Special assessments;

(ii) General taxes;

(iii) General obligation bonds;

(iv) Revenue bonds;

(v) User charges;

(vi) Rates;

(vii) Fees; and

(viii) Other sources.

~~(5) A borrower shall submit a construction completion report((s)) for all project components and other documentation as required under chapter 246-290 WAC.~~

~~((3) Amendments to the loan agreement must be approved by DOH)) (6) A borrower shall comply with any EPA or department orders and compliance schedules during the term of the DWSRF loan agreement.~~

(7) The department, the board, and the ((loan recipient)) borrower shall approve amendments to the DWSRF loan agreement as needed.

~~(a) ((Amendments to)) The DWSRF loan agreement ((are required when there is a)) must be amended:~~

(i) For significant changes to the project's original ranked application and project scope of work; or

(ii) ((Need for a) If additional time ((extension beyond the time cited in the original loan agreement)) is needed to complete project activities.

(b) Amendments to the DWSRF loan agreement are not required when adjustments are made at project closeout to reconcile minor differences between the contract and the ((final)) completed project ((for project close out)).

~~((4) CTED)) (8) Commerce, or ((another)) its authorized auditor ((at CTED's discretion,)) shall audit the ((financial assistance agreement and)) borrower's records.~~

~~((5)) (9) Commerce may terminate the DWSRF loan agreement in whole or in part at any time if the borrower:~~

(a) Fails to comply with the terms of the DWSRF loan agreement under ((WAC 246-296-150,)) this chapter; or ((fails to use))

(b) Uses the DWSRF loan proceeds ((only)) for ((those)) activities other than those identified in the DWSRF loan(("- CTED may terminate the)) agreement ((in whole or in part at any time. CTED)).

(10) Commerce shall, upon termination of a DWSRF loan agreement:

(a) Promptly notify the borrower in writing of its ((determination));

(i) Decision to terminate((-)) the loan agreement;

(ii) Reason for ((such termination, and the)) terminating the loan agreement;

(iii) Effective date of ((the termination. Upon)) termination; and

(b) Require immediate payment of the ((loan agreement, CTED shall request that the)) entire remaining balance of the DWSRF loan ((together with)) and any interest accrued((- be paid immediately)).

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-160 Administrative review and dispute resolution. (1) ~~((H))~~ An applicant ((does not agree with the DOH decision regarding application eligibility, the applicant)) may ((request reconsideration of)) request that the department reconsider a decision of ineligibility under WAC 246-296-070, 246-296-080, and 246-296-090. The request must be:

(a) Sent in writing to the ((director of the DOH division of drinking water. Requests for reconsideration must be in writing)) department at: P.O. Box 47822, Olympia, Washington, 98504-7822; and

(b) Received within ten working days of the date ((DOH) the department notifies the applicant of the decision.

(2) ((H)) An applicant ((does not agree)) that disagrees with the ((DOH) department's decision ((regarding priority)) about rating and ranking ((of the)) its application((- the applicant)) under WAC 246-296-130 may submit comments to ((DOH as part of)) the department during public review of the draft ((intended use plan)) IUP.

(3) ((If an applicant does not agree with board staff recommendations regarding the loan application section submitted, the)) An applicant may request a review of the decision by the board((- Requests)) about its DWSRF loan application. A request for review must be ((in writing and)) received by the board in writing at least fourteen calendar days ((in advance of the)) before a scheduled board meeting.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-170 State environmental review process. (1) Federal law requires that Washington state follow a

~~((state environmental review process))~~ SERP ~~((s))~~ for projects receiving DWSRF ~~((assistance))~~ loans. The purpose of the SERP is to identify any significant impact to the environment that may be caused by ~~((the implementation of))~~ a DWSRF project. This review must be done in compliance with ~~((the National Environmental Policy Act))~~ NEPA ~~((s))~~ or ~~((the State Environmental Policy Act))~~ SEPA ~~((s))~~ and any other applicable environmental ~~((statutes))~~ laws and regulations.

(2) ~~((CTED))~~ The department is designated as the lead agency for SERP. ~~((CTED))~~ The department shall provide basic guidance to the ~~((loan recipient))~~ borrower to meet the requirements of ~~((this process))~~ SERP. Details ~~((regarding))~~ about SERP shall be included in the application package.

AMENDATORY SECTION (Amending WSR 01-21-137, filed 10/24/01, effective 11/24/01)

WAC 246-296-180 Obligation for a public water system(s) to comply if ~~((assistance))~~ a DWSRF loan is not obtained. The inability or failure of any public water system to receive ~~((assistance from the))~~ a DWSRF ~~((program))~~ loan, or any delay in obtaining ~~((assistance))~~ a DWSRF loan, does not ~~((alter))~~ change the ~~((obligation of the))~~ public water ~~((system))~~ system's duty to comply in a timely manner with all applicable federal, state, and local drinking water ~~((standards))~~ regulations.

WSR 11-19-096
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 20, 2011, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-100.

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

Hearing Location(s): Red Lion Hotel at the Quay, Quay-side Portside Room, 100 Columbia Street, Vancouver, WA 98660, on October 25, 2011, at 9:00 a.m.; at Labor and Industries, 12806 Gateway Drive, Tukwila, WA 98168-1050, on October 26, 2011, at 1:00 p.m.; at the Bellingham Public Library, Lecture Room, 210 Central Avenue, Bellingham, WA 98227-9710, on October 26, 2011, at 1:00 p.m.; at the Red Lion Richland Hanford House, Vernita Room, 802 George Washington Way, Richland, WA 99352, on October 27, 2011, at 1:00 p.m.; at the Spokane CenterPlace Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, on October 28, 2011, at 10:00 a.m.; and at Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501, on October 28, 2011, at 10:00 a.m.

Date of Intended Adoption: November 30, 2011.

Submit Written Comments to: Doug Stewart, Employer Services Program Manager, P.O. Box 41440, Olympia, WA

98504-4140, e-mail doug.stewart@lni.wa.gov, fax (360) 902-4988, by 5 p.m. on November 4, 2011.

Assistance for Persons with Disabilities: Contact office of information and assistance by October 21, 2011, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule proposal will amend the tables of classification base premium rates, experience rating plan parameters, experience modification factor calculation limitations and retrospective rating plan size groupings for the workers' compensation insurance program for calendar year 2012. Classification base rates were amended for updated loss and payroll experience, and to propose an increase in premium rates an overall average 2.5 percent per hour worked. This proposal will add language to reflect the new Stay at Work program. This proposal will repeal rules related to the expired farm internship program.

Amending WAC 296-17-31024 Classification premium rates, 296-17-855 Experience modification, 296-17-870 Evaluation of actual losses, 296-17-875 Table I, 296-17-880 Table II, 296-17-885 Table III, 296-17-890 Table IV, 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry, 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications, 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class, 296-17-920 Assessment for supplemental pension fund, 296-17B-540 Determining loss incurred for each claim and 296-17B-900 Retrospective rating plans standard premium size ranges; and repealing WAC 296-17-89503 Farm internship program industrial insurance, accident fund and medical aid fund by class.

Reasons Supporting Proposal: The department's decision to increase rates 2.5 percent is intended to cover the costs of claims that will occur in 2012, keep up with medical inflation, increases in the average amount of workers' wage, and changes in investment returns. Washington law provides that rates should be adjusted annually to reflect the hazards of each industry and in accordance with recognized workers' compensation insurance principles.

Statutory Authority for Adoption: RCW 51.16.035 (base rates), 51.32.073 (supplemental pension), 51.18.010 (retrospective rating), and 51.04.020(1) (general authority).

Statute Being Implemented: RCW 51.16.035, 51.32.073, and 51.18.010.

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: Jo Anne Attwood, Tumwater, Washington, (360) 902-4777; Implementation: Doug Stewart, Tumwater, Washington, (360) 902-4826; and Enforcement: Beth Dupre, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement is required as the proposed rules are adjusting rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are adjusting rates pursuant to legislative standards.

September 20, 2011
 Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 05-12-031, filed 5/24/05, effective 7/1/05)

WAC 296-17-31024 Classification premium rates.
~~((+)) How do you determine what rate to charge me? You are assigned a premium rate for each of your risk classifications (has corresponding base rates. The base rates assigned to your business will depend on the basic classification(s) assigned to your business.~~

~~(2) What do you mean by a base rate?~~

~~The base rate is a comparison of losses (claims) and exposure to produce a cost per unit of exposure. The base rate is an unmodified rate that all employers with an experience factor of 1.000 will pay in a specific classification.~~

~~(3) Do all employers in the same classification pay the base rate?~~

~~In practice, only a few employers pay the base rate. Most employers pay rates that are adjusted to take into account the employer's claims and premium reporting experience. We refer to those modified rates as experience rates. Your experience rate can be higher or lower than the base rate. This means that employers with fewer than expected losses will pay less than employers in the same classification who have more than expected losses. Experience rating encourages strong safety and accident prevention programs. Details of how experience rating affects your premium are found in WAC 296-17-850 through 296-17-890. Your account manager can also answer questions about your individual experience factor. The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager). The rate includes rates for the four different premiums you are required to pay: Accident fund premiums, medical aid fund premiums, stay-at-work program premiums, and supplemental pension fund premiums. Your rate for each class is determined by multiplying your experience factor as determined by these rules by the sum of the accident fund, medical aid fund and stay-at-work program premium base rates for that class published in these rules, and then adding to that product the supplemental pension fund rate.~~

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-855 Experience modification. The basis of the experience modification shall be a comparison of the actual losses charged to an employer during the experience period with the expected losses for an average employer reporting the same exposures in each classification. The comparison shall contain actuarial refinements designed to weigh the extent to which the actual experience is credible, due con-

sideration being given to the volume of the employer's experience. Except for those employers who qualify for an adjusted experience modification as specified in WAC 296-17-860 or 296-17-865, the experience modification factor shall be calculated from the formula:

$$\text{EXPERIENCE MODIFICATION FACTOR} = \frac{\text{Credible Actual Primary Loss} + \text{Credible Actual Excess Loss}}{\text{Expected Loss}}$$

Where

$$\begin{aligned} \text{Credible Actual Primary Loss} &= \text{Actual Primary Loss} \times \text{Primary Credibility} \\ &+ \text{Expected Primary Loss} \times (100\% - \text{Primary Credibility}) \\ \text{Credible Actual Excess Loss} &= \text{Actual Excess Loss} \times \text{Excess Credibility} \\ &+ \text{Expected Excess Loss} \times (100\% - \text{Excess Credibility}) \end{aligned}$$

The meaning and function of each term in the formula is specified below.

For each claim, the actual primary loss is the first dollar portion of the claim costs, which has been shown in actuarial studies, to have the greater credibility in predicting future experience. These amounts are summed over all claims. For each claim in excess of \$20,112 the actual primary loss shall be determined from the formula:

$$\text{ACTUAL PRIMARY LOSS} = \frac{50,280}{(\text{Total loss} + 30,168)} \times \text{total loss}$$

For each claim, less than \$20,112 the full value of the claim shall be considered a primary loss.

For each claim, the excess actual loss is the remaining portion of the claim costs, which have been shown in actuarial studies to have less credibility in predicting future experience. The excess actual loss for each claim shall be determined by subtracting the primary loss from the total loss. These amounts are summed over all claims.

For any claim without disability benefits (time loss, partial permanent disability, total permanent disability or death) either actually paid or estimated to be paid, the total actual losses for calculating the primary loss and excess loss shall first be reduced by the lesser of \$((2,120)) 2,330 or the total cost of the claim. Here are some examples for these claims:

Total Loss	Type of Claim	Total Loss (after deduction)	Primary Loss	Excess Loss
200	Medical Only	0	0	0
2,500	Medical Only	((380)) 170	((380)) 170	0
2,500	Time Loss	2,500	2,500	0
25,000	Medical Only	((22,880)) 22,670	((21,686)) 21,572	((1,194)) 1,098
25,000	Time Loss	25,000	22,785	2,215
100,000	PPD	100,000	38,627	61,373
2,000,000	TPD Pension	((233,984)) 253,784	((44,518)) 44,938	((188,566)) 208,846

Note: The deduction, \$((2,120)) 2,330, is twice the average case incurred cost of these types of claims occurring during the three-year period used for experience rating. On average this results in reducing the average actual loss about sev-

enty percent for these types of claims adjusted. This is done to help make the transition between the two different experience rating methods better by helping make the change in experience factor reasonable for small changes to the actual losses. The \$2,000,000 loss is limited by the Maximum Claim Value before the reduction of ~~\$(2,120)~~ 2,330 is applied.

For each employer, the primary credibility and the excess credibility determines the percentage weight given to the corresponding actual primary losses and the actual excess losses, included in the calculation of the experience modification, based on the volume of expected losses. Primary credibility and excess credibility values are set forth in Table II.

An employer's expected losses shall be determined by summing the expected loss for each of the three years of the experience period, which are calculated by multiplying the reported exposure in each classification during the year by the corresponding classification expected loss rate and rounding the result to the nearest cent. Classification expected loss rates by year are set forth in Table III.

Expected losses in each classification shall be multiplied by the classification "Primary-Ratio" to obtain "expected primary losses" which shall be rounded to the nearest cent. Expected excess losses shall then be calculated by subtracting expected primary losses from expected total losses rounded to the nearest cent. Primary-Ratios are also set forth in Table III.

AMENDATORY SECTION (Amending WSR 09-16-109, filed 8/4/09, effective 10/1/09)

WAC 296-17-870 Evaluation of actual losses. (1)

Except as provided in subsections (3) through (12) of this section, the actual losses for claims with a date of injury during the experience period will be evaluated on the "valuation date." Losses on claims occurring outside the experience period will not be included. The actual losses for closed claims must include:

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

The actual losses for claims that are open may, in addition, also include a reserve for future payments. Actual losses do not include subsidies and reimbursements paid by the stay-at-work program.

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

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

(a) In cases where loss values are included or excluded through mistake other than error of judgment.

(b) In cases where a third party recovery is made, subject to subsection (5)(a) of this section.

(c) In cases where the claim qualifies as a second injury claim under the provisions of RCW 51.16.120.

(d) In cases where a claim, which was previously evaluated as a compensable claim, is closed and is determined to be noncompensable (ineligible for benefits other than medical treatment).

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

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

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

(5) **Third-party recovery - Effect on experience modification.**

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

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

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

(d) Definitions:

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

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

(6) **Second injury claims.** The primary and excess values of any claim which becomes eligible for second injury relief under the provisions of RCW 51.16.120, as now or hereafter amended, shall be reduced by the percentage of relief granted.

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

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

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

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

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

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

will not be charged to the experience record of the nongovernmental state fund employer.

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-875 Table I.

**Primary Losses for Selected Claim Values
Effective January 1, (~~2011~~) 2012**

<u>((CLAIM VALUE)) TOTAL LOSS AFTER DEDUCTION</u>	PRIMARY LOSS
5,000	5,000
10,000	10,000
15,000	15,000
20,112	20,112
29,834	25,000
44,627	30,000
69,102	35,000
100,000	38,627
117,385	40,000
200,000	43,690
<u>((233,084))</u>	<u>((44,518))</u>
<u>253,784**</u>	<u>44,938</u>

** Maximum claim value

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-880 Table II.

**PRIMARY AND EXCESS CREDIBILITY VALUES
Effective January 1, (~~2011~~) 2012**

Maximum Claim Value = \$((233,084)) 253,784
Average Death Value = \$((233,084)) 253,784

<u>((Expected Losses</u>	Primary Credibility	Excess- Credibility
1 - 7,989	12%	7%
7,990 - 8,528	13%	7%
8,529 - 9,074	14%	7%
9,075 - 9,625	15%	7%
9,626 - 10,182	16%	7%
10,183 - 10,748	17%	7%
10,749 - 11,320	18%	7%
11,321 - 11,900	19%	7%
11,901 - 12,487	20%	7%
12,488 - 13,082	21%	7%
13,083 - 13,687	22%	7%
13,688 - 14,299	23%	7%
14,300 - 14,920	24%	7%
14,921 - 15,553	25%	7%

((Expected Losses		Primary- Credibility	Excess- Credibility	((Expected Losses		Primary- Credibility	Excess- Credibility
15,554	- 16,195	26%	7%	334,478	- 350,960	63%	16%
16,196	- 16,845	27%	7%	350,961	- 378,436	63%	17%
16,846	- 17,509	28%	7%	378,437	- 386,051	64%	17%
17,510	- 18,183	29%	7%	386,052	- 421,365	64%	18%
18,184	- 18,871	30%	7%	421,366	- 422,393	64%	19%
18,872	- 19,572	31%	7%	422,394	- 456,904	65%	19%
19,573	- 20,286	32%	7%	456,905	- 466,352	65%	20%
20,287	- 21,015	33%	7%	466,353	- 492,667	66%	20%
21,016	- 21,759	34%	7%	492,668	- 510,311	66%	21%
21,760	- 22,519	35%	7%	510,312	- 528,657	67%	21%
22,520	- 23,298	36%	7%	528,658	- 554,270	67%	22%
23,299	- 24,096	37%	7%	554,271	- 564,879	68%	22%
24,097	- 24,916	38%	7%	564,880	- 598,227	68%	23%
24,917	- 25,756	39%	7%	598,228	- 601,331	69%	23%
25,757	- 26,622	40%	7%	601,332	- 638,020	69%	24%
26,623	- 27,513	41%	7%	638,021	- 642,185	69%	25%
27,514	- 28,434	42%	7%	642,186	- 674,943	70%	25%
28,435	- 29,388	43%	7%	674,944	- 686,145	70%	26%
29,389	- 30,376	44%	7%	686,146	- 712,108	71%	26%
30,377	- 31,405	45%	7%	712,109	- 730,104	71%	27%
31,406	- 32,479	46%	7%	730,105	- 749,513	72%	27%
32,480	- 33,604	47%	7%	749,514	- 774,061	72%	28%
33,605	- 34,791	48%	7%	774,062	- 787,162	73%	28%
34,792	- 36,049	49%	7%	787,163	- 818,021	73%	29%
36,050	- 37,393	50%	7%	818,022	- 825,056	74%	29%
37,394	- 38,843	51%	7%	825,057	- 861,978	74%	30%
38,844	- 40,430	52%	7%	861,979	- 863,201	75%	30%
40,431	- 42,201	53%	7%	863,202	- 901,596	75%	31%
42,202	- 42,381	54%	7%	901,597	- 905,938	75%	32%
42,382	- 44,241	54%	8%	905,939	- 940,245	76%	32%
44,242	- 46,732	55%	8%	940,246	- 949,895	76%	33%
46,733	- 70,726	56%	8%	949,896	- 979,149	77%	33%
70,727	- 77,954	57%	8%	979,150	- 993,855	77%	34%
77,955	- 111,347	57%	9%	993,856	- 1,018,314	78%	34%
111,348	- 114,685	57%	10%	1,018,315	- 1,037,813	78%	35%
114,686	- 144,945	58%	10%	1,037,814	- 1,057,738	79%	35%
144,946	- 158,643	58%	11%	1,057,739	- 1,081,771	79%	36%
158,644	- 178,753	59%	11%	1,081,772	- 1,097,426	80%	36%
178,754	- 202,602	59%	12%	1,097,427	- 1,125,728	80%	37%
202,603	- 212,765	60%	12%	1,125,729	- 1,137,380	81%	37%
212,766	- 246,561	60%	13%	1,137,381	- 1,169,688	81%	38%
246,562	- 246,992	61%	13%	1,169,689	- 1,177,605	82%	38%
246,993	- 281,432	61%	14%	1,177,606	- 1,213,647	82%	39%
281,433	- 290,519	61%	15%	1,213,648	- 1,218,102	83%	39%
290,520	- 316,088	62%	15%	1,218,103	- 1,257,606	83%	40%
316,089	- 334,477	62%	16%	1,257,607	- 1,258,873	84%	40%

Expected Losses		Primary Credibility	Excess Credibility	Expected Losses		Primary Credibility	Excess Credibility		
<u>26,163</u>	=	<u>27,044</u>	<u>39%</u>	<u>7%</u>	<u>628,139</u>	=	<u>631,398</u>	<u>69%</u>	<u>23%</u>
<u>27,045</u>	=	<u>27,953</u>	<u>40%</u>	<u>7%</u>	<u>631,399</u>	=	<u>669,921</u>	<u>69%</u>	<u>24%</u>
<u>27,954</u>	=	<u>28,889</u>	<u>41%</u>	<u>7%</u>	<u>669,922</u>	=	<u>674,294</u>	<u>69%</u>	<u>25%</u>
<u>28,890</u>	=	<u>29,856</u>	<u>42%</u>	<u>7%</u>	<u>674,295</u>	=	<u>708,690</u>	<u>70%</u>	<u>25%</u>
<u>29,857</u>	=	<u>30,857</u>	<u>43%</u>	<u>7%</u>	<u>708,691</u>	=	<u>720,452</u>	<u>70%</u>	<u>26%</u>
<u>30,858</u>	=	<u>31,895</u>	<u>44%</u>	<u>7%</u>	<u>720,453</u>	=	<u>747,713</u>	<u>71%</u>	<u>26%</u>
<u>31,896</u>	=	<u>32,975</u>	<u>45%</u>	<u>7%</u>	<u>747,714</u>	=	<u>766,609</u>	<u>71%</u>	<u>27%</u>
<u>32,976</u>	=	<u>34,103</u>	<u>46%</u>	<u>7%</u>	<u>766,610</u>	=	<u>786,989</u>	<u>72%</u>	<u>27%</u>
<u>34,104</u>	=	<u>35,284</u>	<u>47%</u>	<u>7%</u>	<u>786,990</u>	=	<u>812,764</u>	<u>72%</u>	<u>28%</u>
<u>35,285</u>	=	<u>36,531</u>	<u>48%</u>	<u>7%</u>	<u>812,765</u>	=	<u>826,520</u>	<u>73%</u>	<u>28%</u>
<u>36,532</u>	=	<u>37,852</u>	<u>49%</u>	<u>7%</u>	<u>826,521</u>	=	<u>858,922</u>	<u>73%</u>	<u>29%</u>
<u>37,853</u>	=	<u>39,263</u>	<u>50%</u>	<u>7%</u>	<u>858,923</u>	=	<u>866,309</u>	<u>74%</u>	<u>29%</u>
<u>39,264</u>	=	<u>40,785</u>	<u>51%</u>	<u>7%</u>	<u>866,310</u>	=	<u>905,077</u>	<u>74%</u>	<u>30%</u>
<u>40,786</u>	=	<u>42,452</u>	<u>52%</u>	<u>7%</u>	<u>905,078</u>	=	<u>906,361</u>	<u>75%</u>	<u>30%</u>
<u>42,453</u>	=	<u>44,311</u>	<u>53%</u>	<u>7%</u>	<u>906,362</u>	=	<u>946,676</u>	<u>75%</u>	<u>31%</u>
<u>44,312</u>	=	<u>44,500</u>	<u>54%</u>	<u>7%</u>	<u>946,677</u>	=	<u>951,235</u>	<u>75%</u>	<u>32%</u>
<u>44,501</u>	=	<u>46,453</u>	<u>54%</u>	<u>8%</u>	<u>951,236</u>	=	<u>987,257</u>	<u>76%</u>	<u>32%</u>
<u>46,454</u>	=	<u>49,069</u>	<u>55%</u>	<u>8%</u>	<u>987,258</u>	=	<u>997,390</u>	<u>76%</u>	<u>33%</u>
<u>49,070</u>	=	<u>74,262</u>	<u>56%</u>	<u>8%</u>	<u>997,391</u>	=	<u>1,028,107</u>	<u>77%</u>	<u>33%</u>
<u>74,263</u>	=	<u>81,852</u>	<u>57%</u>	<u>8%</u>	<u>1,028,108</u>	=	<u>1,043,548</u>	<u>77%</u>	<u>34%</u>
<u>81,853</u>	=	<u>116,914</u>	<u>57%</u>	<u>9%</u>	<u>1,043,549</u>	=	<u>1,069,230</u>	<u>78%</u>	<u>34%</u>
<u>116,915</u>	=	<u>120,419</u>	<u>57%</u>	<u>10%</u>	<u>1,069,231</u>	=	<u>1,089,704</u>	<u>78%</u>	<u>35%</u>
<u>120,420</u>	=	<u>152,192</u>	<u>58%</u>	<u>10%</u>	<u>1,089,705</u>	=	<u>1,110,625</u>	<u>79%</u>	<u>35%</u>
<u>152,193</u>	=	<u>166,575</u>	<u>58%</u>	<u>11%</u>	<u>1,110,626</u>	=	<u>1,135,860</u>	<u>79%</u>	<u>36%</u>
<u>166,576</u>	=	<u>187,691</u>	<u>59%</u>	<u>11%</u>	<u>1,135,861</u>	=	<u>1,152,297</u>	<u>80%</u>	<u>36%</u>
<u>187,692</u>	=	<u>212,732</u>	<u>59%</u>	<u>12%</u>	<u>1,152,298</u>	=	<u>1,182,014</u>	<u>80%</u>	<u>37%</u>
<u>212,733</u>	=	<u>223,403</u>	<u>60%</u>	<u>12%</u>	<u>1,182,015</u>	=	<u>1,194,249</u>	<u>81%</u>	<u>37%</u>
<u>223,404</u>	=	<u>258,889</u>	<u>60%</u>	<u>13%</u>	<u>1,194,250</u>	=	<u>1,228,172</u>	<u>81%</u>	<u>38%</u>
<u>258,890</u>	=	<u>259,342</u>	<u>61%</u>	<u>13%</u>	<u>1,228,173</u>	=	<u>1,236,485</u>	<u>82%</u>	<u>38%</u>
<u>259,343</u>	=	<u>295,504</u>	<u>61%</u>	<u>14%</u>	<u>1,236,486</u>	=	<u>1,274,329</u>	<u>82%</u>	<u>39%</u>
<u>295,505</u>	=	<u>305,045</u>	<u>61%</u>	<u>15%</u>	<u>1,274,330</u>	=	<u>1,279,007</u>	<u>83%</u>	<u>39%</u>
<u>305,046</u>	=	<u>331,892</u>	<u>62%</u>	<u>15%</u>	<u>1,279,008</u>	=	<u>1,320,486</u>	<u>83%</u>	<u>40%</u>
<u>331,893</u>	=	<u>351,201</u>	<u>62%</u>	<u>16%</u>	<u>1,320,487</u>	=	<u>1,321,817</u>	<u>84%</u>	<u>40%</u>
<u>351,202</u>	=	<u>368,508</u>	<u>63%</u>	<u>16%</u>	<u>1,321,818</u>	=	<u>1,364,916</u>	<u>84%</u>	<u>41%</u>
<u>368,509</u>	=	<u>397,358</u>	<u>63%</u>	<u>17%</u>	<u>1,364,917</u>	=	<u>1,366,639</u>	<u>84%</u>	<u>42%</u>
<u>397,359</u>	=	<u>405,354</u>	<u>64%</u>	<u>17%</u>	<u>1,366,640</u>	=	<u>1,408,310</u>	<u>85%</u>	<u>42%</u>
<u>405,355</u>	=	<u>442,433</u>	<u>64%</u>	<u>18%</u>	<u>1,408,311</u>	=	<u>1,412,797</u>	<u>85%</u>	<u>43%</u>
<u>442,434</u>	=	<u>443,513</u>	<u>64%</u>	<u>19%</u>	<u>1,412,798</u>	=	<u>1,452,004</u>	<u>86%</u>	<u>43%</u>
<u>443,514</u>	=	<u>479,749</u>	<u>65%</u>	<u>19%</u>	<u>1,452,005</u>	=	<u>1,458,955</u>	<u>86%</u>	<u>44%</u>
<u>479,750</u>	=	<u>489,670</u>	<u>65%</u>	<u>20%</u>	<u>1,458,956</u>	=	<u>1,495,996</u>	<u>87%</u>	<u>44%</u>
<u>489,671</u>	=	<u>517,300</u>	<u>66%</u>	<u>20%</u>	<u>1,495,997</u>	=	<u>1,505,112</u>	<u>87%</u>	<u>45%</u>
<u>517,301</u>	=	<u>535,827</u>	<u>66%</u>	<u>21%</u>	<u>1,505,113</u>	=	<u>1,540,293</u>	<u>88%</u>	<u>45%</u>
<u>535,828</u>	=	<u>555,090</u>	<u>67%</u>	<u>21%</u>	<u>1,540,294</u>	=	<u>1,551,267</u>	<u>88%</u>	<u>46%</u>
<u>555,091</u>	=	<u>581,984</u>	<u>67%</u>	<u>22%</u>	<u>1,551,268</u>	=	<u>1,584,896</u>	<u>89%</u>	<u>46%</u>
<u>581,985</u>	=	<u>593,123</u>	<u>68%</u>	<u>22%</u>	<u>1,584,897</u>	=	<u>1,597,423</u>	<u>89%</u>	<u>47%</u>
<u>593,124</u>	=	<u>628,138</u>	<u>68%</u>	<u>23%</u>	<u>1,597,424</u>	=	<u>1,629,810</u>	<u>90%</u>	<u>47%</u>

Expected Losses		Primary Credibility	Excess Credibility
<u>1,629,811</u>	=	<u>1,643,581</u>	<u>90%</u>
<u>1,643,582</u>	=	<u>1,675,036</u>	<u>91%</u>
<u>1,675,037</u>	=	<u>1,689,735</u>	<u>91%</u>
<u>1,689,736</u>	=	<u>1,720,578</u>	<u>92%</u>
<u>1,720,579</u>	=	<u>1,735,894</u>	<u>92%</u>
<u>1,735,895</u>	=	<u>1,766,442</u>	<u>93%</u>
<u>1,766,443</u>	=	<u>1,782,049</u>	<u>93%</u>
<u>1,782,050</u>	=	<u>1,812,628</u>	<u>94%</u>
<u>1,812,629</u>	=	<u>1,828,205</u>	<u>94%</u>
<u>1,828,206</u>	=	<u>1,859,141</u>	<u>95%</u>
<u>1,859,142</u>	=	<u>1,874,360</u>	<u>95%</u>
<u>1,874,361</u>	=	<u>1,905,983</u>	<u>96%</u>
<u>1,905,984</u>	=	<u>1,920,518</u>	<u>96%</u>
<u>1,920,519</u>	=	<u>1,953,159</u>	<u>97%</u>
<u>1,953,160</u>	=	<u>1,966,673</u>	<u>97%</u>
<u>1,966,674</u>	=	<u>2,000,671</u>	<u>98%</u>
<u>2,000,672</u>	=	<u>2,012,831</u>	<u>98%</u>
<u>2,012,832</u>	=	<u>2,048,526</u>	<u>99%</u>
<u>2,048,527</u>	=	<u>2,058,986</u>	<u>99%</u>
<u>2,058,987</u>	=	<u>2,096,725</u>	<u>100%</u>
<u>2,096,726</u>	=	<u>2,145,272</u>	<u>100%</u>
<u>2,145,273</u>	=	<u>2,194,170</u>	<u>100%</u>
<u>2,194,171</u>	=	<u>2,243,425</u>	<u>100%</u>
<u>2,243,426</u>	=	<u>2,293,040</u>	<u>100%</u>
<u>2,293,041</u>	=	<u>2,343,017</u>	<u>100%</u>
<u>2,343,018</u>	=	<u>2,393,363</u>	<u>100%</u>
<u>2,393,364</u>	=	<u>2,444,080</u>	<u>100%</u>
<u>2,444,081</u>	=	<u>2,495,173</u>	<u>100%</u>
<u>2,495,174</u>	=	<u>2,546,648</u>	<u>100%</u>
<u>2,546,649</u>	=	<u>2,598,506</u>	<u>100%</u>
<u>2,598,507</u>	=	<u>2,650,752</u>	<u>100%</u>
<u>2,650,753</u>	=	<u>2,703,393</u>	<u>100%</u>
<u>2,703,394</u>	=	<u>2,756,430</u>	<u>100%</u>
<u>2,756,431</u>	=	<u>2,809,869</u>	<u>100%</u>
<u>2,809,870</u>	=	<u>2,863,717</u>	<u>100%</u>
<u>2,863,718</u>	=	<u>2,917,973</u>	<u>100%</u>
<u>2,917,974</u>	=	<u>2,972,648</u>	<u>100%</u>
<u>2,972,649</u>	=	<u>3,027,740</u>	<u>100%</u>
<u>3,027,741</u>	=	<u>3,083,260</u>	<u>100%</u>
<u>3,083,261</u>	=	<u>3,139,210</u>	<u>100%</u>
<u>3,139,211</u>	=	<u>3,195,597</u>	<u>100%</u>
<u>3,195,598</u>	=	<u>3,252,424</u>	<u>100%</u>
<u>3,252,425</u>	=	<u>3,309,697</u>	<u>100%</u>
<u>3,309,698</u>	=	<u>3,367,424</u>	<u>100%</u>
<u>3,367,425</u>	=	<u>3,425,603</u>	<u>100%</u>
<u>3,425,604</u>	=	<u>3,484,247</u>	<u>100%</u>

Expected Losses		Primary Credibility	Excess Credibility
<u>3,484,248</u>	=	<u>3,543,356</u>	<u>100%</u>
<u>3,543,357</u>	=	<u>3,602,942</u>	<u>100%</u>
<u>3,602,943</u>	=	<u>& over</u>	<u>100%</u>

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-885 Table III.

**Expected Loss Rates and Primary Ratios
(for Indicated) by Risk Classification and Fiscal Year
Expected Loss Rates in Dollars Per Worker Hour
Effective January 1, (~~2011~~) 2012**

(Class	2007	2008	2009	Primary Ratio
0101	1.2660	1.2449	1.1135	0.435
0103	1.6890	1.6651	1.4961	0.436
0104	0.8893	0.8753	0.7831	0.445
0105	1.2802	1.2550	1.1076	0.507
0107	1.1648	1.1431	1.0196	0.434
0108	0.8893	0.8753	0.7831	0.445
0112	0.6543	0.6436	0.5749	0.456
0201	2.3864	2.3392	2.0939	0.380
0202	2.9958	2.9506	2.6555	0.401
0210	1.0720	1.0490	0.9279	0.447
0212	1.2626	1.2371	1.0977	0.438
0214	1.3743	1.3470	1.1967	0.443
0217	1.0020	0.9820	0.8697	0.469
0219	1.1932	1.1688	1.0330	0.468
0301	0.6903	0.6784	0.6015	0.513
0302	1.9604	1.9234	1.7181	0.413
0303	1.6063	1.5767	1.4089	0.416
0306	0.9385	0.9194	0.8149	0.459
0307	0.8598	0.8427	0.7457	0.479
0308	0.5536	0.5455	0.4849	0.526
0403	1.7083	1.6746	1.4812	0.480
0502	1.2560	1.2308	1.0923	0.442
0504	1.6248	1.6052	1.4465	0.439
0507	2.9030	2.8678	2.5882	0.429
0508	1.7556	1.7266	1.5546	0.385
0509	1.7392	1.7153	1.5526	0.386
0510	1.7410	1.7150	1.5374	0.445
0511	1.4871	1.4543	1.2815	0.478
0512	1.4652	1.4434	1.2984	0.418
0513	0.7332	0.7178	0.6336	0.478
0514	1.7923	1.7560	1.5538	0.476
0516	1.5089	1.4847	1.3300	0.433
0517	2.0824	2.0557	1.8548	0.417
0518	1.3371	1.3122	1.1693	0.441
0519	1.7832	1.7562	1.5762	0.428
0521	0.5508	0.5414	0.4827	0.455
0601	0.5848	0.5731	0.5076	0.476
0602	0.7239	0.7065	0.6200	0.482
0603	0.9857	0.9700	0.8730	0.397

((Class	2007	2008	2009	Primary Ratio	((Class	2007	2008	2009	Primary Ratio
0604	1.0815	1.0675	0.9577	0.476	2907	0.5345	0.5252	0.4646	0.531
0606	0.5637	0.5518	0.4845	0.528	2908	1.0963	1.0789	0.9625	0.471
0607	0.6295	0.6161	0.5414	0.517	2909	0.4032	0.3976	0.3546	0.518
0608	0.3432	0.3376	0.3006	0.482	3101	0.7330	0.7198	0.6391	0.491
0701	1.7750	1.7416	1.5681	0.353	3102	0.2765	0.2723	0.2429	0.508
0803	0.4982	0.4890	0.4321	0.525	3103	0.5497	0.5409	0.4820	0.479
0901	1.3371	1.3122	1.1693	0.441	3104	0.6360	0.6251	0.5556	0.494
1002	0.9940	0.9807	0.8815	0.450	3105	0.7595	0.7490	0.6691	0.509
1003	0.8052	0.7934	0.7094	0.477	3303	0.4738	0.4642	0.4077	0.542
1004	0.5560	0.5435	0.4776	0.489	3304	0.5219	0.5146	0.4580	0.545
1005	8.2496	8.0838	7.1655	0.434	3309	0.3984	0.3929	0.3521	0.475
1007	0.3481	0.3407	0.3010	0.473	3402	0.5507	0.5417	0.4818	0.497
1101	0.7627	0.7481	0.6610	0.509	3403	0.2102	0.2074	0.1859	0.488
1102	1.4415	1.4142	1.2576	0.446	3404	0.5019	0.4940	0.4392	0.512
1103	1.2337	1.2143	1.0863	0.443	3405	0.3037	0.2989	0.2655	0.533
1104	0.6363	0.6249	0.5511	0.545	3406	0.2441	0.2398	0.2116	0.565
1105	0.8332	0.8175	0.7261	0.463	3407	0.8322	0.8164	0.7242	0.474
1106	0.3500	0.3466	0.3122	0.509	3408	0.2269	0.2209	0.1904	0.590
1108	0.6380	0.6265	0.5545	0.517	3409	0.1752	0.1712	0.1487	0.598
1109	1.4646	1.4407	1.2837	0.472	3410	0.2755	0.2711	0.2405	0.543
1301	0.5946	0.5777	0.4980	0.551	3411	0.5120	0.5025	0.4453	0.491
1303	0.2183	0.2135	0.1870	0.545	3412	0.6022	0.5907	0.5248	0.458
1304	0.0298	0.0293	0.0259	0.511	3414	0.6004	0.5898	0.5237	0.495
1305	0.5257	0.5145	0.4512	0.540	3415	0.8365	0.8291	0.7544	0.420
1401	0.4616	0.4594	0.4203	0.417	3501	1.0816	1.0625	0.9419	0.489
1404	0.9263	0.9066	0.7940	0.550	3503	0.3205	0.3179	0.2863	0.534
1405	0.7038	0.6869	0.5966	0.568	3506	0.8531	0.8343	0.7357	0.477
1407	0.5361	0.5286	0.4710	0.515	3509	0.4253	0.4177	0.3680	0.571
1501	0.6296	0.6148	0.5374	0.527	3510	0.3702	0.3630	0.3194	0.554
1507	0.6079	0.5956	0.5249	0.512	3511	0.6332	0.6253	0.5620	0.467
1701	0.8809	0.8661	0.7713	0.463	3512	0.3954	0.3897	0.3462	0.553
1702	1.7754	1.7476	1.5793	0.363	3513	0.5140	0.5114	0.4667	0.457
1703	0.8710	0.8508	0.7547	0.402	3602	0.1288	0.1265	0.1119	0.532
1704	0.8809	0.8661	0.7713	0.463	3603	0.4816	0.4741	0.4214	0.525
1801	0.4636	0.4596	0.4186	0.417	3604	0.7972	0.7945	0.7277	0.467
1802	0.7568	0.7446	0.6619	0.507	3605	0.5443	0.5330	0.4689	0.514
2002	0.8182	0.8059	0.7187	0.497	3701	0.2765	0.2723	0.2429	0.508
2004	0.8643	0.8485	0.7493	0.526	3702	0.4462	0.4378	0.3861	0.532
2007	0.5531	0.5455	0.4878	0.497	3708	0.5888	0.5770	0.5087	0.516
2008	0.3562	0.3517	0.3158	0.485	3802	0.2106	0.2072	0.1837	0.535
2009	0.4073	0.4008	0.3552	0.538	3808	0.4288	0.4214	0.3751	0.471
2101	0.7347	0.7228	0.6416	0.515	3901	0.1824	0.1798	0.1594	0.576
2102	0.5838	0.5745	0.5097	0.530	3902	0.4746	0.4684	0.4183	0.531
2104	0.3286	0.3257	0.2922	0.567	3903	1.1545	1.1439	1.0314	0.502
2105	0.5695	0.5586	0.4919	0.553	3905	0.1591	0.1571	0.1401	0.564
2106	0.4657	0.4585	0.4071	0.522	3906	0.4890	0.4824	0.4308	0.514
2201	0.2465	0.2432	0.2177	0.496	3909	0.3038	0.2997	0.2673	0.536
2202	0.7794	0.7653	0.6776	0.511	4002	1.2574	1.2317	1.0899	0.473
2203	0.5017	0.4931	0.4355	0.549	4101	0.3558	0.3499	0.3107	0.509
2204	0.2465	0.2432	0.2177	0.496	4103	0.5661	0.5549	0.4868	0.569
2401	0.5266	0.5112	0.4397	0.549	4107	0.1614	0.1589	0.1416	0.504
2903	0.6637	0.6536	0.5813	0.521	4108	0.1952	0.1915	0.1685	0.548
2904	0.7046	0.6945	0.6211	0.489	4109	0.2080	0.2050	0.1832	0.503
2905	0.6760	0.6641	0.5866	0.543	4201	0.7100	0.6922	0.6057	0.488
2906	0.3571	0.3524	0.3152	0.514	4301	0.6812	0.6734	0.6032	0.520

((Class	2007	2008	2009	Primary Ratio	((Class	2007	2008	2009	Primary Ratio
4302	0.6994	0.6857	0.6036	0.528	5306	0.0572	0.0563	0.0498	0.573
4304	0.9374	0.9276	0.8340	0.495	5307	0.6315	0.6172	0.5413	0.518
4305	1.2500	1.2172	1.0578	0.522	5308	0.0988	0.0975	0.0867	0.578
4401	0.4302	0.4268	0.3865	0.480	6103	0.0891	0.0879	0.0782	0.589
4402	0.9040	0.8847	0.7749	0.556	6104	0.3954	0.3883	0.3426	0.557
4404	0.5634	0.5556	0.4957	0.512	6105	0.4067	0.3985	0.3517	0.511
4501	0.1983	0.1952	0.1727	0.586	6107	0.1655	0.1642	0.1476	0.570
4502	0.0414	0.0410	0.0366	0.507	6108	0.4995	0.4925	0.4380	0.545
4504	0.1281	0.1262	0.1115	0.595	6109	0.1110	0.1089	0.0965	0.516
4601	0.8045	0.7897	0.6983	0.506	6110	0.6452	0.6348	0.5634	0.519
4801	2.9958	2.9506	2.6555	0.401	6120	0.3033	0.2972	0.2620	0.520
4802	0.3556	0.3519	0.3169	0.490	6121	0.3681	0.3613	0.3196	0.514
4803	0.3132	0.3101	0.2776	0.560	6201	0.3063	0.3025	0.2722	0.469
4804	0.5148	0.5075	0.4514	0.547	6202	0.6426	0.6344	0.5680	0.500
4805	0.3139	0.3093	0.2743	0.554	6203	0.1167	0.1150	0.1017	0.630
4806	0.0646	0.0638	0.0573	0.515	6204	0.1308	0.1289	0.1145	0.560
4808	0.5085	0.5035	0.4536	0.480	6205	0.2761	0.2718	0.2413	0.530
4809	0.3503	0.3467	0.3113	0.531	6206	0.2513	0.2471	0.2190	0.543
4810	0.1471	0.1456	0.1305	0.546	6207	1.2356	1.2318	1.1242	0.499
4811	0.3394	0.3360	0.3011	0.556	6208	0.2649	0.2620	0.2342	0.553
4812	0.4054	0.3992	0.3548	0.545	6209	0.3312	0.3271	0.2921	0.536
4813	0.1772	0.1749	0.1560	0.550	6301	0.1318	0.1291	0.1145	0.460
4900	0.1758	0.1736	0.1570	0.400	6303	0.0774	0.0760	0.0674	0.517
4901	0.0660	0.0649	0.0579	0.481	6304	0.3981	0.3933	0.3511	0.561
4902	0.1223	0.1197	0.1052	0.539	6305	0.1182	0.1162	0.1024	0.577
4903	0.1676	0.1636	0.1419	0.589	6306	0.3022	0.2972	0.2641	0.515
4904	0.0278	0.0273	0.0244	0.546	6308	0.0724	0.0711	0.0627	0.550
4905	0.4054	0.4014	0.3601	0.542	6309	0.2227	0.2192	0.1943	0.544
4906	0.0990	0.0969	0.0847	0.560	6402	0.2977	0.2919	0.2561	0.587
4907	0.0562	0.0555	0.0496	0.534	6403	0.1934	0.1907	0.1694	0.565
4908	0.0874	0.0874	0.0796	0.548	6404	0.2851	0.2810	0.2500	0.542
4909	0.0406	0.0413	0.0388	0.526	6405	0.5396	0.5307	0.4724	0.495
4910	0.4852	0.4781	0.4263	0.496	6406	0.1374	0.1352	0.1196	0.580
4911	0.0613	0.0605	0.0539	0.493	6407	0.2963	0.2916	0.2584	0.549
5001	7.3796	7.2825	6.5926	0.377	6408	0.4450	0.4368	0.3862	0.526
5002	0.6259	0.6118	0.5355	0.534	6409	0.7265	0.7125	0.6307	0.491
5003	2.1501	2.1124	1.8921	0.405	6410	0.3093	0.3044	0.2704	0.538
5004	0.8100	0.8039	0.7318	0.425	6501	0.1672	0.1642	0.1445	0.556
5005	0.6818	0.6708	0.6007	0.421	6502	0.0328	0.0323	0.0287	0.531
5006	1.4000	1.3794	1.2445	0.381	6503	0.0759	0.0743	0.0655	0.507
5101	0.9268	0.9065	0.7957	0.517	6504	0.4089	0.4034	0.3586	0.581
5103	0.7860	0.7746	0.6892	0.540	6505	0.1196	0.1189	0.1069	0.599
5106	0.7860	0.7746	0.6892	0.540	6506	0.1166	0.1148	0.1019	0.564
5108	0.8758	0.8622	0.7651	0.545	6509	0.3967	0.3916	0.3490	0.547
5109	0.5483	0.5375	0.4750	0.500	6510	0.4628	0.4544	0.4040	0.457
5201	0.4114	0.4033	0.3561	0.523	6511	0.4121	0.4055	0.3594	0.538
5204	0.9140	0.9011	0.8092	0.450	6512	0.1684	0.1656	0.1474	0.494
5206	0.3974	0.3907	0.3481	0.488	6601	0.2080	0.2051	0.1830	0.513
5207	0.1647	0.1629	0.1458	0.549	6602	0.5686	0.5607	0.4999	0.522
5208	0.8146	0.8008	0.7094	0.520	6603	0.3516	0.3455	0.3057	0.531
5209	0.7119	0.7023	0.6295	0.478	6604	0.0862	0.0847	0.0750	0.561
5300	0.1268	0.1241	0.1088	0.538	6605	0.3779	0.3722	0.3293	0.581
5301	0.0379	0.0372	0.0328	0.549	6607	0.1785	0.1754	0.1550	0.533
5302	0.0169	0.0167	0.0147	0.510	6608	0.5059	0.4966	0.4453	0.396
5305	0.0606	0.0594	0.0522	0.591	6620	3.4169	3.3153	2.8477	0.572

<u>((Class</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Primary</u> <u>Ratio</u>	<u>Class</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Primary</u> <u>Ratio</u>
6704	0.1493	0.1467	0.1298	0.544	0101	1.4826	1.3888	1.1748	0.401
6705	0.9066	0.8951	0.7965	0.575	0103	1.8753	1.7608	1.4952	0.412
6706	0.3141	0.3119	0.2826	0.496	0104	1.0107	0.9440	0.7911	0.441
6707	4.9587	4.8517	4.2034	0.664	0105	1.5004	1.3944	1.1513	0.501
6708	8.7875	8.8803	8.3466	0.435	0107	1.2527	1.1692	0.9803	0.425
6709	0.2866	0.2828	0.2517	0.547	0108	1.0107	0.9440	0.7911	0.441
6801	0.6741	0.6569	0.5712	0.546	0112	0.7166	0.6706	0.5641	0.445
6802	0.6279	0.6139	0.5355	0.569	0201	2.5321	2.3625	1.9890	0.362
6803	0.8328	0.8238	0.7529	0.342	0202	3.3315	3.1181	2.6297	0.398
6804	0.3618	0.3562	0.3164	0.540	0210	1.1460	1.0672	0.8905	0.424
6809	5.0493	4.9940	4.4681	0.546	0212	1.3433	1.2513	1.0445	0.428
6901	0.0191	0.0205	0.0210	0.715	0214	1.5106	1.4092	1.1801	0.421
6902	0.9391	0.9234	0.8290	0.403	0217	1.1440	1.0655	0.8873	0.454
6903	6.6199	6.6055	6.1538	0.311	0219	1.3421	1.2479	1.0346	0.457
6904	0.5390	0.5205	0.4413	0.584	0301	0.7838	0.7323	0.6121	0.497
6905	0.4294	0.4183	0.3618	0.581	0302	2.1939	2.0482	1.7225	0.390
6906	0.1821	0.1874	0.1799	0.662	0303	1.7907	1.6733	1.4096	0.401
6907	1.3578	1.3332	1.1786	0.522	0306	1.0502	0.9774	0.8135	0.446
6908	0.4561	0.4484	0.3978	0.510	0307	0.9370	0.8717	0.7233	0.470
6909	0.1239	0.1222	0.1086	0.550	0308	0.6123	0.5730	0.4799	0.515
7100	0.0328	0.0326	0.0296	0.463	0403	1.8928	1.7613	1.4617	0.465
7101	0.0231	0.0230	0.0210	0.441	0502	1.3540	1.2617	1.0531	0.423
7102	4.4906	4.4901	4.1042	0.545	0504	1.8017	1.6934	1.4386	0.423
7103	0.6907	0.6721	0.5813	0.553	0507	3.2769	3.0832	2.6273	0.413
7104	0.0335	0.0329	0.0289	0.580	0508	1.8724	1.7511	1.4803	0.371
7105	0.0319	0.0312	0.0275	0.574	0509	1.7950	1.6820	1.4264	0.381
7106	0.2617	0.2564	0.2242	0.591	0510	1.9812	1.8566	1.5686	0.425
7107	0.2519	0.2496	0.2244	0.546	0511	1.6068	1.4941	1.2394	0.460
7108	0.2184	0.2156	0.1918	0.552	0512	1.5554	1.4563	1.2302	0.411
7109	0.1614	0.1586	0.1399	0.578	0513	0.8213	0.7657	0.6391	0.448
7110	0.3391	0.3327	0.2951	0.475	0514	1.9965	1.8553	1.5360	0.472
7111	0.4388	0.4303	0.3823	0.454	0516	1.6942	1.5855	1.3372	0.414
7112	0.7112	0.7009	0.6239	0.538	0517	2.4354	2.2855	1.9393	0.404
7113	0.4206	0.4147	0.3691	0.538	0518	1.4642	1.3675	1.1478	0.421
7114	0.6036	0.5940	0.5241	0.594	0519	1.9071	1.7866	1.5088	0.418
7115	0.5815	0.5737	0.5112	0.544	0521	0.5997	0.5609	0.4721	0.433
7116	0.6495	0.6391	0.5673	0.511	0601	0.6424	0.5983	0.4980	0.458
7117	1.5262	1.5004	1.3282	0.544	0602	0.7642	0.7088	0.5853	0.458
7118	1.5250	1.5040	1.3417	0.515	0603	1.0248	0.9583	0.8083	0.396
7119	1.4744	1.4421	1.2613	0.548	0604	1.2176	1.1424	0.9652	0.471
7120	6.2839	6.1882	5.5174	0.496	0606	0.6308	0.5865	0.4840	0.520
7121	5.8696	5.7810	5.1555	0.495	0607	0.7540	0.7001	0.5778	0.504
7122	0.5496	0.5408	0.4783	0.571	0608	0.3589	0.3358	0.2819	0.461
7200	1.4295	1.3898	1.2011	0.539	0701	1.9379	1.8087	1.5284	0.338
7201	1.6002	1.5632	1.3713	0.494	0803	0.5836	0.5426	0.4485	0.524
7202	0.0309	0.0303	0.0269	0.482	0901	1.4642	1.3675	1.1478	0.421
7203	0.1322	0.1319	0.1201	0.570	1002	1.0471	0.9824	0.8316	0.436
7204	0.0000	0.0000	0.0000	0.500	1003	0.8911	0.8346	0.7024	0.463
7205	0.0000	0.0000	0.0000	0.500	1004	0.6155	0.5716	0.4721	0.476
7301	0.4468	0.4423	0.3992	0.483	1005	9.0730	8.4492	7.0351	0.421
7302	0.9842	0.9743	0.8786	0.482	1007	0.3831	0.3560	0.2951	0.461
7307	0.4810	0.4751	0.4254	0.501	1101	0.8515	0.7931	0.6587	0.498
7308	0.4646	0.4578	0.4054	0.579	1102	1.5977	1.4892	1.2442	0.436
7309	0.2828	0.2795	0.2497	0.556	1103	1.3365	1.2506	1.0535	0.429
7400	1.6002	1.5632	1.3713	0.494))	1104	0.7229	0.6733	0.5573	0.535

<u>Class</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Primary</u> <u>Ratio</u>	<u>Class</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Primary</u> <u>Ratio</u>
1105	0.9161	0.8540	0.7124	0.454	3407	0.9050	0.8431	0.7020	0.466
1106	0.3734	0.3517	0.2988	0.494	3408	0.2581	0.2381	0.1925	0.579
1108	0.7020	0.6545	0.5445	0.509	3409	0.1877	0.1740	0.1425	0.582
1109	1.6292	1.5227	1.2762	0.460	3410	0.2689	0.2523	0.2124	0.521
1301	0.6301	0.5815	0.4724	0.535	3411	0.5878	0.5486	0.4587	0.467
1303	0.2372	0.2205	0.1817	0.535	3412	0.6547	0.6115	0.5130	0.435
1304	0.0320	0.0298	0.0248	0.498	3414	0.6592	0.6176	0.5201	0.464
1305	0.5548	0.5165	0.4285	0.511	3415	0.9266	0.8736	0.7475	0.406
1401	0.4983	0.4722	0.4077	0.408	3501	1.1780	1.0995	0.9174	0.475
1404	1.0636	0.9878	0.8141	0.545	3503	0.3535	0.3332	0.2829	0.522
1405	0.8223	0.7602	0.6182	0.560	3506	0.9578	0.8875	0.7294	0.480
1407	0.5842	0.5475	0.4601	0.505	3509	0.4565	0.4258	0.3539	0.556
1501	0.6862	0.6350	0.5199	0.522	3510	0.3843	0.3587	0.2983	0.526
1507	0.6622	0.6171	0.5130	0.493	3511	0.6717	0.6314	0.5349	0.451
1701	0.9241	0.8640	0.7249	0.445	3512	0.4310	0.4035	0.3373	0.539
1702	1.8931	1.7720	1.5028	0.349	3513	0.5899	0.5579	0.4787	0.459
1703	1.0030	0.9316	0.7764	0.383	3602	0.1335	0.1247	0.1038	0.520
1704	0.9241	0.8640	0.7249	0.445	3603	0.5332	0.4988	0.4170	0.513
1801	0.4965	0.4684	0.4017	0.403	3604	0.8594	0.8154	0.7042	0.455
1802	0.8277	0.7737	0.6446	0.492	3605	0.5996	0.5575	0.4610	0.502
2002	0.9140	0.8560	0.7190	0.485	3701	0.2922	0.2735	0.2296	0.495
2004	0.8617	0.8047	0.6708	0.501	3702	0.5031	0.4679	0.3864	0.525
2007	0.6174	0.5789	0.4875	0.489	3708	0.6586	0.6126	0.5074	0.506
2008	0.4031	0.3783	0.3196	0.475	3802	0.2341	0.2188	0.1825	0.526
2009	0.4231	0.3958	0.3310	0.521	3808	0.4555	0.4258	0.3571	0.450
2101	0.8828	0.8239	0.6858	0.516	3901	0.1889	0.1772	0.1488	0.558
2102	0.6770	0.6319	0.5264	0.515	3902	0.5226	0.4903	0.4122	0.523
2104	0.3679	0.3458	0.2912	0.569	3903	1.2650	1.1915	1.0129	0.490
2105	0.6300	0.5873	0.4871	0.538	3905	0.1713	0.1607	0.1349	0.558
2106	0.5432	0.5080	0.4242	0.512	3906	0.5172	0.4859	0.4109	0.493
2201	0.2763	0.2590	0.2183	0.492	3909	0.3676	0.3439	0.2874	0.529
2202	0.8749	0.8150	0.6770	0.506	4002	1.3834	1.2876	1.0708	0.459
2203	0.5438	0.5082	0.4238	0.539	4101	0.3925	0.3665	0.3060	0.496
2204	0.2763	0.2590	0.2183	0.492	4103	0.6214	0.5786	0.4785	0.548
2401	0.5423	0.5004	0.4062	0.526	4107	0.1813	0.1693	0.1415	0.497
2903	0.7377	0.6897	0.5766	0.510	4108	0.2352	0.2186	0.1805	0.548
2904	0.7803	0.7303	0.6132	0.477	4109	0.2293	0.2148	0.1805	0.493
2905	0.7657	0.7146	0.5947	0.529	4201	0.7725	0.7158	0.5900	0.473
2906	0.3983	0.3743	0.3162	0.493	4301	0.7783	0.7292	0.6120	0.510
2907	0.5934	0.5548	0.4635	0.507	4302	0.8029	0.7466	0.6164	0.524
2908	1.2248	1.1474	0.9663	0.457	4304	1.0552	0.9924	0.8408	0.489
2909	0.4459	0.4176	0.3501	0.509	4305	1.3363	1.2376	1.0157	0.503
3101	0.8081	0.7540	0.6290	0.482	4401	0.4685	0.4423	0.3774	0.468
3102	0.2922	0.2735	0.2296	0.495	4402	0.9698	0.9008	0.7432	0.541
3103	0.5909	0.5528	0.4639	0.464	4404	0.5921	0.5565	0.4704	0.491
3104	0.6936	0.6478	0.5415	0.482	4501	0.2155	0.2015	0.1676	0.571
3105	0.8182	0.7669	0.6446	0.498	4502	0.0476	0.0447	0.0375	0.508
3303	0.5060	0.4710	0.3900	0.523	4504	0.1415	0.1321	0.1093	0.579
3304	0.5864	0.5492	0.4607	0.530	4601	0.8849	0.8254	0.6873	0.490
3309	0.4265	0.4000	0.3381	0.452	4801	3.3315	3.1181	2.6297	0.398
3402	0.5903	0.5524	0.4634	0.475	4802	0.3907	0.3671	0.3101	0.490
3403	0.2314	0.2169	0.1831	0.475	4803	0.3501	0.3289	0.2771	0.562
3404	0.5307	0.4968	0.4167	0.496	4804	0.5561	0.5214	0.4380	0.534
3405	0.3126	0.2927	0.2452	0.515	4805	0.3493	0.3267	0.2727	0.539
3406	0.2927	0.2725	0.2250	0.563	4806	0.0713	0.0670	0.0568	0.507

<u>Class</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Primary</u> <u>Ratio</u>	<u>Class</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>Primary</u> <u>Ratio</u>
4808	0.5378	0.5056	0.4281	0.477	6205	0.2934	0.2748	0.2305	0.517
4809	0.3631	0.3416	0.2894	0.513	6206	0.2701	0.2525	0.2108	0.530
4810	0.1617	0.1523	0.1288	0.536	6207	1.4277	1.3514	1.1599	0.490
4811	0.3954	0.3715	0.3130	0.553	6208	0.2968	0.2790	0.2352	0.546
4812	0.4317	0.4043	0.3389	0.527	6209	0.3617	0.3393	0.2854	0.523
4813	0.1981	0.1859	0.1564	0.541	6301	0.1452	0.1350	0.1119	0.463
4900	0.1852	0.1738	0.1476	0.391	6303	0.0863	0.0805	0.0670	0.509
4901	0.0706	0.0659	0.0550	0.472	6304	0.4117	0.3867	0.3259	0.549
4902	0.1376	0.1278	0.1053	0.532	6305	0.1266	0.1182	0.0981	0.563
4903	0.1781	0.1653	0.1356	0.572	6306	0.3340	0.3122	0.2607	0.501
4904	0.0292	0.0274	0.0228	0.535	6308	0.0801	0.0745	0.0617	0.535
4905	0.4492	0.4221	0.3560	0.539	6309	0.2434	0.2279	0.1907	0.520
4906	0.1102	0.1022	0.0838	0.553	6402	0.3269	0.3046	0.2519	0.573
4907	0.0627	0.0589	0.0493	0.524	6403	0.1938	0.1819	0.1531	0.542
4908	0.1018	0.0965	0.0817	0.541	6404	0.3064	0.2871	0.2408	0.533
4909	0.0449	0.0433	0.0378	0.518	6405	0.6136	0.5729	0.4785	0.484
4910	0.5386	0.5035	0.4216	0.492	6406	0.1476	0.1380	0.1149	0.568
4911	0.0680	0.0638	0.0536	0.474	6407	0.3167	0.2959	0.2468	0.542
5001	8.7558	8.2268	7.0179	0.358	6408	0.4992	0.4650	0.3858	0.514
5002	0.6894	0.6398	0.5262	0.521	6409	0.8154	0.7600	0.6333	0.475
5003	2.3130	2.1551	1.8033	0.403	6410	0.3443	0.3217	0.2682	0.525
5004	0.8764	0.8264	0.7066	0.418	6501	0.1839	0.1713	0.1419	0.549
5005	0.7934	0.7424	0.6256	0.409	6502	0.0356	0.0333	0.0278	0.522
5006	1.5351	1.4385	1.2194	0.369	6503	0.0811	0.0753	0.0624	0.489
5101	1.0280	0.9544	0.7870	0.495	6504	0.4365	0.4097	0.3439	0.566
5103	0.9240	0.8652	0.7247	0.535	6505	0.1390	0.1310	0.1102	0.594
5106	0.9240	0.8652	0.7247	0.535	6506	0.1344	0.1256	0.1046	0.557
5108	0.9622	0.8997	0.7512	0.529	6509	0.4218	0.3951	0.3308	0.546
5109	0.6294	0.5841	0.4810	0.501	6510	0.5071	0.4729	0.3948	0.451
5201	0.4371	0.4072	0.3382	0.509	6511	0.4471	0.4179	0.3489	0.530
5204	1.0571	0.9897	0.8344	0.444	6512	0.1726	0.1614	0.1351	0.484
5206	0.4108	0.3850	0.3247	0.457	6601	0.2360	0.2209	0.1851	0.506
5207	0.1728	0.1627	0.1375	0.531	6602	0.6014	0.5633	0.4730	0.518
5208	0.8598	0.8037	0.6709	0.504	6603	0.3675	0.3440	0.2884	0.510
5209	0.7691	0.7206	0.6064	0.465	6604	0.0938	0.0876	0.0731	0.547
5300	0.1433	0.1330	0.1092	0.533	6605	0.4464	0.4160	0.3432	0.573
5301	0.0439	0.0408	0.0336	0.546	6607	0.1907	0.1781	0.1485	0.523
5302	0.0170	0.0159	0.0133	0.483	6608	0.5779	0.5382	0.4508	0.389
5305	0.0667	0.0620	0.0511	0.577	6620	3.7935	3.4911	2.8173	0.558
5306	0.0594	0.0556	0.0464	0.558	6704	0.1552	0.1450	0.1210	0.524
5307	0.7307	0.6783	0.5596	0.500	6705	1.0604	0.9908	0.8245	0.571
5308	0.1190	0.1109	0.0918	0.575	6706	0.3416	0.3226	0.2762	0.483
6103	0.0961	0.0901	0.0753	0.580	6707	5.7762	5.3620	4.3741	0.650
6104	0.4384	0.4091	0.3404	0.537	6708	9.5681	9.2172	8.1794	0.426
6105	0.4400	0.4097	0.3405	0.492	6709	0.3217	0.3009	0.2510	0.536
6107	0.1722	0.1626	0.1381	0.551	6801	0.7538	0.6970	0.5686	0.530
6108	0.5397	0.5051	0.4224	0.537	6802	0.6936	0.6438	0.5287	0.557
6109	0.1203	0.1123	0.0933	0.511	6803	0.8947	0.8423	0.7236	0.325
6110	0.6804	0.6355	0.5306	0.508	6804	0.4083	0.3820	0.3193	0.523
6120	0.3604	0.3339	0.2735	0.527	6809	5.5474	5.2119	4.3748	0.536
6121	0.4066	0.3789	0.3152	0.501	6901	0.0227	0.0234	0.0222	0.730
6201	0.3494	0.3274	0.2758	0.466	6902	1.0507	0.9820	0.8277	0.400
6202	0.7450	0.6971	0.5833	0.498	6903	7.2850	6.9225	6.0630	0.301
6203	0.1288	0.1203	0.0999	0.617	6904	0.5914	0.5423	0.4333	0.560
6204	0.1481	0.1384	0.1156	0.551	6905	0.4808	0.4443	0.3614	0.564

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-890 Table IV.

Maximum experience modifications for firms with no compensable accidents: Effective ((1/1/2011)) **January 1, 2012**

Class	2008	2009	2010	Primary Ratio	Expected Loss Range	Maximum Experience Modification
6906	0.2013	0.1973	0.1802	0.651	0 - 7,234	0.90
6907	1.4762	1.3750	1.1412	0.517	7,235 - 8,834	0.89
6908	0.4828	0.4514	0.3775	0.491	8,835 - 9,786	0.88
6909	0.1323	0.1239	0.1038	0.539	9,787 - 10,667	0.87
7100	0.0361	0.0342	0.0293	0.451	10,668 - 11,596	0.86
7101	0.0257	0.0242	0.0207	0.433	11,597 - 12,569	0.85
7102	4.9017	4.6618	4.0280	0.535	12,570 - 13,427	0.84
7103	0.7672	0.7089	0.5780	0.534	13,428 - 14,296	0.83
7104	0.0374	0.0348	0.0288	0.566	14,297 - 15,201	0.82
7105	0.0333	0.0310	0.0257	0.556	15,202 - 16,143	0.81
7106	0.2931	0.2725	0.2247	0.580	16,144 - 17,122	0.80
7107	0.2788	0.2624	0.2221	0.537	17,123 - 18,138	0.79
7108	0.2481	0.2324	0.1948	0.550	18,139 - 19,194	0.78
7109	0.1783	0.1663	0.1380	0.565	19,195 - 20,286	0.77
7110	0.3655	0.3410	0.2852	0.458	20,287 - 21,418	0.76
7111	0.5063	0.4713	0.3923	0.449	21,419 - 22,587	0.75
7112	0.7921	0.7416	0.6216	0.529	22,588 - 23,796	0.74
7113	0.4615	0.4323	0.3625	0.526	23,797 - 25,044	0.73
7114	0.6940	0.6490	0.5412	0.581	25,045 - 26,334	0.72
7115	0.6382	0.5980	0.5023	0.538	26,335 - 27,662	0.71
7116	0.7144	0.6673	0.5571	0.499	27,663 - 29,032	0.70
7117	1.4892	1.3920	1.1637	0.516	29,033 - 30,442	0.69
7118	1.6677	1.5634	1.3153	0.499	30,443 - 31,891	0.68
7119	1.6091	1.4952	1.2338	0.533	31,892 - 33,384	0.67
7120	6.9042	6.4609	5.4219	0.483	33,385 - 34,914	0.66
7121	6.4598	6.0453	5.0733	0.483	34,915 - 36,489	0.65
7122	0.5838	0.5451	0.4538	0.554	36,490 - 38,942	0.64
7200	1.6572	1.5263	1.2353	0.528	38,943 - 42,278	0.63
7201	1.9112	1.7694	1.4522	0.494	42,279 - 46,134	0.62
7202	0.0323	0.0302	0.0253	0.452	46,135 - 53,632	0.61
7203	0.1448	0.1376	0.1181	0.562	53,633 & Over	0.60
7204	0.0000	0.0000	0.0000	0.500		
7205	0.0000	0.0000	0.0000	0.500		
7301	0.4679	0.4402	0.3737	0.471		
7302	1.0482	0.9870	0.8391	0.474		
7307	0.5139	0.4829	0.4083	0.485		
7308	0.4740	0.4435	0.3704	0.556		
7309	0.3197	0.2999	0.2521	0.551		
7400	1.9112	1.7694	1.4522	0.494		
Expected Loss Rates in Dollars Per Sq. Ft. of Wallboard Installed						
((Class	2007	2008	2009	Primary Ratio	Expected Loss Range	Maximum Experience Modification
0540	0.0188	0.0185	0.0167	0.446	0 = 7,596	0.90
0541	0.0109	0.0107	0.0095	0.426	7,597 = 9,276	0.89
0550	0.0218	0.0214	0.0193	0.387	9,277 = 10,275	0.88
0551	0.0142	0.0138	0.0125	0.394))	10,276 = 11,200	0.87
					11,201 = 12,176	0.86
					12,177 = 13,198	0.85
Class	2008	2009	2010	Primary Ratio		
0540	0.0232	0.0217	0.0183	0.435		
0541	0.0122	0.0114	0.0095	0.413		
0550	0.0242	0.0227	0.0192	0.387		
0551	0.0150	0.0140	0.0118	0.379		

<u>Expected Loss Range</u>		<u>Maximum Experi- ence Modification</u>		<u>((Base Rates Effective January 1, 2011</u>	
			<u>Class</u>	<u>Accident- Fund</u>	<u>Medical Aid Fund</u>
<u>13.199</u>	= <u>14.098</u>	<u>0.84</u>			
<u>14.099</u>	= <u>15.011</u>	<u>0.83</u>			
<u>15.012</u>	= <u>15.961</u>	<u>0.82</u>	0214	2.2476	0.7960
<u>15.962</u>	= <u>16.950</u>	<u>0.81</u>	0217	1.5258	0.6260
<u>16.951</u>	= <u>17.978</u>	<u>0.80</u>	0219	1.8060	0.7492
<u>17.979</u>	= <u>19.045</u>	<u>0.79</u>	0301	0.9229	0.5091
<u>19.046</u>	= <u>20.154</u>	<u>0.78</u>	0302	3.3552	1.0702
<u>20.155</u>	= <u>21.300</u>	<u>0.77</u>	0303	2.7012	0.8922
<u>21.301</u>	= <u>22.489</u>	<u>0.76</u>	0306	1.5059	0.5633
<u>22.490</u>	= <u>23.716</u>	<u>0.75</u>	0307	1.3203	0.5543
<u>23.717</u>	= <u>24.986</u>	<u>0.74</u>	0308	0.6746	0.4431
<u>24.987</u>	= <u>26.296</u>	<u>0.73</u>	0403	2.5384	1.1181
<u>26.297</u>	= <u>27.651</u>	<u>0.72</u>	0502	2.0327	0.7345
<u>27.652</u>	= <u>29.045</u>	<u>0.71</u>	0504	2.2999	1.1556
<u>29.046</u>	= <u>30.484</u>	<u>0.70</u>	0507	4.2765	2.0017
<u>30.485</u>	= <u>31.964</u>	<u>0.69</u>	0508	3.1091	0.9358
<u>31.965</u>	= <u>33.486</u>	<u>0.68</u>	0509	2.9627	1.0077
<u>33.487</u>	= <u>35.053</u>	<u>0.67</u>	0510	2.5862	1.1644
<u>35.054</u>	= <u>36.660</u>	<u>0.66</u>	0511	2.3325	0.9043
<u>36.661</u>	= <u>38.314</u>	<u>0.65</u>	0512	2.3533	0.9083
<u>38.315</u>	= <u>40.889</u>	<u>0.64</u>	0513	1.1211	0.4589
<u>40.890</u>	= <u>44.392</u>	<u>0.63</u>	0514	2.7704	1.1316
<u>44.393</u>	= <u>48.441</u>	<u>0.62</u>	0516	2.3543	0.9553
<u>48.442</u>	= <u>56.314</u>	<u>0.61</u>	0517	3.1373	1.3718
<u>56.315</u>	& <u>Over</u>	<u>0.60</u>	0518	2.1988	0.7991

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-895 Industrial insurance accident fund base rates and medical aid base rates by class of industry. Industrial insurance accident fund and medical aid fund base rates by class of industry shall be as set forth below.

	<u>((Base Rates Effective January 1, 2011</u>	
<u>Class</u>	<u>Accident- Fund</u>	<u>Medical Aid Fund</u>
0101	1.9913	0.7878
0103	2.5351	1.1235
0104	1.3529	0.5826
0105	1.8059	0.8927
0107	1.9321	0.6800
0108	1.3529	0.5826
0112	0.9852	0.4337
0201	4.4299	1.1360
0202	4.9314	1.8028
0210	1.7341	0.6051
0212	2.0374	0.7248
0601	0.9101	0.3730
0602	1.1677	0.4150
0603	1.6954	0.5583
0604	1.4682	0.8126
0606	0.7735	0.4001
0607	0.8759	0.4264
0608	0.4980	0.2435
0701	3.4669	0.7652
0803	0.6659	0.3675
0901	2.1988	0.7991
1002	1.4477	0.6931
1003	1.1163	0.5836
1004	0.8347	0.3468
1005	13.1041	4.8573
1007	0.5492	0.2097
1101	1.0534	0.5356
1102	2.2602	0.8662
1103	1.8269	0.8111
1104	0.7945	0.4966

((Base Rates Effective January 1, 2011			((Base Rates Effective January 1, 2011		
Class	Accident Fund	Medical Aid Fund	Class	Accident Fund	Medical Aid Fund
1105	1.2720	0.5289	3103	0.7510	0.3911
1106	0.4243	0.3002	3104	0.9005	0.4504
1108	0.8776	0.4661	3105	1.0063	0.5977
1109	2.0698	1.0129	3303	0.6155	0.3500
1301	0.8501	0.3735	3304	0.6206	0.4369
1303	0.2959	0.1575	3309	0.5616	0.2883
1304	0.0414	0.0214	3402	0.7696	0.4041
1305	0.6984	0.3746	3403	0.2959	0.1562
1401	0.6005	0.3679	3404	0.6782	0.3839
1404	1.1704	0.6736	3405	0.3876	0.2454
1405	0.9214	0.5132	3406	0.3000	0.2015
1407	0.6510	0.4292	3407	1.2442	0.5406
1501	0.8992	0.4120	3408	0.2879	0.1640
1507	0.8529	0.4210	3409	0.2046	0.1350
1701	1.2719	0.5943	3410	0.3235	0.2241
1702	3.2097	0.9132	3411	0.7420	0.3484
1703	1.6080	0.3934	3412	0.9478	0.3729
1704	1.2719	0.5943	3414	0.8479	0.4229
1801	0.6892	0.3369	3415	1.2348	0.6070
1802	1.1057	0.5906	3501	1.4885	0.7634
2002	1.0874	0.6184	3503	0.3506	0.2955
2004	1.1303	0.6476	3506	1.3806	0.5172
2007	0.7360	0.4253	3509	0.4988	0.3438
2008	0.4834	0.2730	3510	0.4737	0.2871
2009	0.5040	0.3296	3511	0.8914	0.4757
2101	0.9474	0.5639	3512	0.4860	0.3371
2102	0.7349	0.4602	3513	0.6427	0.4365
2104	0.3455	0.3159	3602	0.1701	0.0990
2105	0.7380	0.4406	3603	0.6227	0.3812
2106	0.6018	0.3700	3604	1.0074	0.7053
2201	0.3165	0.1895	3605	0.7706	0.3759
2202	1.0588	0.5617	3701	0.3828	0.2103
2203	0.6146	0.4012	3702	0.5979	0.3340
2204	0.3165	0.1895	3708	0.8247	0.4088
2401	0.7634	0.3258	3802	0.2690	0.1670
2903	0.8534	0.5232	3808	0.6450	0.2869
2904	0.9650	0.5256	3901	0.2027	0.1609
2905	0.8463	0.5305	3902	0.5794	0.3970
2906	0.4727	0.2897	3903	1.3755	0.9846
2907	0.7022	0.4117	3905	0.1781	0.1443
2908	1.5599	0.7707	3906	0.6036	0.3939
2909	0.5186	0.3257	3909	0.3757	0.2539
3101	1.0666	0.5099	4002	1.9297	0.7811
3102	0.3828	0.2103	4101	0.4850	0.2625

((Base Rates Effective
January 1, 2011

((Base Rates Effective
January 1, 2011

Class	((Base Rates Effective January 1, 2011		Class	((Base Rates Effective January 1, 2011	
	Accident Fund	Medical Aid Fund		Accident Fund	Medical Aid Fund
4103	0.6908	0.4482	5006	2.3288	0.8032
4107	0.2216	0.1219	5101	1.3201	0.6259
4108	0.2486	0.1483	5103	0.9733	0.6476
4109	0.2790	0.1610	5106	0.9733	0.6476
4201	1.1368	0.4010	5108	1.1126	0.7164
4301	0.8042	0.5812	5109	0.8092	0.3732
4302	0.9412	0.5135	5201	0.5756	0.2947
4304	1.1506	0.7729	5204	1.3306	0.6267
4305	1.8475	0.7679	5206	0.5788	0.2774
4401	0.5530	0.3660	5207	0.1868	0.1474
4402	1.1376	0.6595	5208	1.0667	0.6243
4404	0.7257	0.4496	5209	0.9967	0.5315
4501	0.2356	0.1804	5300	0.1750	0.0907
4502	0.0530	0.0342	5301	0.0500	0.0293
4504	0.1489	0.1163	5302	0.0232	0.0126
4601	1.0725	0.5809	5305	0.0721	0.0506
4802	0.4396	0.2937	5306	0.0682	0.0486
4803	0.3251	0.2871	5307	0.9034	0.4130
4804	0.6254	0.4329	5308	0.1178	0.0890
4805	0.3669	0.2637	6103	0.0970	0.0832
4806	0.0782	0.0538	6104	0.4796	0.3179
4808	0.6377	0.4155	6105	0.5779	0.2782
4809	0.4028	0.3064	6107	0.1881	0.1615
4810	0.1652	0.1335	6108	0.6024	0.4205
4811	0.3806	0.3139	6109	0.1541	0.0818
4812	0.5049	0.3338	6110	0.8319	0.4926
4813	0.2013	0.1534	6120	0.4159	0.2155
4900	0.2935	0.1084	6121	0.5077	0.2620
4901	0.0977	0.0462	6201	0.4482	0.2248
4902	0.1667	0.0879	6202	0.8486	0.5149
4903	0.2185	0.1273	6203	0.1190	0.1134
4904	0.0347	0.0233	6204	0.1573	0.1105
4905	0.4368	0.3645	6205	0.3494	0.2169
4906	0.1301	0.0736	6206	0.3156	0.1986
4907	0.0711	0.0481	6207	1.3533	1.1700
4908	0.1046	0.1027	6208	0.2892	0.2404
4909	0.0484	0.0588	6209	0.4011	0.2843
4910	0.6414	0.3677	6301	0.2110	0.0781
4911	0.0833	0.0468	6303	0.1055	0.0576
5001	12.2018	4.3539	6304	0.4359	0.3565
5002	0.8691	0.4365	6305	0.1360	0.0995
5003	3.5793	1.1976	6306	0.4104	0.2294
5004	1.1143	0.6147	6308	0.0923	0.0568
5005	1.0563	0.4251	6309	0.2755	0.1803

<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at- Work</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at- Work</u>	<u>Medical Aid Fund</u>
<u>0103</u>	<u>2.7101</u>	<u>0.0570</u>	<u>1.1784</u>	<u>1003</u>	<u>1.1853</u>	<u>0.0248</u>	<u>0.6062</u>
<u>0104</u>	<u>1.4615</u>	<u>0.0308</u>	<u>0.6146</u>	<u>1004</u>	<u>0.8803</u>	<u>0.0185</u>	<u>0.3630</u>
<u>0105</u>	<u>2.0129</u>	<u>0.0422</u>	<u>0.9625</u>	<u>1005</u>	<u>13.7539</u>	<u>0.2904</u>	<u>5.0222</u>
<u>0107</u>	<u>1.9505</u>	<u>0.0412</u>	<u>0.6986</u>	<u>1007</u>	<u>0.5774</u>	<u>0.0122</u>	<u>0.2146</u>
<u>0108</u>	<u>1.4615</u>	<u>0.0308</u>	<u>0.6146</u>	<u>1101</u>	<u>1.1231</u>	<u>0.0235</u>	<u>0.5602</u>
<u>0112</u>	<u>1.0215</u>	<u>0.0215</u>	<u>0.4570</u>	<u>1102</u>	<u>2.3777</u>	<u>0.0502</u>	<u>0.9051</u>
<u>0201</u>	<u>4.4726</u>	<u>0.0951</u>	<u>1.1336</u>	<u>1103</u>	<u>1.9099</u>	<u>0.0402</u>	<u>0.8200</u>
<u>0202</u>	<u>5.1984</u>	<u>0.1098</u>	<u>1.8954</u>	<u>1104</u>	<u>0.8741</u>	<u>0.0182</u>	<u>0.5242</u>
<u>0210</u>	<u>1.7694</u>	<u>0.0374</u>	<u>0.6170</u>	<u>1105</u>	<u>1.3344</u>	<u>0.0281</u>	<u>0.5500</u>
<u>0212</u>	<u>2.0469</u>	<u>0.0432</u>	<u>0.7357</u>	<u>1106</u>	<u>0.4327</u>	<u>0.0090</u>	<u>0.3018</u>
<u>0214</u>	<u>2.3469</u>	<u>0.0496</u>	<u>0.8314</u>	<u>1108</u>	<u>0.9057</u>	<u>0.0189</u>	<u>0.4833</u>
<u>0217</u>	<u>1.6570</u>	<u>0.0349</u>	<u>0.6724</u>	<u>1109</u>	<u>2.1960</u>	<u>0.0460</u>	<u>1.0610</u>
<u>0219</u>	<u>1.9609</u>	<u>0.0413</u>	<u>0.7731</u>	<u>1301</u>	<u>0.8560</u>	<u>0.0180</u>	<u>0.3778</u>
<u>0301</u>	<u>0.9909</u>	<u>0.0207</u>	<u>0.5489</u>	<u>1303</u>	<u>0.3028</u>	<u>0.0063</u>	<u>0.1643</u>
<u>0302</u>	<u>3.6034</u>	<u>0.0763</u>	<u>1.1143</u>	<u>1304</u>	<u>0.0427</u>	<u>0.0009</u>	<u>0.0214</u>
<u>0303</u>	<u>2.8391</u>	<u>0.0600</u>	<u>0.9552</u>	<u>1305</u>	<u>0.7143</u>	<u>0.0149</u>	<u>0.3710</u>
<u>0306</u>	<u>1.5950</u>	<u>0.0337</u>	<u>0.5906</u>	<u>1401</u>	<u>0.6225</u>	<u>0.0129</u>	<u>0.3833</u>
<u>0307</u>	<u>1.3589</u>	<u>0.0286</u>	<u>0.5637</u>	<u>1404</u>	<u>1.2594</u>	<u>0.0262</u>	<u>0.7353</u>
<u>0308</u>	<u>0.7111</u>	<u>0.0148</u>	<u>0.4623</u>	<u>1405</u>	<u>1.0249</u>	<u>0.0214</u>	<u>0.5504</u>
<u>0403</u>	<u>2.7110</u>	<u>0.0570</u>	<u>1.1394</u>	<u>1407</u>	<u>0.6734</u>	<u>0.0140</u>	<u>0.4458</u>
<u>0502</u>	<u>2.1070</u>	<u>0.0445</u>	<u>0.7371</u>	<u>1501</u>	<u>0.9307</u>	<u>0.0196</u>	<u>0.4172</u>
<u>0504</u>	<u>2.4568</u>	<u>0.0515</u>	<u>1.2073</u>	<u>1507</u>	<u>0.8851</u>	<u>0.0185</u>	<u>0.4360</u>
<u>0507</u>	<u>4.5534</u>	<u>0.0955</u>	<u>2.1781</u>	<u>1701</u>	<u>1.2829</u>	<u>0.0269</u>	<u>0.5857</u>
<u>0508</u>	<u>3.1606</u>	<u>0.0670</u>	<u>0.9279</u>	<u>1702</u>	<u>3.2713</u>	<u>0.0694</u>	<u>0.8977</u>
<u>0509</u>	<u>2.9053</u>	<u>0.0615</u>	<u>0.9673</u>	<u>1703</u>	<u>1.7683</u>	<u>0.0376</u>	<u>0.4190</u>
<u>0510</u>	<u>2.8335</u>	<u>0.0596</u>	<u>1.2376</u>	<u>1704</u>	<u>1.2829</u>	<u>0.0269</u>	<u>0.5857</u>
<u>0511</u>	<u>2.4105</u>	<u>0.0508</u>	<u>0.9170</u>	<u>1801</u>	<u>0.7038</u>	<u>0.0148</u>	<u>0.3383</u>
<u>0512</u>	<u>2.3697</u>	<u>0.0500</u>	<u>0.9061</u>	<u>1802</u>	<u>1.1530</u>	<u>0.0241</u>	<u>0.5946</u>
<u>0513</u>	<u>1.2099</u>	<u>0.0255</u>	<u>0.4848</u>	<u>2002</u>	<u>1.1558</u>	<u>0.0241</u>	<u>0.6528</u>
<u>0514</u>	<u>2.9070</u>	<u>0.0612</u>	<u>1.1683</u>	<u>2004</u>	<u>1.0961</u>	<u>0.0229</u>	<u>0.6079</u>
<u>0516</u>	<u>2.5449</u>	<u>0.0536</u>	<u>0.9954</u>	<u>2007</u>	<u>0.7789</u>	<u>0.0162</u>	<u>0.4532</u>
<u>0517</u>	<u>3.5243</u>	<u>0.0741</u>	<u>1.4942</u>	<u>2008</u>	<u>0.5199</u>	<u>0.0108</u>	<u>0.2909</u>
<u>0518</u>	<u>2.2871</u>	<u>0.0483</u>	<u>0.8277</u>	<u>2009</u>	<u>0.5010</u>	<u>0.0104</u>	<u>0.3225</u>
<u>0519</u>	<u>2.7990</u>	<u>0.0589</u>	<u>1.1602</u>	<u>2101</u>	<u>1.0615</u>	<u>0.0221</u>	<u>0.6388</u>
<u>0521</u>	<u>0.8609</u>	<u>0.0181</u>	<u>0.3663</u>	<u>2102</u>	<u>0.8337</u>	<u>0.0174</u>	<u>0.4871</u>
<u>0601</u>	<u>0.9562</u>	<u>0.0201</u>	<u>0.3798</u>	<u>2104</u>	<u>0.3657</u>	<u>0.0075</u>	<u>0.3326</u>
<u>0602</u>	<u>1.1868</u>	<u>0.0251</u>	<u>0.4028</u>	<u>2105</u>	<u>0.7711</u>	<u>0.0161</u>	<u>0.4620</u>
<u>0603</u>	<u>1.6451</u>	<u>0.0348</u>	<u>0.5534</u>	<u>2106</u>	<u>0.6685</u>	<u>0.0139</u>	<u>0.4036</u>
<u>0604</u>	<u>1.5460</u>	<u>0.0323</u>	<u>0.8711</u>	<u>2201</u>	<u>0.3337</u>	<u>0.0069</u>	<u>0.2022</u>
<u>0606</u>	<u>0.8147</u>	<u>0.0170</u>	<u>0.4267</u>	<u>2202</u>	<u>1.1278</u>	<u>0.0236</u>	<u>0.5887</u>
<u>0607</u>	<u>1.0066</u>	<u>0.0211</u>	<u>0.4732</u>	<u>2203</u>	<u>0.6276</u>	<u>0.0130</u>	<u>0.4216</u>
<u>0608</u>	<u>0.5011</u>	<u>0.0105</u>	<u>0.2386</u>	<u>2204</u>	<u>0.3337</u>	<u>0.0069</u>	<u>0.2022</u>
<u>0701</u>	<u>3.5863</u>	<u>0.0764</u>	<u>0.7768</u>	<u>2401</u>	<u>0.7532</u>	<u>0.0158</u>	<u>0.3189</u>
<u>0803</u>	<u>0.7433</u>	<u>0.0155</u>	<u>0.3963</u>	<u>2903</u>	<u>0.9057</u>	<u>0.0189</u>	<u>0.5425</u>
<u>0901</u>	<u>2.2871</u>	<u>0.0483</u>	<u>0.8277</u>	<u>2904</u>	<u>1.0313</u>	<u>0.0216</u>	<u>0.5367</u>
<u>1002</u>	<u>1.4555</u>	<u>0.0305</u>	<u>0.6884</u>	<u>2905</u>	<u>0.9071</u>	<u>0.0189</u>	<u>0.5635</u>

<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at- Work</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at- Work</u>	<u>Medical Aid Fund</u>
2906	0.5039	0.0105	0.3093	3906	0.6059	0.0126	0.4018
2907	0.7516	0.0157	0.4295	3909	0.4351	0.0090	0.2817
2908	1.6465	0.0345	0.8287	4002	2.0220	0.0426	0.8056
2909	0.5462	0.0114	0.3382	4101	0.5128	0.0107	0.2711
3101	1.1073	0.0232	0.5281	4103	0.7331	0.0152	0.4560
3102	0.3862	0.0081	0.2095	4107	0.2364	0.0049	0.1273
3103	0.7775	0.0163	0.3956	4108	0.2784	0.0058	0.1676
3104	0.9343	0.0196	0.4634	4109	0.2921	0.0061	0.1658
3105	1.0286	0.0214	0.6061	4201	1.1683	0.0247	0.4154
3303	0.6328	0.0132	0.3520	4301	0.9009	0.0187	0.5973
3304	0.6640	0.0137	0.4619	4302	1.0191	0.0213	0.5523
3309	0.5818	0.0122	0.2871	4304	1.2207	0.0253	0.8284
3402	0.7934	0.0166	0.4066	4305	1.8682	0.0393	0.7877
3403	0.3101	0.0065	0.1615	4401	0.5743	0.0119	0.3785
3404	0.6846	0.0143	0.3851	4402	1.1720	0.0244	0.6634
3405	0.3858	0.0080	0.2383	4404	0.7257	0.0151	0.4607
3406	0.3395	0.0070	0.2222	4501	0.2424	0.0050	0.1823
3407	1.2798	0.0269	0.5522	4502	0.0580	0.0012	0.0367
3408	0.3126	0.0065	0.1731	4504	0.1591	0.0033	0.1162
3409	0.2099	0.0044	0.1359	4601	1.1334	0.0237	0.5989
3410	0.2989	0.0062	0.2133	4802	0.4624	0.0096	0.3031
3411	0.8200	0.0172	0.3737	4803	0.3391	0.0069	0.3056
3412	0.9801	0.0207	0.3852	4804	0.6349	0.0131	0.4476
3414	0.8871	0.0186	0.4489	4805	0.3938	0.0081	0.2740
3415	1.3077	0.0274	0.6260	4806	0.0817	0.0017	0.0572
3501	1.5512	0.0325	0.7824	4808	0.6481	0.0135	0.4127
3503	0.3725	0.0076	0.3057	4809	0.4042	0.0083	0.2987
3506	1.4524	0.0307	0.5368	4810	0.1725	0.0035	0.1408
3509	0.5124	0.0106	0.3491	4811	0.4160	0.0085	0.3424
3510	0.4748	0.0099	0.2833	4812	0.5157	0.0107	0.3359
3511	0.9070	0.0190	0.4798	4813	0.2130	0.0044	0.1632
3512	0.5097	0.0106	0.3450	4900	0.2935	0.0062	0.1064
3513	0.6963	0.0144	0.4755	4901	0.0999	0.0021	0.0459
3602	0.1678	0.0035	0.0975	4902	0.1766	0.0037	0.0931
3603	0.6593	0.0137	0.3989	4903	0.2179	0.0045	0.1318
3604	1.0339	0.0214	0.7215	4904	0.0346	0.0007	0.0230
3605	0.8087	0.0170	0.3887	4905	0.4615	0.0095	0.3790
3701	0.3862	0.0081	0.2095	4906	0.1387	0.0029	0.0755
3702	0.6402	0.0134	0.3466	4907	0.0757	0.0016	0.0497
3708	0.8782	0.0184	0.4298	4908	0.1157	0.0024	0.1052
3802	0.2834	0.0059	0.1760	4909	0.0510	0.0010	0.0591
3808	0.6616	0.0139	0.2867	4910	0.6841	0.0143	0.3794
3901	0.1983	0.0041	0.1606	4911	0.0880	0.0018	0.0489
3902	0.6049	0.0125	0.4162	5001	13.8608	0.2929	4.8555
3903	1.4423	0.0298	1.0182	5002	0.9115	0.0191	0.4510
3905	0.1806	0.0037	0.1472	5003	3.6774	0.0778	1.1800

<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at- Work</u>	<u>Medical Aid Fund</u>	<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at- Work</u>	<u>Medical Aid Fund</u>
5004	1.1610	0.0243	0.6212	6402	0.3660	0.0076	0.2538
5005	1.1684	0.0246	0.4685	6403	0.2059	0.0042	0.1647
5006	2.4370	0.0515	0.8251	6404	0.3430	0.0071	0.2429
5101	1.4262	0.0300	0.6331	6405	0.8341	0.0175	0.4078
5103	1.0728	0.0222	0.7274	6406	0.1602	0.0033	0.1213
5106	1.0728	0.0222	0.7274	6407	0.3701	0.0077	0.2439
5108	1.1707	0.0243	0.7334	6408	0.6596	0.0138	0.3422
5109	0.8802	0.0185	0.3887	6409	1.1387	0.0239	0.5158
5201	0.5840	0.0122	0.2961	6410	0.4318	0.0090	0.2547
5204	1.4672	0.0308	0.6754	6501	0.2132	0.0044	0.1359
5206	0.5777	0.0121	0.2737	6502	0.0438	0.0009	0.0272
5207	0.1877	0.0039	0.1476	6503	0.1187	0.0025	0.0492
5208	1.0798	0.0225	0.6257	6504	0.4608	0.0095	0.3794
5209	1.0425	0.0218	0.5315	6505	0.1393	0.0028	0.1371
5300	0.1861	0.0039	0.0954	6506	0.1535	0.0032	0.1062
5301	0.0548	0.0011	0.0315	6509	0.4638	0.0096	0.3454
5302	0.0229	0.0005	0.0119	6510	0.7178	0.0151	0.3095
5305	0.0763	0.0016	0.0512	6511	0.5083	0.0105	0.3409
5306	0.0681	0.0014	0.0476	6512	0.2172	0.0045	0.1190
5307	0.9974	0.0210	0.4479	6601	0.2822	0.0059	0.1762
5308	0.1362	0.0028	0.0946	6602	0.6828	0.0141	0.4621
6103	0.0995	0.0020	0.0845	6603	0.4547	0.0095	0.2709
6104	0.5150	0.0107	0.3287	6604	0.1074	0.0022	0.0746
6105	0.5990	0.0126	0.2813	6605	0.5180	0.0107	0.3603
6107	0.1868	0.0038	0.1613	6607	0.2222	0.0046	0.1423
6108	0.6189	0.0128	0.4279	6608	0.9823	0.0208	0.2715
6109	0.1579	0.0033	0.0835	6620	5.0718	0.1066	2.2471
6110	0.8423	0.0176	0.4871	6704	0.1881	0.0039	0.1151
6120	0.4750	0.0100	0.2323	6705	1.1089	0.0228	0.8720
6121	0.5351	0.0112	0.2701	6706	0.3865	0.0080	0.2778
6201	0.4839	0.0101	0.2381	6707	5.7040	0.1167	4.9904
6202	0.9426	0.0196	0.5446	6708	9.4887	0.1921	9.9207
6203	0.1268	0.0026	0.1165	6709	0.3647	0.0075	0.2538
6204	0.1687	0.0035	0.1174	6801	1.0686	0.0225	0.4583
6205	0.3484	0.0072	0.2216	6802	0.8407	0.0175	0.4916
6206	0.3230	0.0067	0.2033	6803	1.5326	0.0325	0.4604
6207	1.5117	0.0310	1.2443	6804	0.5042	0.0105	0.3105
6208	0.3043	0.0062	0.2586	6809	6.4761	0.1337	4.7701
6209	0.4199	0.0087	0.2913	6901	0.0000	0.0000	0.0620
6301	0.2162	0.0046	0.0817	6902	1.6442	0.0348	0.5631
6303	0.1111	0.0023	0.0607	6903	11.7075	0.2470	4.4160
6304	0.4309	0.0089	0.3510	6904	0.8211	0.0173	0.3321
6305	0.1405	0.0029	0.1005	6905	0.6231	0.0130	0.3161
6306	0.4347	0.0091	0.2366	6906	0.0000	0.0000	0.3161
6308	0.0995	0.0021	0.0570	6907	1.8259	0.0381	1.0205
6309	0.2916	0.0061	0.1844	6908	0.6279	0.0131	0.3386

<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at-Work</u>	<u>Medical Aid Fund</u>
6909	0.1553	0.0032	0.1057
7100	0.0453	0.0009	0.0277
7101	0.0348	0.0007	0.0191
7102	4.1835	0.0840	4.9388
7103	1.0109	0.0212	0.4675
7104	0.0436	0.0009	0.0290
7105	0.0390	0.0008	0.0252
7106	0.3139	0.0065	0.2242
7107	0.2945	0.0060	0.2410
7108	0.2578	0.0053	0.2039
7109	0.1969	0.0041	0.1387
7110	0.5123	0.0108	0.2247
7111	0.7525	0.0159	0.2899
7112	0.9278	0.0192	0.6150
7113	0.5219	0.0108	0.3611
7114	0.6954	0.0143	0.5883
7115	0.6961	0.0144	0.5091
7116	0.8658	0.0180	0.5096
7117	1.8367	0.0382	1.0888
7118	1.9854	0.0412	1.2543
7119	1.9614	0.0409	1.1008
7120	8.8935	0.1857	4.8388
7121	8.3195	0.1737	4.5345
7122	0.6436	0.0133	0.4582
7200	2.2619	0.0476	0.9398
7201	2.6642	0.0561	1.0954
7202	0.0470	0.0010	0.0201
7203	0.1398	0.0028	0.1526
7204	0.0000	0.0000	0.0000
7205	0.0000	0.0000	0.0000
7301	0.6022	0.0125	0.3533
7302	1.2487	0.0259	0.8090
7307	0.5975	0.0124	0.3967
7308	0.5144	0.0106	0.3913
7309	0.3313	0.0068	0.2680
7400	2.6642	0.0561	1.0954

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-89502 Industrial insurance accident fund, medical aid and supplemental pension rates by class of industry for nonhourly rated classifications. The base rates as set forth below are for classifications whose premium rates are based on units other than hours worked.

((Base Rates Effective January 1, 2011

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
0540	0.0285	0.0124	0.0009
0541	0.0180	0.0063	0.0009
0550	0.0366	0.0124	0.0009
0551	0.0246	0.0074	0.0009))

Base Rates Effective January 1, 2012

<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at-Work</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
0540	0.0335	0.0007	0.0143	0.0007
0541	0.0190	0.0004	0.0066	0.0007
0550	0.0378	0.0008	0.0133	0.0007
0551	0.0246	0.0005	0.0076	0.0007

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-89504 Horse racing industry industrial insurance, medical aid, and supplemental pension by class.

((Base Rates Effective January 1, 2011

<u>Class</u>	<u>Accident Fund</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
6614	83*	66*	†
6615	479*	340*	†
6616	18*	11*	†
6617	147*	87*	†
6618	99*	50*	†
6622	95**	74**	†
6623	30**	14**	†))

Base Rates Effective January 1, 2012

<u>Class</u>	<u>Accident Fund</u>	<u>Stay-at-Work</u>	<u>Medical Aid Fund</u>	<u>Supplemental Pension Fund</u>
6614	103*	3*	83*	1
6615	554*	13*	387*	1
6616	19*	0*	10*	1
6617	155*	4*	90*	1
6618	84*	2*	63*	1
6622	1,005**	26*	818**	1
6623	155**	4*	85**	1

- * These rates are calculated on a per license basis for parimutuel race tracks and are base rated.
- ** These rates are calculated on a per horse stall for parimutuel race tracks and are base rated.

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17-920 Assessment for supplemental pension fund. The amount of ~~((53.9))~~ 46.6 mils ~~((0.0539))~~ 0.0466 shall be retained by each employer from the earnings of each worker for each hour or fraction thereof the worker is employed. The amount of money so retained from the employee shall be matched in an equal amount by each employer, except as otherwise provided in these rules, all such moneys shall be remitted to the department on or before the last day of January, April, July and October of each year for the preceding calendar quarter, provided self-insured employers shall remit to the department as provided under WAC 296-15-060. All such moneys shall be deposited in the supplemental pension fund.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17-89503 Farm internship program industrial insurance, accident fund and medical aid fund by class.

AMENDATORY SECTION (Amending WSR 10-21-086, filed 10/19/10, effective 11/19/10)

WAC 296-17B-540 Determining loss incurred for each claim. (1) Calculating the initial loss incurred:

For each of your claims, we will multiply the case incurred loss by the appropriate loss development, and discount factors to determine the initial loss incurred.

If you have a fatality, we will use two hundred ~~((eighty))~~ eighty-seven thousand four hundred ten dollars as the claim's initial incurred loss for the claim, with two hundred seventy-five thousand three hundred nine dollars for accident fund incurred loss and twelve thousand one hundred one dollars for the medical aid incurred loss, regardless of the case incurred loss, and before recovery factors if applicable.

(2) Applying the single loss occurrence limit:

The initial loss incurred for a claim will be the amount we use as the loss incurred unless the single loss occurrence limit applies.

The single loss occurrence limit applies when the sum of all initial losses incurred for your claims arising out of a single event is greater than your selected single loss occurrence limit. In that case, each claim's initial loss incurred will be its proportionate share of your single loss occurrence limit.

(3) Applying the expected loss ratio factors:

The preliminary loss incurred for a claim will be the amount of the initial loss incurred, after application of the single loss limit, multiplied by the appropriate expected loss ratio factor. The accident fund and medical aid fund portions

of each claim will have separate expected loss ratio factors applied.

AMENDATORY SECTION (Amending WSR 11-04-069, filed 1/28/11, effective 2/28/11)

WAC 296-17B-900 Retrospective rating plans standard premium size ranges.

RETROSPECTIVE RATING STANDARD PREMIUM SIZE RANGES

Effective January 1, ~~((2011))~~ 2012

((Size-Group-Number	Standard-Premium-Range	
	From:	To:
1	\$ 5,610	- \$ 6,559
2	6,560	- 7,419
3	7,420	- 8,349
4	8,350	- 9,359
5	9,360	- 10,429
6	10,430	- 11,569
7	11,570	- 12,799
8	12,800	- 14,099
9	14,100	- 15,479
10	15,480	- 16,929
11	16,930	- 18,489
12	18,490	- 20,129
13	20,130	- 21,879
14	21,880	- 23,729
15	23,730	- 25,679
16	25,680	- 27,759
17	27,760	- 29,949
18	29,950	- 32,279
19	32,280	- 34,729
20	34,730	- 37,339
21	37,340	- 40,109
22	40,110	- 43,049
23	43,050	- 46,169
24	46,170	- 49,489
25	49,490	- 53,009
26	53,010	- 56,759
27	56,760	- 60,749
28	60,750	- 64,999
29	65,000	- 69,529
30	69,530	- 74,359
31	74,360	- 79,529
32	79,530	- 85,069
33	85,070	- 91,009
34	91,010	- 97,379
35	97,380	- 104,199
36	104,200	- 111,599

<u>((Size Group Number</u>	<u>Standard Premium Range</u>		<u>Size Group Number</u>	<u>From:</u>	=	<u>To:</u>
	<u>From:</u>	<u>To:</u>			=	
			<u>7</u>	<u>12,080</u>	=	<u>13,369</u>
37	111,600	119,699	<u>8</u>	<u>13,370</u>	=	<u>14,719</u>
38	119,700	128,199	<u>9</u>	<u>14,720</u>	=	<u>16,169</u>
39	128,200	137,499	<u>10</u>	<u>16,170</u>	=	<u>17,679</u>
40	137,500	147,499	<u>11</u>	<u>17,680</u>	=	<u>19,309</u>
41	147,500	158,199	<u>12</u>	<u>19,310</u>	=	<u>21,019</u>
42	158,200	169,799	<u>13</u>	<u>21,020</u>	=	<u>22,849</u>
43	169,800	182,199	<u>14</u>	<u>22,850</u>	=	<u>24,779</u>
44	182,200	195,799	<u>15</u>	<u>24,780</u>	=	<u>26,819</u>
45	195,800	210,399	<u>16</u>	<u>26,820</u>	=	<u>28,989</u>
46	210,400	226,299	<u>17</u>	<u>28,990</u>	=	<u>31,279</u>
47	226,300	243,599	<u>18</u>	<u>31,280</u>	=	<u>33,709</u>
48	243,600	262,499	<u>19</u>	<u>33,710</u>	=	<u>36,269</u>
49	262,500	283,299	<u>20</u>	<u>36,270</u>	=	<u>38,989</u>
50	283,300	305,999	<u>21</u>	<u>38,990</u>	=	<u>41,889</u>
51	306,000	331,199	<u>22</u>	<u>41,890</u>	=	<u>44,959</u>
52	331,200	359,199	<u>23</u>	<u>44,960</u>	=	<u>48,219</u>
53	359,200	390,299	<u>24</u>	<u>48,220</u>	=	<u>51,679</u>
54	390,300	424,999	<u>25</u>	<u>51,680</u>	=	<u>55,359</u>
55	425,000	464,199	<u>26</u>	<u>55,360</u>	=	<u>59,269</u>
56	464,200	508,599	<u>27</u>	<u>59,270</u>	=	<u>63,439</u>
57	508,600	558,899	<u>28</u>	<u>63,440</u>	=	<u>67,879</u>
58	558,900	616,899	<u>29</u>	<u>67,880</u>	=	<u>72,609</u>
59	616,900	683,699	<u>30</u>	<u>72,610</u>	=	<u>77,649</u>
60	683,700	761,699	<u>31</u>	<u>77,650</u>	=	<u>83,049</u>
61	761,700	853,499	<u>32</u>	<u>83,050</u>	=	<u>88,839</u>
62	853,500	962,999	<u>33</u>	<u>88,840</u>	=	<u>94,999</u>
63	963,000	1,094,999	<u>34</u>	<u>95,000</u>	=	<u>101,699</u>
64	1,095,000	1,257,999	<u>35</u>	<u>101,700</u>	=	<u>108,799</u>
65	1,258,000	1,460,999	<u>36</u>	<u>108,800</u>	=	<u>116,499</u>
66	1,461,000	1,723,999	<u>37</u>	<u>116,500</u>	=	<u>124,999</u>
67	1,724,000	2,070,999	<u>38</u>	<u>125,000</u>	=	<u>133,899</u>
68	2,071,000	2,554,999	<u>39</u>	<u>133,900</u>	=	<u>143,599</u>
69	2,555,000	3,268,999	<u>40</u>	<u>143,600</u>	=	<u>153,999</u>
70	3,269,000	4,446,999	<u>41</u>	<u>154,000</u>	=	<u>165,199</u>
71	4,447,000	6,664,999	<u>42</u>	<u>165,200</u>	=	<u>177,299</u>
72	6,665,000	12,199,999	<u>43</u>	<u>177,300</u>	=	<u>190,299</u>
73	12,200,000	31,209,999	<u>44</u>	<u>190,300</u>	=	<u>204,499</u>
74	31,210,000	and over))	<u>45</u>	<u>204,500</u>	=	<u>219,699</u>
			<u>46</u>	<u>219,700</u>	=	<u>236,299</u>
<u>Size Group Number</u>	<u>From:</u>	=	<u>To:</u>	<u>47</u>	=	<u>254,399</u>
<u>1</u>	<u>\$5,860</u>	=	<u>\$6,849</u>	<u>48</u>	=	<u>274,099</u>
<u>2</u>	<u>6,850</u>	=	<u>7,749</u>	<u>49</u>	=	<u>295,899</u>
<u>3</u>	<u>7,750</u>	=	<u>8,719</u>	<u>50</u>	=	<u>319,599</u>
<u>4</u>	<u>8,720</u>	=	<u>9,769</u>	<u>51</u>	=	<u>345,899</u>
<u>5</u>	<u>9,770</u>	=	<u>10,889</u>	<u>52</u>	=	<u>375,099</u>
<u>6</u>	<u>10,890</u>	=	<u>12,079</u>	<u>53</u>	=	<u>407,599</u>

<u>Size Group Number</u>	<u>From:</u>	=	<u>To:</u>
54	<u>407,600</u>	=	<u>443,799</u>
55	<u>443,800</u>	=	<u>484,799</u>
56	<u>484,800</u>	=	<u>531,099</u>
57	<u>531,100</u>	=	<u>583,699</u>
58	<u>583,700</u>	=	<u>644,199</u>
59	<u>644,200</u>	=	<u>713,999</u>
60	<u>714,000</u>	=	<u>795,399</u>
61	<u>795,400</u>	=	<u>891,299</u>
62	<u>891,300</u>	=	<u>1,005,999</u>
63	<u>1,006,000</u>	=	<u>1,143,999</u>
64	<u>1,144,000</u>	=	<u>1,313,999</u>
65	<u>1,314,000</u>	=	<u>1,525,999</u>
66	<u>1,526,000</u>	=	<u>1,799,999</u>
67	<u>1,800,000</u>	=	<u>2,162,999</u>
68	<u>2,163,000</u>	=	<u>2,667,999</u>
69	<u>2,668,000</u>	=	<u>3,413,999</u>
70	<u>3,414,000</u>	=	<u>4,643,999</u>
71	<u>4,644,000</u>	=	<u>6,959,999</u>
72	<u>6,960,000</u>	=	<u>12,739,999</u>
73	<u>12,740,000</u>	=	<u>32,589,999</u>
74	<u>32,590,000</u>	=	<u>and over</u>

**WSR 11-19-097
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed September 20, 2011, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-102.

Title of Rule and Other Identifying Information: Amending WAC 232-12-021 Importation and retention of dead nonresident wildlife.

Hearing Location(s): Natural Resources Building, Conference Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on November 4-5, 2011, at 8:30 a.m.

Date of Intended Adoption: November 4-5, 2011.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by October 13, 2011.

Assistance for Persons with Disabilities: Contact Susan Galloway by October 31, 2011, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates the rules regarding restrictions on the importation of deer, elk, and moose from states known to harbor chronic wasting disease in wild game populations.

Reasons Supporting Proposal: Reduces the disease risk for native deer, elk, and moose populations in Washington.

Statutory Authority for Adoption: RCW 77.12.047.
Statute Being Implemented: RCW 77.12.047.
Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2693; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not directly regulate small business. A copy of the statement may be obtained by contacting Wildlife Program Administrative Division, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2515, fax (360) 902-2162, e-mail Wildthing@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These are not hydraulics rules.

September 20, 2011

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 10-214, filed 8/20/10, effective 9/20/10)

WAC 232-12-021 Importation and retention of dead nonresident wildlife. It is unlawful:

(1) To import or possess dead wildlife, taken in another state or country, into Washington unless such wildlife was acquired lawfully. Proof of legal acquisition must be retained during the period of retention of the carcass or edible parts. Violation of this subsection is punishable under RCW 77.15.290.

(2) For a person who imports a dead mountain sheep, mountain goat, cougar or bear to fail to report such importation to the department in writing within ten days of the importation. The report must contain the name and address of the importer, the location where the dead wildlife is being stored and general information describing where and how the wildlife was obtained. Violation of this subsection is punishable under RCW 77.15.290.

(3) To import or possess deer, elk, or moose, or parts thereof, harvested in Colorado, Wyoming, Utah, New Mexico, Wisconsin, Illinois, South Dakota, Nebraska, Kansas, New York, West Virginia, Virginia, North Dakota, Alberta, Maryland, Minnesota, and Saskatchewan with the following exceptions:

(a) Meat that has been deboned in the state or province where it was harvested and is imported as boned out meat;

(b) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;

(c) Hides or capes without heads attached;

(d) Tissue imported for use by a diagnostic or research laboratory;

(e) Finished taxidermy mounts.

Violation of this subsection is punishable under RCW 77.15.290.

(4) To fail to notify the department within twenty-four hours if an importer or receiver of deer or elk is notified by a state or province that a harvested animal has tested positive for chronic wasting disease. Violation of this subsection is an infraction punishable under RCW 77.15.160.

WSR 11-19-101
PROPOSED RULES
NOXIOUS WEED
CONTROL BOARD

[Filed September 20, 2011, 7:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-028.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties. The board is proposing to amend the state noxious weed list, and some of its by-laws, including a new section on listing guidelines.

Hearing Location(s): Yakima City Hall, Council Chambers, 129 North Second Street, Yakima, WA 98901, on November 1, 2011, at 1:00 p.m.

Date of Intended Adoption: November 2, 2011.

Submit Written Comments to: Alison Halpern, P.O. Box 42560, Olympia, WA 98504-2560, e-mail ahalpern@agr.wa.gov, fax (360) 902-2053, by October 31, 2011.

Assistance for Persons with Disabilities: Contact Wendy DesCamp by October 24, 2011, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state noxious weed list provides the basis for noxious weed control efforts for county and district weed control boards and other entities. It also provides guidelines for the state noxious weed control board. This proposal amends chapter 16-750 WAC by:

- Adding oriental clematis, *Clematis orientalis*, as a Class A noxious weed.
- Adding tree-of-heaven, *Ailanthus altissima*, as a Class C noxious weed.
- Adding Japanese eelgrass, *Zostera japonica*, as a Class C noxious weed (on commercially managed shellfish beds only).
- Changing the designation of hairy willow-herb. *Epilobium hirsutum*, on the Class B list.
- Changing the designation of hoary alyssum, *Berteroa incana*, on the Class B list.
- Correcting the scientific name of Bohemian knotweed, *Polygonum x bohemicum*.
- Adding new section on listing guidelines.
- Changing committee terms of office and officer election dates.

Statutory Authority for Adoption: Chapter 17.10 RCW.
Statute Being Implemented: Chapter 17.10 RCW.

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

Name of Proponent: Washington state noxious weed control board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Alison Halpern, 1111 Washington Street S.E., Olympia, WA, (360) 902-2053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement for proposed rules that impose more than a minor cost on businesses in an industry. An analysis of the direct economic effects of the proposed eight rule amendments indicates that costs to small businesses would be negligible or none at all. To summarize the analysis, none of the proposals seek to prohibit sales of these species, and no small businesses will be impacted from the two changes in Class B designations. Results of a survey indicate that the two proposed species that had once been used as ornamental plants are not carried in the horticultural trade. The state weed board does not require control of Class C noxious weeds; moreover, results of a survey indicate that several commercial shellfish growers see indirect benefits to the listing of Japanese eelgrass. A copy of the analysis can be obtained by contacting Alison Halpern, P.O. Box 42560, Olympia, WA 98504-2560.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state noxious [weed] control board is not one of the agencies listed in this section.

September 20, 2011

Alison Halpern

Executive Secretary

AMENDATORY SECTION (Amending WSR 09-01-071, filed 12/15/08, effective 1/16/09)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
bean-caper, Syrian	<i>Zygophyllum fabago</i>
blueweed, Texas	<i>Helianthus ciliaris</i>
brome, false	<i>Brachypodium sylvaticum</i>
broom, Spanish	<i>Spartium junceum</i>
buffalobur	<i>Solanum rostratum</i>
bulrush, ricefield	<i>Schoenoplectus mucronatus</i>
clary, meadow	<i>Salvia pratensis</i>
<u>clematis, oriental</u>	<u><i>Clematis orientalis</i></u>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, dense flower	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
cordgrass, smooth	<i>Spartina alterniflora</i>
crupina, common	<i>Crupina vulgaris</i>
flax, spurge	<i>Thymelaea passerina</i>
four o'clock, wild	<i>Mirabilis nyctaginea</i>
geranium, shiny	<i>Geranium lucidum</i>
goatsrue	<i>Galega officinalis</i>
hawkweed, European	<i>Hieracium sabaudum</i>
hawkweed, yellow devil	<i>Hieracium floribundum</i>

Common Name	Scientific Name
hogweed, giant	<i>Heracleum mantegazzianum</i>
hydrilla	<i>Hydrilla verticillata</i>
johnsongrass	<i>Sorghum halepense</i>
knawweed, bighead	<i>Centaurea macrocephala</i>
knawweed, Vochin	<i>Centaurea nigrescens</i>
kudzu	<i>Pueraria montana var. lobata</i>
milfoil, variable-leaf	<i>Myriophyllum heterophyllum</i>
mustard, garlic	<i>Alliaria petiolata</i>
nightshade, silverleaf	<i>Solanum elaeagnifolium</i>
primrose-willow, floating	<i>Ludwigia peploides</i>
rush, flowering	<i>Butomus umbellatus</i>
sage, clary	<i>Salvia sclarea</i>
sage, Mediterranean	<i>Salvia aethiopsis</i>
spurge, eggleaf	<i>Euphorbia oblongata</i>
starthistle, purple	<i>Centaurea calcitrapa</i>
sweetgrass, reed	<i>Glyceria maxima</i>
thistle, Italian	<i>Carduus pycnocephalus</i>
thistle, milk	<i>Silybum marianum</i>
thistle, slenderflower	<i>Carduus tenuiflorus</i>
velvetleaf	<i>Abutilon theophrasti</i>
woad, dyers	<i>Isatis tinctoria</i>

AMENDATORY SECTION (Amending WSR 10-24-037, filed 11/22/10, effective 12/23/10)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name	Will be a "Class B designate" in all lands lying within:
(1) alyssum, hoary <i>Berteroa incana</i>	(a) regions 1, 2, 5, 6, 8, 9, 10
	(b) <u>Chelan and Douglas counties</u> of region 3 ((, except Okanogan County))
	(c) Okanogan County((,)) of region 3, except Ranges 29 through 31 East of Townships 37 through 40 North
	(d) Ferry County of region 4 south of Hwy 20
	(e) Adams and Whitman counties of region 7.
(2) archangel, yellow <i>Lamiastrum galeobdolon</i>	(a) Clallam County of region 1
	(b) San Juan County of region 2
	(c) Cowlitz and Skamania counties of region 8.
(3) arrowhead, grass-leaved <i>Sagittaria graminea</i>	(a) regions 1, 3, 4, 6, 7, 8, 9, 10
	(b) region 2 except Lake Roesiger, Lake Serene, Lake Loma and Echo Lake in Snohomish County
	(c) region 5 except Mason Lake in Mason County.
(4) blackgrass <i>Alopecurus myosuroides</i>	(a) regions 1, 2, 3, 5, 6, 8, 9, 10
	(b) Ferry, Stevens, Pend Oreille counties of region 4
	(c) Adams County of region 7.
(5) blueweed <i>Echium vulgare</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9, 10

Name	Will be a "Class B designate" in all lands lying within:
	(b) region 7 except for an area starting at the Stevens County line on SR 291 south to the SR 291 bridge over the Little Spokane River, thence upstream along the Little Spokane River to the first Rutter Parkway Bridge; thence south along the Rutter Parkway to the intersection of Rutter Parkway and Indian Trail Road; thence southerly along Indian Trail Road to a point three miles south (on section line between sections 22 and 27, T-26N, R-42E); thence due west to a point intersecting the line between Ranges 41 and 42; thence north along this line to a point 1/4 mile south of Charles Road; thence northwesterly parallel to Charles Road to a point 1/4 miles south of the intersection of Charles Road and West Shore Road; thence northerly along West Shore Road to the Spokane River (Long Lake); thence southeasterly along the Spokane River to the point of beginning.
(6) broom, Scotch <i>Cytisus scoparius</i>	(a) regions 3, 4, 6, 7, 9, 10.
(7) bryony, white <i>Bryonia alba</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) region 7 except Whitman County (c) Franklin and Asotin counties of region 10.
(8) bugloss, common <i>Anchusa officinalis</i>	(a) regions 1, 2, 3, 5, 6, 8, 9, 10 (b) region 4 except Stevens and Spokane counties (c) Lincoln, Adams, and Whitman counties of region 7.
(9) bugloss, annual <i>Anchusa arvensis</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9 (b) Lincoln and Adams counties (c) Whitman County except ranges 43 through 46 East of Townships 16 through 20 North (d) Asotin County of region 10.
(10) butterfly bush <i>Buddleja davidii</i>	(a) Pend Oreille County of region 4 (b) Grays Harbor County, and that portion of Thurston County lying below the ordinary high-water mark of the Nisqually River in region 5 (c) Kittitas County of region 6 (d) Lincoln County of region 7.
(11) camelthorn <i>Alhagi maurorum</i>	(a) regions 1, 2, 3, 4, 5, 7, 8, 9 (b) region 6 except those portions of Sections 23, 24, 25, and 29 through 36, T16N, R27E, W.M. lying outside Intercounty Weed District No. 52 and except Sections 1 through 12, T15N, R27E, W.M. in Grant County and except the area west of Highway 17 and north of Highway 26 in Adams County (c) Franklin, Columbia, Garfield, and Asotin counties of region 10 (d) an area beginning at the Washington—Oregon border at the southwest portion of section 5, R32E, T6N, then north to the northwest corner of section 3, R32E, T7N, then east to the northeast corner of section 3, R36E, T7N, then south to southeast portion of section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning.
(12) carrot, wild <i>Daucus carota</i>	(a) regions 3, 7 (except where intentionally cultivated)

Name		Will be a "Class B designate" in all lands lying within:	
		(b)	Spokane and Ferry counties of region 4 (except where intentionally cultivated)
		(c)	region 6, except Yakima County (except where intentionally cultivated)
		(d)	region 9, except Yakima County (except where intentionally cultivated)
		(e)	region 10, except Walla Walla County (except where intentionally cultivated).
(13)	catsear, common <i>Hypochaeris radicata</i>	(a)	regions 3, 4, 6, 7, 10
		(b)	region 9 except Klickitat County.
(14)	chervil, wild <i>Anthriscus sylvestris</i>	(a)	regions 1, 3, 4, 5, 6, 7, 9, 10
		(b)	region 2 except Guemes Island in Skagit County
		(c)	region 8 except Clark County.
(15)	cinquefoil, sulfur <i>Potentilla recta</i>	(a)	regions 1, 3, 8, 10
		(b)	region 2 except Skagit County
		(c)	region 4 except Stevens, Ferry, and Pend Oreille counties
		(d)	region 5 except Thurston County
		(e)	region 6 except Yakima County
		(f)	region 7 except Spokane County
		(g)	region 8 except Lewis County
		(h)	region 9 except Klickitat County.
(16)	daisy, oxeye <i>Leucanthemum vulgare</i>	(a)	regions 7, 10
		(b)	region 9 except those areas lying within Klickitat and Yakima counties west of Range 13 East
		(c)	region 6 except those areas lying within Yakima and Kittitas counties west of Range 13 E.
(17)	elodea, Brazilian <i>Egeria densa</i>	(a)	regions 3, 4, 6, 7, 9, 10
		(b)	Lewis County of region 8
		(c)	Clallam County of region 1
		(d)	King County of region 5, except lakes Washington, Sammamish, Union and Fenwick.
(18)	fanwort <i>Cabomba caroliniana</i>	(a)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10
		(b)	region 8 except T8N, R3W of Cowlitz County.
(19)	fennel, common <i>Foeniculum vulgare</i> (except var. <i>azoricum</i>)	(a)	regions 3, 4, 6, 7, 8, 9, 10
		(b)	region 1 except the incorporated areas of Port Townsend
		(c)	region 2 except the incorporated areas of Anacortes and Mount Vernon
		(d)	region 5 except King and Kitsap counties.
(20)	fieldcress, Austrian <i>Rorippa austriaca</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
		(b)	regions 7 and 10 except within the Palouse River Canyon from Big Palouse Falls to the Snake River.
(21)	floating heart, yellow <i>Nymphoides peltata</i>	(a)	regions 1, 2, 3, 5, 6, 7, 8, 9, 10
		(b)	region 4 except the Spokane River between Long Lake Dam and Nine Mile Dam.
(22)	gorse <i>Ulex europaeus</i>	(a)	regions 1, 3, 4, 6, 7, 9, 10
		(b)	Skagit, Island, and Whatcom counties of region 2
		(c)	Thurston, Kitsap, Pierce, and King counties of region 5

Name	Will be a "Class B designate" in all lands lying within:
	(d) Wahkiakum, Clark, Skamania, Cowlitz, and Lewis counties of region 8.
(23) hawkweed, mouseear <i>Hieracium pilosella</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 except Thurston County (c) Thurston County lying within T17N, R1W, S31; T16N, R2W, S30 W1/2; T16N, R3W, S25, SE1/4; T16N, R3W, S36, N1/2; T16N, R2W, S31, NW1/4.
(24) hawkweed, orange <i>Hieracium aurantiacum</i>	(a) regions 1, 3, 6, 9, 10 (b) Skagit County of region 2 (c) Ferry County of region 4 (d) Pierce, Thurston and King counties of region 5 (e) Lincoln and Adams counties of region 7 (f) Lewis County of region 8.
(25) hawkweed, polar <i>Hieracium atratum</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 outside the boundaries of Mt. Rainier National Park.
(26) hawkweed, queen-devil <i>Hieracium glomeratum</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10 (b) Ferry County of region 4.
(27) hawkweed, smooth <i>Hieracium laevigatum</i>	(a) regions 1, 3, 4, 5, 6, 7, 8, 9, 10 (b) San Juan, Island, and Skagit counties of region 2.
(28) hawkweed, yellow <i>Hieracium caespitosum</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 10 (b) region 4 except Stevens and Pend Oreille counties (c) region 9 except sections 32, 33 and 34 of T6N, R12E, and sections 4, 5, 6, and 7 of T5N, R12E, and section 12 of T5N, R11E, of Klickitat County.
(29) helmet, policeman's <i>Impatiens glandulifera</i>	(a) regions 1, 3, 4, 6, 7, 8, 9, 10 (b) region 2 except Whatcom County (c) region 5 except Thurston County.
(30) herb-Robert <i>Geranium robertianum</i>	(a) regions 3, 4, 6, 7, 9, 10
(31) houndstongue <i>Cynoglossum officinale</i>	(a) Kittitas County of region 6 (b) region 5 (c) Douglas and Chelan counties of regions 3 and 6.
(32) indigobush <i>Amorpha fruticosa</i>	(a) regions 1, 2, 3, 4, 5, 6 (b) regions 7 and 10 except within 200 feet of the Snake River from Central Ferry downstream (c) regions 8, 9, and 10 except within 200 feet of the Columbia River.
(33) knapweed, black <i>Centaurea nigra</i>	(a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties (c) region 6 except Kittitas County (d) region 8 except Clark County.

Name	Will be a "Class B designate" in all lands lying within:
(34) knapweed, brown <i>Centaurea jacea</i>	(a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties (c) region 6 except Kittitas County (d) region 8 except Clark County.
(35) knapweed, diffuse <i>Centaurea diffusa</i>	(a) regions 1, 2, 5, 8 (b) Grant County lying in Townships 13 through 16 North, Ranges 25 through 27 East; Townships 17 and 18 N., Ranges 25 through 30 East; Townships 19 and 20 North, Ranges 29 and 30 East; T21N, R23E, Sections 1 through 30; T21N, R26E., Sections 5, 6, 7, 8, 17, and 18; East 1/2 Township 21N, Range 27E.; T21N, Ranges 28 through 30 E; those portions of Townships 22 through 28N, Ranges 28 through 30 E.; those portions of Township 22 through 28N., Ranges 23 through 30E. lying in Grant County; all W.M. (c) Adams County except those areas within T15N, R36E, Section 36; T15N, R37E, Sections 22, 26, 27, 28, 31, 32, 33 and 34; T15N, R37E, western half of Sections 23, 24 and 25; T15N, R38E, Sections 2, 10, 11, 14, 15, 19 and 20; T16N, R38E, Sections 34 and 35; T17N, R37E, Sections 5 and 6 (d) Franklin County of regions 9 and 10.
(36) knapweed, meadow <i>Centaurea jacea x nigra</i>	(a) regions 1, 2, 3, 4, 7, 9, 10 (b) region 5 except that area below the ordinary highwater mark of the Nisqually River, beginning at Alder Dam and downstream to the mouth of the Nisqually River in Pierce and Thurston counties (c) region 6 except Kittitas County (d) region 8 except Clark County.
(37) knapweed, Russian <i>Acroptilon repens</i>	(a) regions 1, 2, 5, 7, 8 (b) region 4 except that area lying within the boundaries of the Colville Indian Reservation within Ferry County (c) Adams County of region 6 except for the area west of Highway 17 and North of Highway 26 (d) Intercounty Weed District No. 52 (e) region 10 except Franklin County.
(38) knapweed, spotted <i>Centaurea stoebe</i>	(a) regions 1, 2, 3, 5, 6, 9 (b) Ferry County of region 4 (c) Adams and Whitman counties of region 7 (d) region 8, except that portion of Lewis County below the ordinary high watermark of the Tilton River from Hwy. 508 to Lake Mayfield (e) region 10 except Garfield County.
(39) knotweed, Bohemian <i>Polygonum x bohemicum</i>	(a) Kittitas County of region 6 (b) Chelan and Douglas counties of regions 3 and 6 (c) Pend Oreille County of region 4 (d) Asotin County of region 10.

	Name	Will be a "Class B designate" in all lands lying within:
(40)	knotweed, giant <i>Polygonum sachalinense</i>	(a) Kittitas County of region 6 (b) Pend Oreille County of region 4 (c) Asotin County of region 10.
(41)	knotweed, Himalayan <i>Polygonum polystachyum</i>	(a) Kittitas County of region 6 (b) Pend Oreille County of region 4 (c) Lewis County of region 8 (d) Asotin County of region 10.
(42)	knotweed, Japanese <i>Polygonum cuspidatum</i>	(a) Kittitas County of region 6 (b) Chelan and Douglas counties of regions 3 and 6 (c) Pend Oreille County of region 4 (d) Asotin County of region 10.
(43)	kochia <i>Kochia scoparia</i>	(a) Regions 1, 2, 5, 8 (b) Pend Oreille County of region 4 (c) Kittitas County of region 6.
(44)	laurel, spurge <i>Daphne laureola</i>	(a) regions 3, 4, 6, 7, 8, 9, 10 (b) San Juan, Snohomish and Skagit counties of region 2 (c) Grays Harbor and Mason counties of region 5.
(45)	lawnweed <i>Soliva sessilis</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 except King and Thurston counties.
(46)	lepyrodielis <i>Lepyrodielis holosteoides</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9, 10 (b) region 7 except an area within Whitman County east of the Pullman—Wawawai Road from Wawawai to Pullman and south of State Highway 270 from Pullman to Moscow, Idaho.
(47)	loosestrife, garden <i>Lysimachia vulgaris</i>	(a) regions 1, 2, 3, 4, 6, 7, 8, 9, 10 (b) region 5 except King County (c) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line.
(48)	loosestrife, purple <i>Lythrum salicaria</i>	(a) regions 1, 4, 7, 8 (b) region 2 except Snohomish County (c) region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside (d) Grays Harbor, Mason, Kitsap, and Thurston counties of region 5 (e) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line (f) Pierce County, except those areas lying within T2D, 21, 22N, R1W and R1E, all sections (g) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed

Name	Will be a "Class B designate" in all lands lying within:
(49)	loosestrife, wand <i>Lythrum virgatum</i>
	<ul style="list-style-type: none"> (h) region 9 except Benton County (i) region 10 except Walla Walla County (j) Intercounty Weed Districts No. 51 and No. 52. (a) regions 1, 4, 7, 8 (b) region 2 except Snohomish County (c) region 3 except within 100 feet of the ordinary highwater mark of the Okanogan River from the Canadian border south to Riverside (d) region 5 except King County (e) Those portions of King County lying north of I-90 and east of the line extending from SR522 to SR202 to E. Lake Sammamish Parkway; west of I-5 including Vashon Island; south of I-90 and east and south of I-405 to the county line (f) region 6 except that portion of Grant County lying northerly of the Frenchmen Hills-O'Sullivan Dam Road, southerly of Highway Interstate 90, easterly of the section line of the location of County Road J SW/NW if constructed and westerly of the section line of the location of County Road H SE/NE if constructed
(50)	nutsedge, yellow <i>Cyperus esculentus</i>
	<ul style="list-style-type: none"> (g) region 9 except Benton County (h) region 10 except Walla Walla County (i) Intercounty Weed Districts No. 51 and No. 52. (a) regions 1, 2, 3, 4, 5, 7, 8 (b) region 6 except those areas lying between State Highway 26 and State Highway 28, and westerly of Dodson Road in Grant County, and except S 1/2, Sec. 2, T20N, R25E., W.M. (c) region 9 except: <ul style="list-style-type: none"> (i) except those areas lying within the following boundary description within Yakima County: Beginning at the intersection of Highway 12 and Parker Heights Road and continuing easterly to Konnowac Pass Road follow said road north to the intersection of Konnowac Pass Road and Nightingale Road. The northern boundary shall be the Roza Canal, continuing from the established point at Nightingale Road. The boundaries will follow the Roza Canal easterly to the County Line Road. The east boundaries will be the Yakima/Benton County Line from a point beginning at the County Line and Highway 22 (near Byron) continuing westerly along Highway 22 (to near the city of Mabton) to the intersection of Highway 22 and the Reservation Boundary (Division Road) and continuing north to the Yakima River. Then it will follow the river northwest to the Wapato-Donald Road continuing north along said road to Highway 12 then Highway 12 to Parker Heights Road. (ii) an area lying southerly of State Route 14 and within T2N, Ranges 13 and 14 E of Klickitat County (d) region 10 except Walla Walla County.

		Will be a "Class B designate" in all lands lying within:	
Name			
(51)	oxtongue, hawkweed <i>Picris hieracioides</i>	(a)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10
		(b)	region 8 except Skamania County.
(52)	parrotfeather <i>Myriophyllum aquaticum</i>	(a)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10
		(b)	region 8 except Clark, Cowlitz, and Wahkiakum counties.
(53)	pepperweed, perennial <i>Lepidium latifolium</i>	(a)	regions 1, 2, 3, 4, 5, 7, 8, 10
		(b)	Intercounty Weed Districts No. 51 and 52
		(c)	Kittitas County of region 6
		(d)	Adams County of region 6 except for the area west of Highway 17 and north of Highway 26.
(54)	poison-hemlock <i>Conium maculatum</i>	(a)	Clallam County and that area lying within Port Townsend city limits in Jefferson County of region 1
		(b)	Snohomish and San Juan counties of region 2
		(c)	Pend Oreille County of region 4
		(d)	Kitsap and Thurston counties of region 5
		(e)	Kittitas County of region 6
		(f)	Lincoln County of region 7
		(g)	Clark County of region 8.
(55)	primrose, water <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, 3, 4, 5, 6, 7, 9, 10
		(b)	region 8 except T8N, R3W, S14 of Cowlitz County.
(56)	puncturevine <i>Tribulus terrestris</i>	(a)	Skagit County of region 2
		(b)	Kittitas County of region 6
		(c)	Adams County
		(d)	Clallam County of region 1.
(57)	ragwort, tansy <i>Senecio jacobaea</i>	(a)	regions 3, 4, 6, 7, 9, 10
		(b)	region 5, that portion of Pierce County lying south or east of a boundary beginning at the White River and State Highway 410, then west along State Highway 410 to intersection with State Highway 162 (Orting) to intersection with Orville Road, then south along Orville Road to intersection with Kapowsin Highway (304th Street East), then west following Kapowsin Highway to intersection with State Route 7, then south along State Route 7 to intersection with State Route 702, then west along State Route 702 to intersection with State Route 507, then southwest along State Route 507 to intersection with the Nisqually River.
(58)	reed, common, nonnative genotypes <i>Phragmites australis</i>	(a)	region 1
		(b)	Island, San Juan and Snohomish counties of region 2
		(c)	Okanogan County of region 3
		(d)	Pend Oreille and Stevens counties of region 4
		(e)	region 5 except Grays Harbor and Pierce counties
		(f)	Kittitas County of region 6
		(g)	Yakima County of regions 6 and 9
		(h)	Lincoln County of region 7
		(i)	Clark and Lewis counties of region 8
		(j)	Klickitat County of region 9
		(k)	Asotin County of region 10.

Name	Will be a "Class B designate" in all lands lying within:
(59) Saltcedar <i>Tamarix ramosissima</i>	(a) regions 1, 2, 3, 4, 5, 7, 8, unless intentionally established prior to 2004 (b) region 6 except Grant County, unless intentionally established prior to 2004 (c) region 9 except Benton and Franklin counties, unless intentionally established prior to 2004 (d) region 10 except Franklin County, unless intentionally established prior to 2004.
(60) sandbur, longspine <i>Cenchrus longispinus</i>	(a) regions 1, 2, 3, 4, 5, 7, 8 (b) Adams County of region 6 except for that area lying within Intercounty Weed District No. 52 (c) Intercounty Weed District No. 51 (d) Kittitas County of region 6 (e) Asotin County of region 10.
(61) skeletonweed, rush <i>Chondrilla juncea</i>	(a) regions 1, 2, 3, 5, 8 (b) Franklin County except T13N, R36E; and T14N, R36E (c) Adams County except those areas lying east of a line running north from Franklin County along the western boundary of Range 36 East to State Highway 26 then north on Sage Road until it intersects Lee Road, then due north until intersection with Providence Road, then east to State Highway 261, then north along State Highway 261 to its intersection with Interstate 90, henceforth on a due north line to intersection with Bauman Road, then north along Bauman Road to its terminus, then due north to the Lincoln County line. (d) region 6 except that portion lying within Grant County that is southerly of State Highway 28, northerly of Interstate Highway 90 and easterly of Grant County Road I Northwest (e) Stevens County north of Township 33 North of region 4 (f) Ferry and Pend Oreille counties of region 4 (g) region 9 except the Dallesport area in Klickitat County lying within Township 2N, Ranges 13 and 14 (h) Asotin County of region 10 (i) Garfield County south of Highway 12 (j) Columbia County from the Walla Walla County line on Highway 12, all areas south of Turner Road; at Turner Road to the Garfield county line, all areas south and east of Turner Road (k) Whitman County lying in Ranges 43 through 46 East of Townships 15 through 20 North; T14N, Ranges 44 through 46 East; and T13N, Ranges 45 and 46 East.
(62) sowthistle, perennial <i>Sonchus arvensis ssp. arvensis</i>	(a) regions 1, 2, 3, 4, 7, 8, 9, 10 (b) Adams County of region 6 (c) region 5 except for sections 28, 29, 30, 31, 32, and 33 in T19N, R1E of Thurston and Pierce counties.
(63) spurge, leafy <i>Euphorbia esula</i>	(a) regions 1, 2, 3, 4, 5, 6, 8, 9, 10 (b) region 7 except as follows:

Name	Will be a "Class B designate" in all lands lying within:
	(i) T27N, R37E, Sections 34, 35, 36; T27N, R38E, Sections 31, 32, 33; T26N, R37E, Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 16, 26; T26N, R38E, Sections 5, 6, 7, 8 of Lincoln County
	(ii) T24N, R43E, Section 12, Qtr. Section 3, Parcel No. 9068 of Spokane County.
(64) spurge, myrtle <i>Euphorbia myrsinites</i> L	(a) Pend Oreille County of region 4
	(b) Along the Asotin, Grande Ronde, and Snake rivers and in all other areas that are not an actively cultivated garden in Asotin County of region 10.
(65) starthistle, yellow <i>Centaurea solstitialis</i>	(a) regions 1, 2, 3, 5, 6, 8
	(b) region 4 except those areas within Stevens County bounded by a line beginning at the intersection of State Highway 20 and State Highway 25, then north to intersection with Pinkston Creek Road, then east along Pinkston Creek Road to intersection with Highland Loop Road, then south along Highland Loop Road to intersection with State Highway 20, then west along State Highway 20 to intersection with State Highway 25
	(c) region 7 except those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
	(d) Franklin County
	(e) region 9 except Klickitat County
	(f) lands west of Shumaker Grade and south of Mill Road in Asotin County.
(66) Swainsonpea <i>Sphaerophysa sal-sula</i>	(a) regions 1, 2, 3, 4, 5, 7, 8
	(b) Columbia, Garfield, Asotin, and Franklin counties
	(c) an area beginning at the Washington—Oregon border at the southwest portion of Section 15, R32E, T6N, then north to the northwest corner of Section 3, R32E, T7N, then east to the northeast corner of Section 3, R36E, T7N, then south to the southeast portion of Section 15, R36E, T6N, at the Washington—Oregon border, then west along the Washington—Oregon border to the point of beginning
	(d) Weed District No. 3 of Grant County
	(e) Adams County of region 6.
(67) thistle, musk <i>Carduus nutans</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10
	(b) Spokane and Pend Oreille counties.
(68) thistle, plumeless <i>Carduus acanthoides</i>	(a) regions 1, 2, 3, 5, 6, 7, 8, 9, 10
	(b) region 4 except those areas within Stevens County lying north of State Highway 20.

Name	Will be a "Class B designate" in all lands lying within:	
(69) thistle, Scotch <i>Onopordum acanthium</i>	(a)	regions 1, 2, 3, 4, 5, 6, 8, 9
	(b)	region 7 except for those areas within Whitman County lying south of State Highway 26 from the Adams County line to Colfax and south of State Highway 195 from Colfax to Pullman and south of State Highway 270 from Pullman to the Idaho border
	(c)	Franklin County.
(70) toadflax, Dalmatian <i>Linaria dalmatica ssp. dalmatica</i>	(a)	regions 1, 2, 5, 8, 10
	(b)	Douglas County of region 3 lying south of T25N and west of R25E
	(c)	Okanogan County lying within T 33, 34, 35N, R19, 20, 21, 22E, except the southwest, southeast, and northeast quarters of the northeast quarter of section 27, T35N, R21E; and the northeast quarter of the southeast quarter of section 27, T35N, R21E
	(d)	Kittitas, Chelan, Douglas, and Adams counties of region 6
	(e)	Intercounty Weed District No. 51
	(f)	Weed District No. 3 of Grant County
	(g)	Lincoln and Adams counties
	(h)	The western two miles of Spokane County of region 7
	(i)	region 9 except as follows: <ul style="list-style-type: none"> (i) those areas lying within Yakima County (ii) those areas lying west of the Klickitat River and within Klickitat County.
(71) watermilfoil, Eurasian <i>Myriophyllum spicatum</i>	(a)	regions 1, 9, 10
	(b)	Okanogan and Chelan counties of region 3
	(c)	in all water bodies of public access, except the Pend Oreille River, in Pend Oreille County of region 4
	(d)	Chelan and Adams counties of region 6
	(e)	region 7 except Spokane County
	(f)	region 8 except within 200 feet of the Columbia River.
(72) willow-herb, hairy <i>Epilobium hirsutum</i>	(a)	regions 1, 3, 4
	(b)	region 2 except Whatcom and Island counties
	(c)	region 5 except Thurston County
	(d)	region 6 except Grant County
	(e)	region 7 except Whitman County
	(f)	region 8 except Skamania County
	(g)	Yakima County of region 9
	(h)	region 10 except Franklin (County) and Walla Walla counties.

AMENDATORY SECTION (Amending WSR 10-24-037, filed 11/22/10, effective 12/23/10)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
babysbreath	<i>Gypsophila paniculata</i>
beard, old man's	<i>Clematis vitalba</i>

Common Name	Scientific Name
bindweed, field	<i>Convolvulus arvensis</i>
blackberry, evergreen	<i>Rubus laciniatus</i>
blackberry, Himalayan	<i>Rubus armeniacus</i>
canarygrass, reed	<i>Phalaris arundinacea</i>
cockle, white	<i>Silene latifolia ssp. alba</i>
cocklebur, spiny	<i>Xanthium spinosum</i>
cress, hoary	<i>Cardaria draba</i>

Common Name	Scientific Name
odder, smoothseed alfalfa	<i>Cuscuta approximata</i>
<u>eelgrass, Japanese (on commercially managed shellfish beds only)</u>	<i>Zostera japonica</i>
goatgrass, jointed	<i>Aegilops cylindrica</i>
groundsel, common	<i>Senecio vulgaris</i>
hawkweed, common	<i>Hieracium lachenalii</i>
hawkweed, other nonnative species	<i>Hieracium sp.</i> , except species designated in the note in the left-hand column

Note:

This listing includes all species of *Hieracium*, except the following:

- Species designated as Class A noxious weeds in WAC 16-750-005;
- Species designated as Class B noxious weeds in WAC 16-750-011;
- Native species designated below:
 - Canada hawkweed (*H. canadense*)
 - houndstongue hawkweed (*H. cynoglossoides*)
 - long-beaked hawkweed (*H. longiberbe*)
 - narrow-leaved hawkweed (*H. umbellatum*)
 - slender hawkweed (*H. gracile*)
 - western hawkweed (*H. albertinum*)
 - white-flowered hawkweed (*H. albiflorum*)
 - woolley-weed (*H. scouleri*)

henbane, black	<i>Hyoscyamus niger</i>
iris, yellow flag	<i>Iris pseudacorus</i>
ivy, English, 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica'
	<i>Hedera helix</i> 'Baltica'
	<i>Hedera helix</i> 'Pittsburgh'
	<i>Hedera helix</i> 'Star'
mayweed, scentless	<i>Matricaria perforata</i>
pondweed, curly-leaf	<i>Potamogeton crispus</i>
rye, cereal	<i>Secale cereale</i>
spikeweed	<i>Hemizonia pungens</i>
St. Johnswort, common	<i>Hypericum perforatum</i>
tansy, common	<i>Tanacetum vulgare</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
toadflax, yellow	<i>Linaria vulgaris</i>
<u>tree-of-heaven</u>	<i>Ailanthus altissima</i>
water lily, fragrant	<i>Nymphaea odorata</i>
whiteweed, hairy	<i>Cardaria pubescens</i>
wormwood, absinth	<i>Artemisia absinthium</i>

NEW SECTION

WAC 16-750-022 Noxious weed list—Listing process. The noxious weed list is adopted annually by the Washington state noxious weed control board. The listing process is open to the public, and there are several opportunities for

participation. The process of considering changes to the list begins with the board's noxious weed committee. The weed listing process consists of the following steps each year:

(1) The board accepts proposals to make additions, deletions, or changes to the weed list between January and the end of April.

(2) Starting in May, the committee reviews and evaluates the proposals and may conduct additional research including literature reviews, surveys of counties, discussions with other states, and field investigations during its deliberations, which continues into September.

(3) The board considers the committee's recommendations in September and votes on which proposed changes to include in a public hearing, typically held in November.

(4) The board solicits public comment at the public hearing and makes its final decisions on proposed changes to the weed list after considering the testimony received.

(5) The new revised noxious weed list becomes effective in January.

(6) Proposals to add new species to the weed list that were not adopted by the board will not be reconsidered for future listing unless additional information is provided, including additional data from scientific sources regarding any invasive and noxious qualities of the species, as well as existing positive economic benefits.

AMENDATORY SECTION (Amending WSR 99-24-029, filed 11/23/99, effective 1/3/00)

WAC 16-750-130 State noxious weed control board—Organization. The organization of the board is as follows:

(1) The officers of the board are the chairperson, vice-chairperson, and secretary. The title of the chief administrative officer is the executive secretary.

(2) Duties of officers.

(a) The chairperson presides at all meetings of the board, has the power to appoint committees, acts as ex officio member of all committees except the executive committee, serves as chairperson of the executive committee, serves as official signer of agreements between the board and public or private agencies, and performs such other duties as pertain to the office.

(b) The vice-chairperson performs the duties of the chairperson in his or her absence, acts as an ex officio member of all committees, and any other duties delegated by the chairperson. The vice-chairperson will assume the duties of and serve out the term of the chairperson upon permanent departure of the chairperson.

(c) The secretary is the official keeper of the minutes and, approves them, and presents them to the board for adoption. In the absence of the chairperson and vice-chairperson, the secretary performs the duties of the chairperson.

(d) The duties of the executive secretary, in addition to administrative duties assigned elsewhere in this chapter, are to keep a record of the proceedings of the board, notify all board members, county noxious weed control boards, and weed districts of meetings, act as an ex officio nonvoting member of all committees, negotiate agreements with public

and private agencies on behalf of the board, and perform other responsibilities as delegated by the chairperson.

(3) Term of office. Term of office for officers of the board is twelve months (~~effective July 27 of the year elected~~) following elections held at the first board meeting in January and ending (~~July 26~~) at the January meeting of the following year.

(4) Election of officers. Elections will be held at the first meeting of the (~~first~~) year in (~~July~~) January. Officers are elected by a majority vote of the voting members present.

(5) Vacancies of officers other than chairperson, shall be filled by election of the voting board members present.

AMENDATORY SECTION (Amending WSR 99-24-029, filed 11/23/99, effective 1/3/00)

WAC 16-750-140 State noxious weed control board—Committees. Standing committees shall fairly reflect the composition of the board and unless advertised and open to the public, not more than four voting members may attend a committee meeting.

(1) Executive committee. An executive committee is authorized to deal with housekeeping and personnel matters, subject to board approval at the next scheduled board meeting. The chairperson appoints the executive committee with approval of the board.

(2) Standing committees. The standing committees of the board are: Budget, executive, noxious weed, and education. The board chairperson appoints the chairperson and other members of each committee.

(3) Ad-hoc committees may be appointed from time to time.

(4) Committee voting procedures.

(a) All members of a particular committee have the right to vote. Other members in attendance may enter into discussion, but shall have no vote.

(b) Proxy voting is not permitted.

(c) All questions decided by the committee will be by majority of the committee members present.

(5) Advisory committees. Advisory committees are established by the board as deemed necessary to the functioning of the board. Advisory committees are limited in their scope to the purposes determined by the board.

(6) Notice. Notice of committee meetings shall be given to the executive secretary.

(7) Committee reports.

(a) Committee reports and recommendations are submitted to the board in writing except when committees meet in conjunction with the board.

(b) Minority reports may be submitted by members of a committee, if signed by those members.

(8) Committee compensation. Board members attending meetings of committees will, upon request, be reimbursed on the same basis as for attendance at regularly called board meetings.

(9) All committee appointments will be reviewed in (~~July~~) January of even-numbered years.

WSR 11-19-106

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed September 21, 2011, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-004.

Title of Rule and Other Identifying Information: Chapter 246-305 WAC, Certification of independent review organizations (IROs).

Hearing Location(s): Department of Health, 310 Israel Road, Tumwater, WA 98501, on October 27, 2011, at 9:00.

Date of Intended Adoption: October 28, 2011.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by October 20, 2011.

Assistance for Persons with Disabilities: Contact Sherry Thomas by October 17, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington state's IRO certification process under chapter 246-305 WAC does not include all the minimum consumer protections required under the 2010 Patient Protection and Affordable Care Act (ACA) and Federal Interim Rules (75 F.R. 43330). The proposed rules will ensure that IROs will continue to use the state process after January 1, 2012. The proposed rules also include general housekeeping edits. On July 29, 2011, the department filed emergency rules on this topic under WSR 11-16-064.

Reasons Supporting Proposal: The department must amend the current IRO rules to comply with the new federal requirements under the ACA and federal interim rules. The Federal Department of Health and Human Services (HHS) has deemed that the state is currently compliant as a result of the emergency rules. The state must adopt permanent rules by January 1, 2012, to retain the deemed status so carriers will continue to use the state's process.

Statutory Authority for Adoption: RCW 43.70.235 and 48.43.535.

Statute Being Implemented: 75 F.R. 43330.

Rule is necessary because of federal law, 75 F.R. 43330 and Section 2719(b) of the Affordable Care Act.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, (360) 236-4612.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

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)(v) exempts

rules the content of which is explicitly and specifically dictated by statute.

September 21, 2011
Gregg J. Grunenfelder
Deputy Secretary
for Mary C. Selecky
Secretary

Chapter 246-305 WAC

CERTIFICATION OF INDEPENDENT REVIEW ORGANIZATIONS (IROs)

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-001 Purpose and scope. (1) Purpose. These rules are adopted by the Washington state department of health to implement the provisions of RCW 43.70.235 regarding the certification of independent review organizations (IROs). Certified (~~(independent review organizations)~~) IROs are qualified to receive referrals from the insurance commissioner or designee under RCW 48.43.535 to make binding determinations related to health care coverage and payment disputes between health insurance carriers and their enrollees.

(2) Other applicable rules. Independent review (~~(also)~~) is also subject to rules of the insurance commissioner implementing RCW 48.43.535.

(3) Applicability. These rules apply to independent review cases originating in Washington state under RCW 48.43.535, and to independent review organizations conducting these reviews.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-010 Definitions. (~~(For the purpose of this chapter, the following words and phrases shall have the following meanings))~~ The definitions in this section apply throughout the chapter unless the context clearly (~~(indicates)~~) requires otherwise.

(1) "Adverse benefit determination" means a (~~(decision by a health carrier to deny, modify, reduce, or terminate coverage of or payment for a health care service for an enrollee))~~ benefit is denied, reduced, or terminated. The basis for these actions or determinations may include:

(a) An enrollee's or applicant's eligibility to participate in a plan or group plan;

(b) Any utilization review; or

(c) Failure to cover an item or service for which benefits are otherwise provided because of a determination that the item or service is experimental, investigational, or not medically necessary or appropriate.

(2) "Applicant" means a person or entity seeking to become a Washington certified (~~(IRO-)~~) independent review organization(~~(s))~~ (IRO).

(3) "Attending provider" includes "treating provider" or "ordering provider" as used in WAC 284-43-620 and 284-43-630.

(4) "Carrier" or "health carrier" has the same meaning in this chapter as in WAC 284-43-130.

(5) "Case" means a dispute relating to a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for health care service for an enrollee, which has been referred to a specific IRO by the insurance commissioner under RCW 48.43.535.

(6) "Clinical peer" means a physician or other health professional who holds an unrestricted license or certification and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category, as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(7) "Clinical reviewer" means a medical reviewer, as defined in this section.

(8) "Conflict of interest" means violation of any provision of WAC 246-305-030, including, but not limited to, material familial, professional and financial affiliations.

(9) "Contract specialist" means a reviewer who deals with interpretation of health plan coverage provisions. If a clinical reviewer is also interpreting health plan coverage provisions, that reviewer (~~(must))~~ shall have the qualifications required of a contract specialist.

(10) "Department" means the Washington state department of health.

(11) "Enrollee" means (~~(a))~~ an "~~(covered person))~~ appellant" as defined in WAC 284-43-130. "Enrollee" also means a person lawfully acting on behalf of the enrollee, including, but not limited to, a parent or guardian.

(12) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(13) "Health care provider" or "provider" means a person practicing health care services consistent with Washington state law, or a person with valid credentials from another state for a similar scope of practice.

~~((13))~~ (14) "Independent review" means the process of review and determination of a case referred to an IRO under RCW 48.43.535.

~~((14))~~ (15) "Independent review organization" or "IRO" means an entity certified by the department under this chapter.

~~((15))~~ (16) "IRO," see independent review organization.

~~((16))~~ (17) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

~~((17))~~ (18) "Material professional affiliation" includes, but is not limited to, any provider-patient relationship, any partnership or employment relationship, or a shareholder or similar ownership interest in a professional corporation.

~~((18))~~ (19) "Material financial affiliation" means any financial interest including employment, contract or consultation which generates more than five percent of total annual revenue or total annual income of an IRO or an individual director, officer, executive or reviewer of the IRO. This

includes a consulting relationship with a manufacturer regarding technology or research support for a specific product.

~~((19))~~ (20) "Medical reviewer" means a physician or other health care provider who is assigned to an external review case by a certified IRO, consistent with this chapter.

~~((20))~~ (21) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical practice of any health profession which complies with one or more of the following requirements:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS data base Health Services Technology Assessment Research (HSTAR);

(c) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861 (t)(2) of the federal Social Security Act;

(d) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, ~~((Health Care Financing Administration))~~ Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(f) Clinical practice guidelines that meet Institute of Medicine criteria; or

(g) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

~~((21))~~ (22) "Referral" means receipt by an IRO of notification from the insurance commissioner or designee that a case has been assigned to that IRO under provisions of RCW 48.43.535.

~~((22))~~ (23) "Reviewer" or "expert reviewer" means a clinical reviewer or a contract specialist, as defined in this section.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-020 General requirements for certification. In order to qualify for certification, an IRO ~~((must))~~ shall:

(1) Submit an application for certification to the department as described in WAC 246-305-080.

(2) Hold a current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process.

(3) Demonstrate expertise and a history of reviewing health care in terms of medical necessity, appropriateness, and the application of other health plan coverage provisions.

~~((2))~~ (4) Demonstrate the ability to handle a full range of review cases occurring in Washington state. Certified IROs may contract with more specialized review organizations; however, the certified IRO ~~((must))~~ shall ensure that each review conducted meets all the requirements of this chapter.

~~((3))~~ (5) Demonstrate capability to review administrative and contractual coverage issues, as well as medical necessity and effectiveness, and the appropriateness of experimental and investigational treatments.

~~((4))~~ (6) Comply with all conflict of interest provisions in WAC 246-305-030.

~~((5))~~ (7) Maintain and assign qualified expert reviewers in compliance with WAC 246-305-040.

~~((6))~~ (8) Conduct reviews, reach determinations and document determinations consistent with WAC 246-305-050 and 246-305-060.

~~((7))~~ (9) Maintain administrative processes and capabilities in compliance with WAC 246-305-070.

~~((8) File an application for certification meeting the requirements of WAC 246-305-080.)~~

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-030 Conflict of interest. (1) An IRO:

(a) Must not be a subsidiary of, or in any way owned or controlled by, a carrier or an association of health care providers or carriers;

(b) ~~((Must))~~ Shall provide information to the department on its own organizational affiliations and potential conflicts of interest at the time of application and when material changes occur;

(c) ~~((Must))~~ Shall immediately turn down a case referred by the insurance commissioner if accepting it would constitute an organizational conflict of interest; and

(d) ~~((Must))~~ Shall ensure that reviewers are free from any actual or potential conflict of interest in assigned cases.

(2) An IRO, as well as its reviewers, must not have any material familial, professional, ~~((familial))~~ or financial affiliation, as defined in WAC 246-305-010, with the health carrier, enrollee, enrollee's provider, that provider's medical or practice group, the facility at which the service would be provided, or the developer or manufacturer of a drug or device under review. An affiliation with any director, officer or executive of an IRO ~~((shall))~~ must be considered to be an affiliation with the IRO.

(3) The following do not constitute violations of this section:

(a) Staff affiliation with an academic medical center or National Cancer Institute-designated clinical cancer research center;

(b) Staff privileges at a health care facility;

(c) Maintaining a provider contract with a carrier which provides no more than five percent of the provider's or clinical group's annual revenue; or

(d) An IRO's receipt of a carrier's payment for independent reviews assigned by the insurance commissioner under RCW 48.43.535.

(4) Notwithstanding the provisions of subsection (3) of this section, a potential reviewer (~~shall~~) must be considered to have a conflict of interest with regard to a facility or health plan, regardless of revenue from that source, if the potential reviewer is a member of a standing committee of: The facility, the health plan, or a provider network that contracts with the health plan.

(5) A conflict of interest may be waived only if both the enrollee and the health plan agree in writing after receiving full disclosure of the conflict, and only if:

(a) The conflict involves a reviewer, and no alternate reviewer with necessary special expertise is available; or

(b) The conflict involves an IRO and the insurance commissioner determines that seeking a waiver of conflict is preferable to reassigning the review to a different IRO.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-040 Expert reviewers. (1) Each IRO (~~must~~) shall maintain an adequate number and range of qualified expert reviewers in order to:

(a) Make determinations regarding the full range of independent review cases occurring in Washington state under RCW 48.43.535; and

(b) Meet timelines specified in WAC 246-305-050(3) including those for expedited review.

(2) All reviewers (~~shall~~) must be health care providers with the exception of contract specialists.

(3) IROs (~~must~~) shall maintain policies and practices that assure that all clinical reviewers:

(a) Hold a current, unrestricted license, certification, or registration in Washington state, or current, unrestricted credentials from another state with substantially comparable requirements, as determined by the department and outlined in the (~~November 2000~~) May 2011 edition of the department of health publication, *Health Care Professional Credentialing Requirements*;

(b) Have at least five years of recent clinical experience;

(c) Are board-certified in the case of a medical doctor, a doctor of osteopathy, a podiatrist, or a member of another profession in which board certification exists as determined by the department of health; and

(d) Have the ability to apply scientific standards of evidence in judging research literature pertinent to review issues, as demonstrated through relevant training or professional experience.

(4) Contract specialists must be knowledgeable in health insurance contract law, as evidenced by training and experience, but do not need to be an attorney or have any state credential.

(5) Assignment of appropriate reviewers to a case.

(a) An IRO shall assign one or more expert reviewer to each case, as necessary to meet requirements of this subsection.

(b) Any reviewer assigned to a case (~~must~~) shall comply with the conflict of interest provisions in WAC 246-305-030.

(c) The IRO shall assign one or more clinical reviewers to each case. (~~At least one~~) All clinical reviewers assigned to (~~each~~) a case (~~must~~) shall each meet (~~each of~~) the following requirements:

(i) (~~Have expertise to address each of the issues that are the source of the dispute;~~

~~(ii) Be~~) A clinical peer as defined in WAC 246-305-010(6);

(ii) An expert in the treatment of the enrollee's medical condition that is the subject of the external review;

(iii) Knowledgeable about the recommended health care service or treatment through five years of recent or current actual clinical experience treating patients with the same or similar medical condition of the enrollee. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement; and

~~(iii)~~ (iv) Have the ability to evaluate alternatives to the proposed treatment.

~~(d) (All clinical reviewers assigned must have at least five years of recent clinical experience dealing with the same health conditions under review or similar conditions. Exceptions may be made to this requirement in unusual situations when the only experts available for a highly specialized review are in academic or research life and do not meet the clinical experience requirement.~~

~~(e))~~ If contract interpretation issues must be addressed, a contract specialist must be assigned to the review.

~~(f))~~ (e) Each IRO (~~must~~) shall have a policy specifying the number and qualifications of reviewers to be assigned to each case. The number of expert reviewers should be dictated by what it takes to meet the requirements of this subsection.

(i) The number of expert reviewers should reflect the complexity of the case, the goal of avoiding unnecessary cost, and the need to avoid tie votes.

(ii) The IRO may consider, but shall not be bound by, recommendations regarding complexity from the carrier or attending provider.

(iii) Special attention should be given to situations such as review of experimental and investigational treatments that may benefit from an expanded panel.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-050 Independent review process. (1) Information for review.

(a) IROs (~~must~~) shall, as necessary, request (~~as necessary~~), accept, and consider the following information as relevant to a case (~~referred~~):

(i) Information that the carrier is required to submit to the IRO under WAC 284-43-630, including information

identified in that section that is initially missing or incomplete as submitted by the carrier.

(ii) Other medical, scientific, and cost-effectiveness evidence which is relevant to the case. For the purposes of this section, medical, scientific, and cost-effectiveness evidence has the meaning ~~((assigned))~~ defined in WAC 246-305-010.

(b) After referral of a case, an IRO ~~((must))~~ shall accept additional information from the enrollee, the carrier, or a provider acting on behalf of the enrollee or at the enrollee's request, provided the information is submitted within ~~((seven calendar))~~ five business days of the referral or, in the case of an expedited referral, within twenty-four hours. The additional information must be related to the case and relevant to statutory criteria.

(c) The IRO shall forward this information to the carrier within one business day of receipt of the information.

(2) Completion of reviews~~((±))~~. Once the insurance commissioner or designee refers a review, the IRO ~~((must))~~ shall proceed to final determination unless requested otherwise by both the carrier and the enrollee or the carrier notifies the IRO it has reversed its adverse benefit determination.

(3) Time frames for reviews.

(a) An IRO ~~((must))~~ shall make its determination within the following time limits:

(i) If the review is not expedited, within fifteen days after receiving necessary information, or within twenty days after receiving the referral, whichever is earlier. In exceptional circumstances where information is incomplete, the determination may be delayed until no later than twenty-five days after receiving the referral.

(ii) If the review is expedited, as defined in WAC 284-43-625, within seventy-two hours after receiving ~~((all necessary information, or within eight days after receiving))~~ the referral~~((, whichever is earlier. Expedited time frames apply when a condition could seriously jeopardize the enrollee's health or ability to regain maximum function, as determined consistent with WAC 284-43-620))~~. If information on whether a referral is expedited is not provided to the IRO, the IRO may presume that it is not an expedited review, but the IRO has the option to seek clarification from the insurance commissioner or designee.

(b) An IRO ~~((must))~~ shall provide notice to enrollees and the carrier of the result and basis for the determination, consistent with subsection (5) of this section, within two business days of making a determination in regular cases and immediately in expedited cases.

(c) As used in this subsection, a day is a calendar day, except that if the period ends on a weekend or an official Washington state holiday, the time limit is extended to the next business day. A business day is any day other than Saturday, Sunday or an official Washington state holiday.

(4) Decision-making procedures.

(a) The independent review process is intended to be neutral and independent of influence by any affected party or by state government. The department may conduct investigations under the provisions of this chapter but the department has no involvement in the disposition of specific cases.

(b) Independent review is a paper review process. These rules do not establish a right to in-person participation or

attendance by the enrollee, the health plan, or the attending provider nor to reconsideration of IRO determinations.

(c) An IRO shall present cases to reviewers in a way that maximizes the likelihood of a clear, unambiguous determination. This may involve stating or restating the questions for review in a clear and precise manner that encourages yes or no answers.

(d) If more than one reviewer is used, the IRO shall:

(i) Provide an opportunity for the reviewers to exchange ideas and opinions about the case with one another, if requested by a reviewer. This ~~((shall))~~ must be done in a manner that avoids pressure on reviewers to take a position with which they do not agree and preserves a dissenting reviewer's opportunity to document the rationale for dissent in the case file.

(ii) Accept the majority decision of the clinical reviewers in determining clinical issues.

(e) When a case requires an interpretation regarding the application of health plan coverage provisions, that determination ~~((shall))~~ must be made by a reviewer or reviewers who are qualified as contract specialists.

(f) An IRO may uphold an adverse benefit determination if the patient or any provider refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond. An IRO may overturn an adverse benefit determination if the carrier refuses to provide relevant medical records that are available and have been requested with reasonable opportunity to respond.

(g) If reviewers are deadlocked, the IRO may add another reviewer if time allows.

(h) If all pertinent information has been disclosed and reviewers are unable to make a determination, the IRO shall decide in favor of the enrollee.

(5) Notification and documentation of determinations. An IRO ~~((must))~~ shall notify the enrollee and the carrier of the result and rationale for the determination, including its clinical basis unless the decision is wholly based on application of coverage provisions, within the time frame in subsection (3)(b) of this section.

(a) Documentation of the basis for the determination shall include references to ~~((support))~~ supporting evidence, and if applicable, the rationale for any interpretation regarding the application of health plan coverage provisions.

(b) If the determination overrides the health plan's medical necessity or appropriateness standards, the rationale shall document why the health plan's standards are unreasonable or inconsistent with sound, evidence-based medical practice.

(c) The written report shall include the qualifications of reviewers but shall not disclose the identity of the reviewers.

(d) Notification of the determination ~~((shall))~~ must be provided initially by ~~((phone))~~ telephone, e-mail, or ~~((fax))~~ facsimile, followed by a written report by mail. In the case of expedited reviews the initial notification ~~((shall))~~ must be immediate and by ~~((phone))~~ telephone.

NEW SECTION

WAC 246-305-051 Additional requirements for experimental or investigational treatment reviews. (1) In addition to the qualifications listed in WAC 246-305-040 (3)

and (5), at least part of the clinical reviewers' relevant, recent clinical experience must have been obtained in the past three years.

(2) Each clinical reviewer shall consider the following information, if appropriate and available, in reaching an opinion:

- (a) The enrollee's pertinent medical records;
 - (b) The attending physician or health care provider's recommendation;
 - (c) Consulting reports from appropriate health care providers and other documents submitted by the carrier, enrollee, or enrollee's authorized representative, or the enrollee's treating physician or health care provider; and
 - (d) Whether:
 - (i) The terms of coverage under the enrollee's health benefit plan would have covered the treatment had the carrier not determined that the treatment was experimental or investigational;
 - (ii) The recommended or requested health care service or treatment has been approved by the federal Food and Drug Administration, if applicable, for the condition; or
 - (iii) Medical or scientific evidence or evidence-based standards demonstrate that the recommended or requested health care service or treatment is more likely than any available standard health care service or treatment to be beneficial to the enrollee and the adverse risks would not be substantially increased over those of available standard health care services or treatments.
- (3) Clinical reviewers shall include the following in their written opinions to the IRO:
- (a) A description of the enrollee's medical condition;
 - (b) A description of the indicators relevant to determining whether there is sufficient evidence to demonstrate that the recommended or requested health care service or treatment is likely to be more beneficial to the enrollee than any available standard health care services or treatments and the adverse risks would not be substantially increased over those of available standard health care services or treatments;
 - (c) A description and analysis of any medical, scientific evidence, or cost-effectiveness evidence as defined in WAC 246-305-010(21);
 - (d) A description and analysis of any evidence-based standard as defined in WAC 246-305-010(12); and
 - (e) Information on whether the reviewer's rationale for the opinion is based on subsection (2)(e)(i) or (ii) of this section.
- (4) IROs shall include the following in their notification of the results and rationale for the determination:
- (a) A general description of the reason for the request for external review;
 - (b) The written opinion of each clinical reviewer, including whether the recommended or requested health care service or treatment should be covered and the rationale for each reviewer's recommendation;
 - (c) The date the review was requested;
 - (d) The date the review was conducted;
 - (e) The date of the IRO's decision;
 - (f) The principle reason or reasons for the IRO's decision; and
 - (g) The rationale for the IRO's decision.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-060 Criteria and considerations for independent review determinations. (1) General criteria and considerations.

(a) ~~((An IRO's))~~ The determination must ~~((use fair procedures and))~~ be consistent with the standards in RCW 43.70.235, 48.43.535, and ~~((this))~~ chapter 246-305 WAC.

(b) The expert reviewers from a certified IRO will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee.

(c) The IRO ~~((must))~~ shall ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement.

(i) Clinical reviewers may override the health plan's medical necessity or appropriateness standards only if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice, or experimental or investigational treatment protocols.

(ii) Reviewers may make determinations about the application of general health plan coverage provisions to specific issues concerning health care services for an enrollee. For example, whether a specific service is excluded by more general benefit exclusion language may require independent interpretation.

(2) Medical necessity and appropriateness—Criteria and considerations. Only clinical reviewers may determine whether a service, which is the subject of an adverse decision, is medically necessary and appropriate. These determinations must be based upon their expert clinical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in ~~((the))~~ Washington state ~~((of Washington))~~.

(a) Medical standards of practice include the standards appropriately applied to physicians or other health care providers, as pertinent to the case.

(b) In considering medical standards of practice within ~~((the))~~ Washington state ~~((of Washington))~~:

(i) Clinical reviewers may use national standards of care, absent evidence presented by the health plan or enrollee that the Washington state standard of care is different.

(ii) A health care service or treatment should be considered part of the Washington state standard of practice if reviewers believe that failure to provide it would be inconsistent with that degree of care, skill and learning expected of a reasonably prudent health care provider acting in the same or similar circumstances.

(c) Medical necessity will be a factor in most cases referred to an IRO, but not necessarily in all. See WAC 246-305-060(3).

(3) Health plan coverage provisions—Criteria and considerations. The following requirements ~~((shall))~~ must be observed when a review requires making determinations about the application of health plan coverage provisions to issues concerning health care services for an enrollee.

(a) These determinations ~~((shall))~~ must be made by one or more contract specialists meeting the requirements of WAC 246-305-040(4), except that a clinical determination of medical necessity or appropriateness, by itself, is not an inter-

pretation of the scope of covered benefits and does not require a contract specialist.

(b) If the full health plan coverage agreement has not already been provided by the carrier (~~((pursuant to))~~) under WAC 284-43-630 (2)(f) of the insurance commissioner, the IRO shall request additional provisions from the health plan coverage agreement in effect during the relevant period of the enrollee's coverage, as necessary to have an adequate context for determinations.

(c) In general, the IRO and its contract specialists may assume that the contractual health plan coverage provisions themselves are consistent with the Washington Insurance Code (Title 48 RCW), absent information to the contrary. Primary responsibility for determining consistency with the insurance code, when at issue, rests with the insurance commissioner.

(4) No provision of this chapter should be interpreted to establish a standard of medical care, or to create or eliminate any cause of action.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-070 Administrative processes and capabilities of ~~((independent review organizations))~~ IROs. (1) An IRO (~~((must))~~) shall maintain written policies and procedures covering all aspects of review.

(2) An IRO (~~((must))~~) shall ensure the confidentiality of medical records and other personal health information received for use in independent reviews, in accordance with applicable federal and state laws.

(3) An IRO (~~((must))~~) shall have a quality assurance (~~((mechanism))~~) program that ensures the timeliness, quality of review, and communication of determinations to enrollees and carriers. The (~~((mechanism must also))~~) quality assurance program must ensure the qualifications, impartiality, and freedom from conflict of interest of the organization, its staff, and expert reviewers.

(a) The quality assurance program must include a written plan addressing scope and objectives, program organization, monitoring and oversight mechanisms, and evaluation and organizational improvement of IRO activities.

(b) Quality of reviews includes use of appropriate methods to match the case, confidentiality, and systematic evaluation of complaints for patterns or trends. Complaints must be recorded on a log, including the nature of the complaint and (~~((how resolved))~~) the resolution. The department reserves the right to examine both the complaints and the log.

(c) Organizational improvement efforts must include the implementation of action plans to improve or correct identified problems, and communication of the results of action plans to staff and reviewers.

(4) An IRO (~~((must))~~) shall maintain case logs and case files with full documentation of referrals, reviewers, questions posed, information considered (including sources of the information and citations of studies or criteria), determinations and their rationale, communication with parties in the dispute including notices given, and key dates in the process, for at least (~~((two))~~) three years following the review.

(5) An IRO (~~((must))~~) shall maintain a training program for staff and expert reviewers, addressing at least:

(a) Confidentiality;

(b) Neutrality and conflict of interest;

(c) Appropriate conduct of reviews;

(d) Documentation of evidence for determination; and

(e) In the case of contract specialists, principles of health contract law and any provisions of Washington state law determined to be essential.

(6) An IRO (~~((must))~~) shall maintain business hours, methods of contact (including by telephone), procedures for after-hours requests, and other relevant procedures to ensure timely availability to conduct expedited as well as regular reviews.

(7) An IRO shall not disclose reviewers' identities. The department will not require reviewers' identities as part of the certification application process, but may examine identified information about reviewers as part of enforcement activities.

(8) An IRO shall promptly report any attempt at interference by any party, including a state agency, to the department.

(9) An IRO shall have a medical director who holds a current unrestricted license as a medical doctor or osteopathic physician and has had experience in direct patient care. The medical director shall provide guidance for clinical aspects of the independent review process and oversee the IRO's quality assurance and credentialing programs.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-080 Application for certification as an ~~((independent review organization))~~ IRO. (1) To be certified as an (~~((independent review organization))~~) IRO under this chapter, an organization (~~((must))~~) shall submit to the department an application (~~((it))~~) on the form required by the department. The application must include:

(a) For an applicant that is publicly held, the name of each stockholder or owner of more than five percent of any stock or options;

(b) The name of any holder of bonds or notes of the applicant that exceed one hundred thousand dollars;

(c) The name and type of business of each corporation or other organization that the applicant controls or is affiliated with and the nature and extent of the affiliation or control;

(d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under (c) of this subsection and a description of any relationship the named individual has with:

(i) A carrier;

(ii) A utilization review agent;

(iii) A nonprofit or for-profit health corporation;

(iv) A health care provider;

(v) A drug or device manufacturer; or

(d)(i) through (v) of this subsection;

(e) The percentage of the applicant's revenues that the applicant anticipates will be derived from reviews conducted under RCW 48.43.535;

(f) A description of the areas of expertise of the health care professionals and contract specialists making review determinations for the applicant, as well as the IRO's policies and standards addressing qualifications, training, and assignment of all types of reviewers;

(g) The procedures that the ~~((independent review organization))~~ IRO will use in making review determinations regarding reviews conducted under RCW 48.43.535;

(h) Attestations that all requirements will be met;

(i) Evidence of ~~((accreditations, certifications, and government IRO contracts that the applicant believes demonstrate compliance with certain requirements of this chapter))~~ current accreditation from a nationally recognized private accrediting organization acceptable to the federal Department of Health and Human Services or Department of Labor for the federal external review process.

(i) Applicants ~~((must))~~ shall authorize release of information from primary sources, including full reports of site visits, inspections, and audits;

(ii) The department may require the applicant to indicate which documents demonstrate compliance with specific Washington state certification requirements under this chapter.

(j) Other documentation, including, but not limited to, legal and financial information, policies and procedures, and data that are pertinent to requirements of this chapter; and

(k) Any other reasonable application requirements demonstrating ability to meet all requirements for certification in Washington state.

(2) Department investigation and verification activities regarding the applicant may include, but are not limited to:

(a) Review of application and filings for completeness and compliance with standards;

(b) On-site survey or examination;

(c) Primary-source verification with accreditation or regulatory bodies of compliance with requirements which are used to demonstrate compliance with certain standards in this chapter;

(d) Other means of determining regulatory and accreditation histories; and

(e) Exercising any power of the department under WAC 246-305-100.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-090 Ongoing requirements for ~~((independent review organizations))~~ IROs. A certified IRO shall:

(1) Comply with the provisions of RCW 43.70.235, 48.43.535(5), and this chapter;

(2) Cooperate with the department during investigations;

(3) Provide the department with information requested in a prompt manner;

(4) Conduct annual self-assessments of compliance with Washington certification requirements;

(5) ~~((File))~~ Submit an annual statistical report with the department on a form specified by the department summarizing reviews conducted. The report shall include, but may not be limited to, volumes, types of cases, compliance with time-

lines for expedited and nonexpedited cases, determinations, number and nature of complaints, and compliance with the conflict of interest~~((s-rules))~~ requirements described in WAC 246-305-030.

(6) Submit updated information to the department if at any time there is a material change in the information included in the application.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-100 Powers of the department. (1) The department may deny, suspend, revoke, or modify certification of an IRO if the department has reason to believe the applicant, certified IRO, its agents, officers, directors, or any person with any interest ~~((therein))~~ in the IRO has failed or refused to comply with the requirements established under this chapter.

(2) The department may conduct an on-site review, audit, and examine records to investigate complaints alleging that an applicant, certified IRO, or reviewer committed any conduct described in WAC 246-305-110.

AMENDATORY SECTION (Amending WSR 01-08-023, filed 3/28/01, effective 4/28/01)

WAC 246-305-110 Grounds for action against an applicant or a certified IRO. (1) The department may deny an application for certification, or suspend, revoke, or modify certification if the applicant, certified IRO, its agents, officers, directors, or any person with any interest ~~((therein))~~:

(a) Knowingly or with reason to know makes a misrepresentation of, false statement of, or fails to disclose, a material fact to the department. This applies to any data attached to any record requested or required by the department or matter under investigation or in a ~~((self-inspection))~~ self-assessment;

(b) Obtains or attempts to obtain certification by fraudulent means or misrepresentation;

(c) Fails or refuses to comply with the requirements of RCW 43.70.235, 48.43.535(5), or this chapter;

(d) Conducts business or advertising in a misleading or fraudulent manner;

(e) Refuses to allow the department access to records, or fails to promptly produce for inspection any book, record, document, or item requested by the department, or willfully interferes with an investigation;

(f) Accepts referral of cases from the insurance commissioner under RCW 48.43.535 without certification, or with certification which has been terminated, or is subject to sanction;

(g) Was the holder of a license, certification, or contract issued by the department or by any competent authority in any state, federal, or foreign jurisdiction that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(h) Had accreditation from a recognized national or state IRO accrediting body that was terminated for cause and never reissued, or sanctioned for cause and the terms of the sanction have not been fulfilled;

(i) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes, but is not limited to: Willful misrepresentation of facts during an investigation, or administrative proceeding, or any other legal action; or use of threats or harassment against any patient, client, customer, or witness; or use of financial inducements to any patient, client, customer, or witness to prevent or attempt to prevent him or her from providing evidence during an investigation, in an administrative proceeding, or any other legal action involving the department;

(j) Willfully prevents or interferes with any department representative in the preservation of evidence;

(k) Misrepresented or was fraudulent in any aspect of the conduct of business;

(l) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an IRO;

(m) Violates any state or federal statute, or administrative rule regulating the IRO;

(n) Fails to comply with an order issued by the secretary of the department of health or designee;

(o) Uses interference, coercion, discrimination, reprisal, or retaliation against a patient, client, or customer exercising his or her rights;

(p) Offers, gives, or promises anything of value or benefit to any federal, state, or local employee or official for the purpose of influencing that employee or official to circumvent federal, state, or local laws, regulations, or ordinances governing the certification holder or applicant;

(2) A person, including, but not limited to, enrollees, carriers, and providers, may submit a written complaint to the department alleging that a certified IRO committed conduct described in this section.

(3) An applicant or certified IRO may contest a department decision or action according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

AMENDATORY SECTION (Amending WSR 05-24-029, filed 11/30/05, effective 12/31/05)

WAC 246-305-990 Maximum fee schedule. This section sets the maximum fee schedule for independent reviews, and the process of review and determination of a case referred to an independent review organization (IRO).

(1) IROs may not charge more than the following amount for each review:

Category	Amount
Contract review, interpretation of health plan coverage provisions	\$600
Standard medical review, straightforward review of medical necessity or adverse determination	\$700
Highly specialized medical review of complex conditions or experimental or investigational treatment	\$1000

Category	Amount
Medical review with multiple reviewers	\$1100
Surcharge for expedited review	\$200

The fees in this section include all costs for time and materials associated with the review including, but not limited to:

(a) Record transmission expenses such as postage and facsimile costs; and

(b) Medical record handling and duplication.

(2) If the IRO and the health care plan agree in advance that the referral includes both a contract review and a medical review, the IRO may charge both fees.

(3) If an IRO charges more than the maximum fees allowed under this section, the department may take action as described in WAC 246-305-110.

WSR 11-19-107
PROPOSED RULES
HEALTH CARE AUTHORITY
 (Public Employees Benefits Board)

[Order 11-02—Filed September 21, 2011, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-081.

Title of Rule and Other Identifying Information: Rules related to enrollment in chapter 182-08 WAC; eligibility in chapter 182-12 WAC; and appeals in chapter 182-16 WAC.

Hearing Location(s): Health Care Authority, Cherry Street Plaza Building, Conference Room 106A (Apple Room), 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on October 25, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 26, 2011.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on October 25, 2011.

Assistance for Persons with Disabilities: Contact Kelly Richters by October 18, 2011, TTY/TDD (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Annual review of public employees benefits board (PEBB) rules.

These proposed amendments will:

1. Clarify the administration of premium refunds and the disposition of employee premiums if a state agency does not provide notice of eligibility to an employee or fails to enroll an employee as required and add instruction for making a correction.

2. Align administration of special enrollment rules, the employee waiver rule and the date coverage begins or ends to federal regulations and the state of Washington salary reduction plan.

3. Implement state legislation, including implementation of a health savings account.

4. Implement the PEBB policy designating uniform medical plan (UMP) classic as the medical plan employees will be enrolled in if they fail to select a medical plan when newly eligible.

5. Provide a deadline for employees to notify the DCAP or FSA administrator of their transfer to another state agency.

6. Remove the requirement for a retiree to maintain enrollment in retiree life insurance while eligible for the employer contribution toward PEBB active employee life insurance.

7. Make the rules clearer and technically correct. This includes minor editing and the following specific changes:

a. Several titles are amended to be more congruent with the content.

b. WAC 182-12-208 now reflects the contractual requirement for retirees to maintain dental enrollment for two years.

c. To prevent confusion, WAC 182-08-196 no longer refers to UMP.

d. WAC 182-12-171 "age requirement" and "length of service" are replaced with "retirement eligibility criteria."

e. Clarify that employer group life insurance and long-term disability appeals go to the PEBB appeals committee.

f. Removed reference to the timeframe for enrollment in long-term care coverage from WAC 182-08-197.

Reasons Supporting Proposal: Comply with federal regulation, implement state legislation and manage budget short-falls.

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: Chapter 8, Laws of 2011 (2ESB 5773).

Rule is necessary because of federal law, HIPAA, PPACA, IRC.

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Barbara Scott, 676 Woodland Square Loop, Lacey, WA, (360) 923-2642; and Enforcement: Mary Fliss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2640.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee (JARRC) has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by JARRC or applied voluntarily.

September 21, 2011

Kevin M. Sullivan

Rules Coordinator

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

~~("Administrator" means the administrator of the health care authority (HCA) or designee.)~~

"Agency" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the health care authority (HCA) or designee.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical col-

leges, and includes the higher education personnel board and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the ~~((administrator))~~ director, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The ~~((administrator))~~ director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB program within the HCA.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees of the state (as defined in WAC 182-12-114), eligible retired and disabled employees of the state (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group coverage or is on approved educational leave (see WAC 182-12-128 and 182-12-136).

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-08-180 Premium payments and premium refunds.

Premium payments. PEBB premiums ~~((for retiree, COBRA or PEBB continuation coverage))~~ begin to accrue the first of the month in which PEBB insurance coverage is effective.

Premium is due for the entire month of insurance coverage and will not be prorated during ~~((the))~~ any month ~~((of death or loss of eligibility of the enrollee except for life insurance premiums when the individual is eligible for life conversion))~~.

(1) A newly eligible employee must complete the appropriate enrollment forms to enroll or waive coverage within thirty-one days after becoming eligible as described in WAC 182-08-197.

(a) If an employing agency does not notify an employee of his or her eligibility for benefits, as required in WAC 182-12-113, until after the thirty-one-day period has expired, the employing agency must:

(i) Notify the employee of his or her eligibility for PEBB benefits as described in WAC 182-08-197(3); and

(ii) Remit both the employer contribution and the employee contribution for medical premiums from the date benefits begin as described in WAC 182-12-114 to the HCA. A state agency may not collect from the employee any por-

tion of the medical premium for months prior to the state agency's notification to the employee.

(b) If an employing agency fails to enroll an employee as required in WAC 182-08-197, the employing agency must:

(i) Correct the enrollment error; and

(ii) Remit both the employer contribution and the employee contribution for medical premiums due for insurance coverage from the date PEBB benefits begin as described in WAC 182-12-114 to the HCA. A state agency may only collect the employee contribution for medical premiums for the three months prior to the month the state agency corrects the error.

(c) If an employee elects optional coverage described in WAC 182-08-197 (2)(a) or (b), the employee is responsible for premiums from the month that the optional coverage begins.

Premium refunds. PEBB premiums ((for employees, retirees, COBRA, or PEBB continuation coverage)) will be refunded using the following method:

((H)) (2) When ((any PEBB)) a subscriber submits an enrollment change affecting subscriber or dependent eligibility, ((such as for example: Death, divorce, or when no longer an eligible dependent as defined at WAC 182-12-260 no more than)) HCA may allow up to three months of accounting adjustments ((and)). HCA will refund to the individual or the employing agency any excess premium paid ((will be refunded to any individual or employing agency)) during the three month adjustment period, except as indicated in WAC 182-12-148(4).

((2) Notwithstanding subsection (1) of this section, the PEBB assistant administrator)) (3) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-025, the PEBB assistant director or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium ((if both)). The written appeal must provide proof of the following ((œœur)):

((a) The PEBB subscriber or a dependent or beneficiary of a subscriber submits a written appeal to the PEBB appeals committee; and

(b) Proof is provided that)) Extraordinary circumstances beyond the control of the subscriber, dependent or beneficiary made it virtually impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium.

((3) Errors resulting in)) (4) If a federal government entity retroactively determines that an enrollee is enrolled in coverage (for example medicare) the subscriber or beneficiary may be eligible for a refund of all premiums paid during the time he or she was enrolled under the federal program if approved by the PEBB assistant director or designee.

(5) Accounts reflecting an underpayment to HCA must be ((reimbursed by)) paid, and are due from the employing agency ((œ)), subscriber or beneficiary to the HCA. Upon request ((of an employing agency, subscriber, or beneficiary, as appropriate)), the HCA ((will)) may develop a repayment plan designed ((not)) to ((create undue)) reduce hardship ((œ the employing agency or subscriber)).

((4)) (6) HCA errors will be ((adjusted)) corrected by returning ((the)) all excess premiums paid((- if any, to)) by

the employing agency, subscriber, or beneficiary((- as appropriate)).

(7) Employing agency errors will be corrected by returning all excess premiums paid by the employee or beneficiary.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-08-196 What happens if my health plan becomes unavailable? ((Employees, retirees and survivors, and enrollees in PEBB continuation coverage for whom the))

(1) Subscribers must select a new health plan within sixty days of their chosen health plan ((becomes)) becoming unavailable due to a change in contracting service area or the ((retiree's entitlement to)) subscriber or subscriber's dependent ceasing to be eligible because of his or her enrollment in medicare ((must select a new health plan within sixty days after notification by the PEBB program.

(H)) (a) Employees must notify their employing agency of their new health plan choice.

(b) All other subscribers must notify the PEBB program of their new health plan choice.

(c) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received.

(2) The PEBB program will change health plan enrollment as follows if the subscriber fails to select a new health plan as required under subsection (1) of this section:

(a) Employees who fail to select a new ((medical or dental)) health plan within the ((prescribed)) required time period will be enrolled in a successor plan if one is available or will be enrolled in ((the Uniform Medical Plan, the Uniform Dental Plan, or)) a plan ((selected)) designated by the ((administrator, along with the employee's existing dependent enrollment)) director.

((2) Retirees and survivors eligible under WAC 182-12-250 or 182-12-265)) (b) All other subscribers who fail to select a new health plan within the ((prescribed)) required time period will be enrolled in a successor plan if one is available ((or will be enrolled in the Uniform Medical Plan, and the Uniform Dental Plan,)) or a plan ((selected)) designated by the ((administrator)) director.

(3) Any subscriber ((assigned to)) enrolled in a health plan as described in subsection (2) of this ((rule)) section may not change health plans ((until the next open enrollment)) except as allowed in WAC 182-08-198.

((3) Enrollees in PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, or 182-12-270(2) must select a new health plan no later than sixty days after notification by the PEBB program. If enrollees fail to select a new health plan within sixty days of the notification, health plan coverage will end as of the last day of the month in which the plan is available.))

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-08-197 When must newly eligible employees select PEBB benefits and complete enrollment forms?

(1) Employees who are newly eligible for PEBB benefits

must complete the appropriate forms indicating enrollment and their health plan choice, or their decision to waive medical under WAC 182-12-128. Employees must return the forms to their employing agency no later than thirty-one days after they become eligible for PEBB benefits under WAC 182-12-114. Newly eligible employees who do not return an enrollment form to their employing agency indicating their medical and dental choice within thirty-one days will be enrolled in a health plan as follows:

(a) Medical enrollment will be Uniform Medical Plan Classic;

(b) Dental enrollment (if the employer group participates in PEBB dental) will be Uniform Dental Plan; and

(c) Dependents will not be enrolled.

(2) Employees who are newly eligible may enroll in optional insurance coverage (except for employees of employer groups that do not participate in life insurance or long-term disability insurance).

(a) To enroll in the amounts of optional life insurance available without health underwriting, employees must return a completed life insurance enrollment form to their employing agency no later than sixty days after becoming eligible for PEBB benefits.

(b) To enroll in optional long-term disability insurance without health underwriting, employees must return a completed long-term disability enrollment form to their employing agency no later than thirty-one days after becoming eligible for PEBB benefits.

~~(c) ((To enroll in long-term care insurance with limited health underwriting, employees must return a completed long-term care enrollment form to the contracted vendor no later than thirty-one days after becoming eligible for PEBB benefits.~~

~~((d))~~ Employees may apply for optional life~~((;))~~ and optional long-term disability~~((, and long-term care))~~ insurance at any time by providing evidence of insurability and receiving approval from the contracted vendor.

(3) If an employing agency does not notify a newly eligible employee of his or her eligibility for PEBB benefits, as required in WAC 182-12-113, until after the thirty-one-day period described in subsection (1) of this section has expired, then the following must occur:

(a) The employing agency must notify the employee of his or her eligibility for PEBB benefits and his or her requirement to complete and return enrollment forms.

(b) The employee must complete and return the appropriate forms as follows:

(i) An enrollment form indicating enrollment and health plan choice (if applicable indicating a decision to waive medical) no later than thirty-one days from the date of the employing agency's notice to the employee;

(ii) To enroll in optional coverage, a life insurance enrollment form no later than sixty days from the date of the employing agency's notice to the employee and a long-term disability insurance enrollment form no later than thirty-one days from the date of the employing agency's notice to the employee.

(c) Employees who do not return the appropriate forms to their employing agency indicating their medical and dental

choice will be enrolled in a health plan according to subsection (1)(a), (b), and (c) of this section.

(d) Employees who do not return the appropriate forms to their employing agency indicating optional coverage elections, are not eligible to enroll in optional coverage, except as described in subsection (2)(c) of this section.

(4) Employees who are eligible to participate in the state's salary reduction plan (see WAC 182-12-116) will ~~((be))~~ automatically ~~((enrolled))~~ enroll in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, new employees must complete the appropriate form and return it to their ~~((employing))~~ state agency no later than thirty-one days after they become eligible for PEBB benefits.

~~((4))~~ (5) Employees who are eligible to participate in the state's salary reduction plan may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both. To enroll in these optional PEBB benefits, employees must return the appropriate enrollment forms to their ~~((employing))~~ state agency or PEBB designee no later than thirty-one days after becoming eligible for PEBB benefits.

~~((5))~~ (6) The employer contribution toward insurance coverage ends according to WAC 182-12-131. Employees who become newly eligible for the employer contribution enroll as described in subsections (1) and (2) of this section, with the following exceptions in which insurance coverage elections stay the same:

(a) When an employee transfers from one employing agency to another employing agency without a break in state service. This includes movement of employees between any entities described in WAC 182-12-111 and participating in PEBB benefits.

(b) When employees have a break in state service that does not interrupt their employer contribution toward PEBB insurance coverage.

(c) When employees continue insurance coverage by self-paying the full premium under WAC 182-12-133(1) or 182-12-142 and become newly eligible for the employer contribution before the end of the maximum number of months allowed for continuing PEBB health plan enrollment under those rules. Employees who are eligible to continue optional life or optional long-term disability under continuation coverage but discontinue that insurance coverage are subject to the insurance underwriting requirements if they apply for the insurance when they return to work or become eligible again for the employer contribution.

~~((6))~~ (7) When an employee's employment ends, participation in the state's salary reduction plan ends. If the employee is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or FSA administrator of his or her employment transfer within the current plan year.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-08-198 When may a subscriber change health plans? Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the annual open enrollment. The subscriber must submit the appropriate enrollment forms to change health plan no later than the end of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to the event that creates the special open enrollment for either the subscriber or the subscriber's dependents or both. To make a health plan change, the subscriber must submit the appropriate enrollment forms (and a completed disenrollment form, if required) no later than sixty days after the event occurs. Employees submit the enrollment forms to their employing agency. All other subscribers (~~including retirees, COBRA, and other self-pay subscribers,~~) submit the enrollment forms to the PEBB program. Insurance coverage in the new health plan will begin the first day of the month following the ~~((event that created the special open enrollment, or in cases where the event occurs on the first day of the month, insurance coverage will begin on that date))~~ later of the event date or the date the form is received. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, insurance coverage will begin the month in which the ~~((event))~~ birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) ~~((Subscriber's))~~ Subscriber acquires a new dependent (becomes eligible under PEBB rules) due to:

(i) ~~((Through))~~ Marriage or registering a domestic partnership with Washington's secretary of state;

(ii) ~~((Through))~~ Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) ~~((When))~~ A child (becomes) becoming eligible as (an extended) a dependent with a disability;

(b) ~~((Subscriber's dependent no longer meets PEBB eligibility criteria because:~~

(i) ~~Subscriber has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;~~

(ii) ~~A child dependent turns age twenty six;~~

(iii) ~~A child dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or~~

(iv) ~~A dependent dies;~~

(c) ~~((e))~~ Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

~~((d))~~ (c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or ((a)) the subscriber's dependent's eligibility for the employer contribution toward group health coverage ((or the employer contribution toward insurance coverage));

~~((e))~~ (d) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location ((but)) the subscriber ((does not)) must select a new health plan. If the subscriber does not select a new health plan, the PEBB program may ((enroll)) change the ((subscriber in the Uniform Medical Plan or Uniform Dental Plan)) subscriber's health plan as described in WAC 182-08-196;

~~((f))~~ (e) Subscriber receives a court order or medical support order requiring the subscriber, the subscriber's spouse, or the subscriber's Washington state registered domestic partner to provide insurance coverage for an eligible dependent (a former spouse or former registered domestic partner is not an eligible dependent);

~~((g))~~ (f) Subscriber or a subscriber's dependent becomes eligible for ((a medical)) state premium assistance ((program under the department of social and health services, including) through medicaid or ((the)) a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility ((a medical assistance program)) for coverage under medicaid or CHIP;

~~((h))~~ Seasonal employees whose off-season occurs during the annual open enrollment. They may select a new health plan upon their return to work;

(i) ~~((g))~~ (g) Subscriber or ((an eligible)) a subscriber's dependent becomes entitled to medicare, enrolls in or disenrolls from a medicare Part D plan. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-08-196;

(h) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). HCA may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

~~((i))~~ (i) Subscriber experiences a disruption that could function as a reduction in benefits for the subscriber or the subscriber's dependent(s) due to a specific condition or ongoing course of treatment. A subscriber may not change their health plan if the subscriber's or an enrolled dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program criteria used will include, but is not limited to, the following in determining if a continuity of care issue exists:

(i) Active cancer treatment; or

(ii) Recent transplant (within the last twelve months); or

(iii) Scheduled surgery within the next sixty days; or

(iv) Major surgery within the previous sixty days; or

(v) Third trimester of pregnancy; or

(vi) Language barrier.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-08-199 When may an employee enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)? An eligible employee (as described in WAC 182-12-116) may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When they are newly eligible under WAC 182-12-114, as described in WAC 182-08-197.

(2) **During annual open enrollment:** An eligible employee (as described in WAC 182-12-116) may enroll in or change their election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. Employees must submit, in paper or on-line, the appropriate enrollment form to enroll or reenroll no later than the last day of the annual open enrollment. The enrollment or new election will be effective January 1st of the following year.

(3) **During a special open enrollment:** Employees may enroll or change their election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the appropriate forms as instructed on the forms no later than sixty days after the event occurs. ~~(Enrollment will be effective the first day of the month following approval by the administrator.)~~

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 152 without regard to the income limitations of that section. It does not include a Washington state registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC Section 152.

~~((The following events create a special open enrollment for purposes of an eligible employee making a change:~~

~~(a) Employee's)) (a) An employee may enroll or change his or her election under the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following the later of the event date or the date the form is received.~~

(i) Employee acquires a new dependent ((becomes eligible under PEBB rules)) due to:

~~((i) Through)) • Marriage;~~

~~((ii) Through)) • Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;~~

~~((iii)) • A child becoming eligible as an extended dependent through legal custody or legal guardianship; or~~

~~((iv) When)) • A child ((becomes)) becoming eligible as ((an extended eligible)) a dependent with a disability;~~

~~((b) Employee's dependent no longer meets PEBB eligibility criteria because:~~

~~(i) Employee has a change in marital status, including legal separation documented by a court order;~~

~~(ii) An eligible dependent child turns age twenty six;~~

~~(iii) An eligible dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or~~

~~(iv) An eligible dependent dies;~~

~~(e)) (ii) Employee or an ((eligible)) employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);~~

~~((f)) (iii) Employee or an ((eligible)) employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the employer contribution toward group health coverage ((~~or the employer contribution toward insurance coverage~~));~~

~~((e)) (iv) Employee receives a court order or medical support order requiring the employee or the employee's spouse to provide insurance coverage for an eligible dependent;~~

~~((f)) (v) Employee or ((an eligible)) employee's dependent becomes eligible for ((~~a medical~~)) state premium assistance ((~~program under the department of social and health services, including~~)) through medicaid or ((~~the~~)) a state children's health insurance program (CHIP), or the ((~~subscriber~~)) employee or employee's dependent loses eligibility ((~~in such a medical assistance program~~)) for coverage under medicaid or CHIP;~~

~~((g) Seasonal employees whose off-season occurs during the annual open enrollment may enroll in the plan upon their return to work;~~

~~((h)) (vi) Employee or ((an eligible)) employee's dependent gains or loses eligibility for medicaid;~~

~~((i) In addition to (a) through (h) of this section, the following are events that create a special open enrollment for purposes of an eligible employee making a change in his or her DCAP:~~

~~(i) Employees who change dependent care providers may make a change in their DCAP to reflect the cost of the new provider;~~

~~(ii) The employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1); or~~

~~(iii) If an employee's dependent care provider imposes a change in the cost of dependent care, the employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (a)(1) through (8), incorporating the rules of Section 152 (b)(1) and (2) of the IRC.)~~

(vii) Employee or employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). HCA may require evidence

that the employee or employee's dependent is no longer eligible for an HSA:

(viii) Employee experiences a disruption that could function as a reduction in benefits for the employee or the employee's dependent(s) due to a specific condition or ongoing course of treatment. An employee may not change their health plan if the employee's or an enrolled dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program criteria used will include, but is not limited to, the following in determining if a continuity of care issue exists:

- (A) Active cancer treatment; or
- (B) Recent transplant (within the last twelve months); or
- (C) Scheduled surgery within the next sixty days; or
- (D) Major surgery within the previous sixty days; or
- (E) Third trimester of pregnancy; or
- (F) Language barrier.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following approval by the FSA administrator.

(i) Employee acquires a new dependent due to:

• Marriage;
• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability;

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

(iii) Employee receives a court order or medical support order requiring the employee or the employee's spouse to provide insurance coverage for an eligible dependent;

(iv) Employee or an employee's dependent loses eligibility for coverage under medicaid or a state children's health insurance program (CHIP);

(v) Employee or an employee's dependent gains or loses eligibility for medicare;

(c) An employee may enroll or change his or her election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. Enrollment will be effective the first day of the month following approval by the DCAP administrator.

(i) Employee acquires a new dependent due to:

• Marriage;
• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability;

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee changes dependent care provider; the change to DCAP can reflect the cost of the new provider;

(iv) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

(v) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (a)(1) through (8), incorporating the rules of Section 152 (b)(1) and (2) of the IRC.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

~~("Administrator" means the administrator of the HCA or designee.)~~

"Agency" means the health care authority.

"Benefits eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or their dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB medical insurance by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the HCA or designee.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, tribal governments, school districts, and educational service districts participating in

PEBB insurance coverage under contract as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and includes the higher education personnel board and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Open enrollment" means a time period when: Subscribers may apply to transfer their enrollment from one health plan to another; a dependent may be enrolled; a dependent may be removed from coverage; or an employee who previously waived medical may enroll in medical. Open enrollment is also the time when employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan. An "annual" open enrollment, designated by the ~~((administrator))~~ director, is an open enrollment when all PEBB subscribers may make enrollment changes for the upcoming year. A "special" open enrollment is triggered by a specific life event. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, 182-12-262.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The ~~((administrator))~~ director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB program within HCA.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees of the state (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other comprehensive group coverage or is on approved educational leave (see WAC 182-12-128 and 182-12-136).

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-128 May an employee waive health plan enrollment? Employees must enroll in dental, life and long-term disability insurance (unless the employing agency

does not participate in these PEBB insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage.

(1) Employees may waive enrollment in PEBB medical by submitting the appropriate enrollment form to their employing agency during the following times:

(a) **When the employee becomes eligible:** Employees may waive medical when they become eligible for PEBB benefits. Employees must indicate they are waiving medical on the appropriate enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** Employees may waive medical during the annual open enrollment if they submit the appropriate enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee waives medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) During the annual open enrollment;

(b) During a special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the appropriate forms, the PEBB program may require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment.

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if ~~((one of these))~~ a special open enrollment events occurs. The change in enrollment must correspond to the event that creates the special open enrollment. Any one of the following events may create a special open enrollment:

(a) ~~((Employee's))~~ Employee acquires a new dependent (becomes eligible under PEBB rules) due to:

(i) ~~((Through))~~ Marriage or registering a domestic partnership with Washington state;

(ii) ~~((Through))~~ Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) ~~((When))~~ A child (becomes) becoming eligible as ((an extended)) a dependent with a disability;

(b) ~~((Employee's dependent no longer meets PEBB eligibility criteria because:~~

~~(i) Employee has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;~~

~~(ii) A child dependent turns age twenty-six;~~

~~(iii) A child dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or~~

~~(iv) A dependent dies;~~

~~((e))~~ Employee or a dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

~~((d))~~ ~~(c)~~ Employee or ~~((a))~~ an employee's dependent has a change in employment status that affects the employee's or ~~((a))~~ employee's dependent's eligibility for the employer contribution toward group health coverage ~~((or the employer contribution toward insurance coverage;~~

~~(e)~~ ~~Employee or a dependent has a change in residence that affects health plan availability);~~

~~((f))~~ ~~(d)~~ Employee receives a court order or medical support order requiring the employee, spouse, or Washington state registered domestic partner to provide insurance coverage for an eligible dependent (a former spouse or former registered domestic partner is not an eligible dependent);

~~((g))~~ ~~(e)~~ Employee or dependent becomes eligible for ~~((a medical))~~ state premium assistance ~~((program under the department of social and health services, including))~~ through medicaid or ~~((the))~~ a state children's health insurance program (CHIP), or the employee or dependent loses eligibility ~~((in a medical assistance program))~~ for coverage under medicaid or CHIP.

To waive or enroll during a special open enrollment, the employee must submit the appropriate forms to their employing agency no later than sixty days after the event that creates the special open enrollment.

Medical will be waived the end of the month following the later of the event date or the date the form is received. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, medical will be waived the first of the month in which the event occurs.

Enrollment in ~~((insurance coverage))~~ medical will begin the first day of the month following the later of the event ~~((that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that))~~ date or the date the form is received. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, ~~((insurance coverage))~~ enrollment in medical will begin the first of the month in which the event occurs.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-131 How do eligible employees maintain the employer contribution toward insurance coverage? The employer contribution toward insurance coverage begins on the day that PEBB benefits begin under WAC 182-12-114. This section describes under what circumstances an employee maintains eligibility for the employer contribution toward PEBB benefits.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3) and (4) of this section, an employee who has established eligibility for benefits under WAC 182-12-114 is eligible for the employer contribution each month in which he or she is in pay status eight or more hours per month.

(2) Maintaining the employer contribution - Benefits-eligible seasonal employees.

(a) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of less than nine months is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. The employer contribution toward PEBB benefits for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) A benefits-eligible seasonal employee (eligible under WAC 182-12-114(2)) who works a season of nine months or more is eligible for the employer contribution:

(i) In any month of his or her season in which he or she is in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked.

(3) Maintaining the employer contribution - Eligible faculty.

(a) Benefits-eligible faculty anticipated to work the entire instructional year or equivalent nine-month period (eligible under WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible under WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which the employee works half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

Exception:

Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment. If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to PEBB benefits. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue

to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty (~~with gaps of~~) who lose eligibility for the employer contribution: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

(5) Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

(6) Employees who are in pay status less than eight hours in a month. Unless otherwise indicated in this (~~rule~~) section, when there is a month in which an employee is not in pay status for at least eight hours, the employee:

(a) Loses eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) The employer contribution to PEBB insurance coverage ends in any one of these circumstances for all employees:

(a) When the employee fails to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the

employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When the employee moves to a position that is not anticipated to be eligible for benefits under WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB medical, dental and life insurance for an employee, spouse, Washington state registered domestic partner, or child ceases at 12:00 midnight, the last day of the month in which the employee is eligible for the employer contribution under this ~~((rule))~~ section.

Exception: If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(8) Options for continuation coverage by self-paying.

During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the HCA. These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

WAC 182-12-138 What options are available if an employee is approved for the federal Family and Medical Leave Act (FMLA)? (1) Employees on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward insurance coverage in accordance with the federal FMLA. These employees may also continue current optional life and long-term disability. The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave. If the employee's contribution toward premiums ~~((are))~~ is more than sixty days delinquent, insurance coverage will end as of the last day of the month for which a full premium was paid.

(2) If an employee exhausts the period of leave approved under FMLA, insurance coverage may be continued by self-paying the full premium set by the HCA, with no contribution from the employer, under WAC 182-12-133(1) while on approved leave.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-141 If an employee reverts from an eligible position ~~((to another position))~~, what happens to his or her insurance coverage? (1) If an employee reverts for reasons other than a layoff and is not eligible for the employer contribution toward insurance coverage under this

chapter, he or she may continue PEBB insurance coverage by self-paying the full premium set by the HCA for up to eighteen months under the same terms as an employee who is granted leave without pay under WAC 182-12-133(1).

(2) If an employee is reverted due to a layoff, the employee may be eligible for the employer contribution toward insurance coverage under the criteria of WAC 182-12-129. If determined not to be eligible under WAC 182-12-129, the employee may continue PEBB insurance coverage by self-paying the full premium set by the HCA under WAC 182-12-133.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-171 When are retiring employees eligible to enroll in retiree insurance? (1) Procedural requirements. Retiring employees must meet these procedural requirements, as well as have substantive eligibility under subsection (2) or (3) of this section.

(a) The employee must submit the appropriate forms to enroll or defer insurance coverage within sixty days after the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of other coverage.

Exception: The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who do not enroll in a PEBB health plan at retirement are only eligible to enroll at a later date if they have deferred enrollment as identified in WAC 182-12-200 or 182-12-205 and maintained comprehensive employer sponsored medical as defined in WAC 182-12-109.

(b) The employee and enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance, he or she must enroll and maintain enrollment in medicare.

(2) **Eligibility requirements.** Eligible employees (as defined in WAC 182-12-114 and 182-12-131) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as defined in subsection (4) of this section) are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. To be eligible to continue PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirements when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the PEBB appeals committee to determine eligibility (see WAC 182-16-032). Employees must meet ~~((other))~~ retiree insurance election procedural requirements.

- Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below.

- Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if this is required by department of retirement systems because their monthly retirement plan payment is below the minimum payment that can be paid.

- Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011~~((43))~~ (15)), are eligible if they meet their Plan 3 retirement plan's ((age requirement and length of service)) eligibility criteria when PEBB employee insurance coverage ends. They do not have to receive a retirement plan payment.

- Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's ~~((age requirement))~~ retirement eligibility criteria, or are at least age fifty-five with ten years of state service.

- Employees who are permanently and totally disabled are eligible if they start receiving or defer a monthly disability retirement plan payment.

- Employees not retiring under a Washington state-sponsored retirement plan must meet the same age and years of service ~~((had))~~ as if the person had been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment.

- Employees who retire from a local government or tribal government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(b) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance. These employees may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(c) **Washington state K-12 school district and educational service district employees for districts that do not participate in PEBB benefits.** Employees of Washington state K-12 school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if department of retirement systems requires this because their monthly retirement plan payment is below the minimum payment that can be paid or they enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.-011~~((43))~~ (15)), are eligible if they meet their Plan 3 retirement plan's ((age requirement and length of service)) eligibility criteria when employer paid or COBRA coverage ends.

Employees who separate from employment due to total and permanent disability ~~((who))~~, and are eligible for a deferred retirement allowance under a Washington state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled before 1995 or within sixty days following retirement.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapter 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) **Elected and full-time appointed officials of the legislative and executive branches.** Employees who are elected and full-time appointed state officials (as defined under WAC 182-12-114(4)) who voluntarily or involuntarily leave public office are eligible to continue PEBB insurance coverage as a retiree if they meet procedural and eligibility requirements. They do not have to receive a retirement plan payment from a state-sponsored retirement system.

(4) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and firefighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- ~~((Teacher's))~~ Teachers' retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under the PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-205 May a retiree defer enrollment in a PEBB health plan at or after retirement? Except as stated in subsection (1)(c) of this section, if retirees defer enrollment in a PEBB health plan, they also defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other life insurance, except as allowed in WAC 182-12-209(3).

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other comprehensive employer sponsored medical as identified below:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(2) To defer health plan enrollment, the retiree must submit the appropriate forms to the PEBB program requesting to defer. The PEBB program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may enroll in a PEBB health plan as follows:

(a) Retirees who defer while enrolled in comprehensive employer-sponsored medical may enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB program:

(i) During annual open enrollment. (PEBB health plan will begin January 1st after the annual open enrollment.); or

(ii) No later than sixty days after their comprehensive employer-sponsored medical ends. (PEBB health plan will begin the first day of the month after the comprehensive employer-sponsored medical ends.)

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in a federal retiree medical plan to the PEBB program:

(i) During annual open enrollment. (PEBB health plan will begin January 1st after the annual open enrollment.); or

(ii) No later than sixty days after the federal retiree medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the federal retiree medical ends.)

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and medicaid may enroll in a PEBB health plan by submitting the appropriate forms and evidence of continuous enrollment in creditable coverage to the PEBB program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin January 1st after the annual open enrollment.); or

(ii) No later than sixty days after their medicaid coverage ends (Enrollment in the PEBB health plan will begin the first day of the month after the medicaid coverage ends.); or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. (Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends.)

(d) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the department of social and health services has determined it is

more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

WAC 182-12-208 ~~((May a))~~ What are the requirements regarding enrollment in retiree ~~((enroll only in))~~ dental? (1) If ~~((an enrollee))~~ a subscriber is enrolled in retiree insurance coverage, he or she may not enroll in dental unless he or she is also enrolled in medical.

(2) A subscriber enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

WAC 182-12-209 Who is eligible for retiree life insurance? Eligible employees who participate in PEBB life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit the appropriate forms to the PEBB program no later than sixty days after the date their PEBB employee life insurance ends.

(1) Employees whose life insurance premiums are being waived under the terms of the life insurance contract are not eligible for retiree term life insurance until their waiver of premium benefit ends.

(2) Retirees may not defer enrollment in retiree term life insurance.

(3) If a retiree returns to active ~~((employee))~~ employment status ~~((in an employing agency))~~ and becomes eligible for the employer contribution toward PEBB employee life insurance, he or she ~~((must))~~ may choose:

(a) To continue to self-pay premiums and keep retiree life insurance ~~((premiums))~~ in ~~((order to maintain retiree term life insurance ~~(even while participating in PEBB employee life insurance))~~)~~ place during the period he or she is eligible for employee life insurance; or

(b) To stop self-paying premiums during the period he or she is eligible for employee life insurance and resume self-paying premiums for retiree life insurance when he or she is no longer eligible for the employer contribution toward PEBB employee life insurance.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

WAC 182-12-211 If department of retirement systems makes a formal determination of retroactive eligibility, may the retiree enroll in PEBB retiree insurance coverage? (1) When the Washington state department of retirement systems (DRS) makes a formal determination that a person is retroactively eligible for pension benefits that person may apply for enrollment in a PEBB health plan only if application is made within sixty days after the date of notice from DRS.

(2) All premiums due from the date of eligibility established by DRS or the date of the DRS decision letter, at the

option of the retiree, must be sent with the application to the PEBB program.

(3) The ~~((administrator))~~ director may make an exception to the date PEBB retiree insurance coverage commences or payment of premiums; however, such requests must demonstrate extraordinary circumstances beyond the control of the retiree.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, Washington state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in health plans administered by the PEBB program within HCA.

(1) This section applies to the surviving spouse, the surviving Washington state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, Washington state registered domestic partner, and dependent children" means:

- (a) A lawful spouse;
- (b) An ex-spouse as defined in RCW 41.26.162;
- (c) A Washington state registered domestic partner as defined in RCW 26.60.020; and
- (d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(7) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a Washington state registered domestic partner; and

(iii) Legally adopted children.

(4) Surviving spouses, Washington state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on their behalf) must submit the appropriate forms (to either enroll or defer enrollment in a PEBB health plan) to PEBB program no later than one hundred eighty days after the latter of:

- (a) The death of the emergency service worker;
- (b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;

(c) The last day the surviving spouse, Washington state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, Washington state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in a PEBB health plan may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose appropriate forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the appropriate forms (for example, if the PEBB program receives the appropriate forms on August 29, the survivor may request health plan enrollment to begin on July 1); or

(c) The first of the month after the date that the PEBB program receives the appropriate forms.

For surviving spouses, Washington state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled in dental for at least two years before dental can be dropped.

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if enrolled in comprehensive employer sponsored medical.

(ii) Survivors may enroll in a PEBB health plan when they lose comprehensive employer sponsored medical. Survivors will need to provide evidence that they were continuously enrolled in comprehensive employer sponsored medical when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

~~(9) ((Survivors may not add new dependents acquired through birth, adoption, establishment of an extended dependent, marriage, or establishment of a qualified domestic partnership.~~

~~(10))~~ Survivors will lose their right to enroll in a PEBB health plan if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in comprehensive employer sponsored medical through an employer during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-260 Who are eligible dependents? To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The PEBB program verifies the eligibility of all dependents and reserves the right to request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility ~~((within a specified time))~~. The PEBB program will not enroll or reenroll dependents into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber ~~((or dependent))~~ must notify the PEBB program, in writing, no later than sixty days after the date ~~((he or she))~~ his or her dependent is no longer eligible under this section. See WAC 182-12-262 for the consequences of not removing an ineligible dependent from coverage.

The following are eligible as dependents under the PEBB eligibility rules:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) Effective January 1, 2010, Washington state registered domestic partners, as defined in RCW 26.60.020(1). Former Washington state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are defined as the subscriber's biological children, stepchildren, legally adopted children, children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child, children of the subscriber's Washington state registered domestic partner, or children specified in a court order or divorce decree. In addition, children include extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's Washington state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program.

Eligible children include:

(a) Children up to age twenty-six.

(b) Effective January 1, 2011, children of any age with disabilities, mental illness, or intellectual or other developmental disabilities who are incapable of self-support, provided such condition occurs before age twenty-six.

(i) The subscriber must provide evidence of the disability and evidence that the condition occurred before age twenty-six:

(ii) The subscriber must notify the PEBB program, in writing, no later than sixty days after the date that a child age twenty-six or older no longer qualifies under this subsection.

For example, children who become self-supporting are not eligible under this ~~((rule))~~ subsection as of the last day of the month in which they become capable of self-support.

(ii) Children age twenty-six and older who become capable of self-support do not regain eligibility under (b) of this subsection if they later become incapable of self-support.

(iv) The PEBB program will certify the eligibility of children with disabilities periodically.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in health plan coverage.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 (1)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in PEBB insurance coverage. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date. ~~((Except as provided in WAC 182-12-205 (1)(c), a dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent.))~~

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents ~~((when the dependent becomes eligible or))~~ during ~~((another))~~ a special open enrollment as described in subsection ~~((s))~~ (3) ~~((and))~~ of this section. The subscriber must satisfy the enrollment requirements as described in subsection (4) of this section.

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **Subscribers are required to remove a dependent** ~~((s))~~ within sixty days of the date the dependent no longer meets the eligibility criteria in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency. All other subscribers must notify the PEBB program. The PEBB program will remove a subscriber's enrolled dependent the last day of the month in which the dependent ceases to meet the eligibility criteria. Consequences for not submitting

notice within sixty days of any dependent ceasing to be eligible may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) Employees have the opportunity to remove dependents:

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsection ~~((s))~~ (3) ~~((and (4)))~~ of this section. ~~((The dependent will be removed the last day of the month in which the event that creates the special open enrollment occurs.))~~

(c) **Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's coverage prospectively.

(3) **Special open enrollment.** Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to the event that creates the special open enrollment for either the subscriber or the subscriber's dependents or both.

- Health plan coverage will begin the first of the month following the ~~((event that created the special open enrollment; or in cases where the event occurs on the first day of a month, health plan coverage will begin on that date))~~ later of the event date or the date the form is received.

- Enrollment of extended dependents or dependents with a disability will be the first day of the month following eligibility certification.

- Dependents will be removed from the subscriber's health plan coverage the last day of the month following the event.

- If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs.

Any one of the following ~~((changes are))~~ events ~~((that))~~ may create a special open enrollment ~~((for medical and dental))~~:

(a) ~~((Subscriber's))~~ Subscriber acquires a new dependent ~~((becomes eligible under PEBB rules))~~ due to:

(i) ~~((Through))~~ Marriage or registering a domestic partnership with Washington's secretary of state;

(ii) ~~((Through))~~ Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) ~~((When))~~ A child ~~((becomes))~~ becoming eligible as ~~((an extended))~~ a dependent with a disability;

(b) ~~((Subscriber's dependent no longer meets PEBB eligibility criteria because:~~

(i) ~~Subscriber has a change in marital status or Washington state registered domestic partnership status, including legal separation documented by a court order;~~

(ii) ~~A child dependent turns age twenty-six;~~

(iii) ~~A child dependent ceases to be eligible as an extended dependent or as a dependent with disabilities; or~~

(iv) ~~A dependent dies;~~

(e)) ~~Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);~~

~~((d))~~ (c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or ~~((a))~~ the subscriber's dependent's eligibility for the employer contribution toward group health coverage ~~((or the employer contribution toward insurance coverage));~~

~~((e))~~ Subscriber or a dependent has a change in residence that affects health plan availability;

(f)) (d) Subscriber receives a court order or medical support order requiring the subscriber, the subscriber's spouse, or the subscriber's Washington state registered domestic partner to provide insurance coverage for an eligible dependent ~~((-))~~ (a former spouse or former registered domestic partner is not an eligible dependent ~~((-))~~); ~~((e))~~

(g)) (e) Subscriber or a subscriber's dependent becomes eligible for ~~((a medical))~~ state premium assistance ~~((program under the department of social and health services, including))~~ through medicaid or ~~((the))~~ a state children's health insurance program (CHIP), or the subscriber or dependent loses eligibility ~~((in a medical assistance program))~~ for coverage under medicaid or CHIP.

(4) **Enrollment requirements. Subscribers must submit the appropriate forms within the time frames described in this subsection.** Employees submit the appropriate forms to their employing agency. All other subscribers submit the appropriate forms to the PEBB program. In addition to the appropriate forms indicating dependent enrollment, the ~~((PEBB program may require the subscriber to))~~ subscriber must provide ~~((documentation or))~~ the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll their eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the appropriate forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must sub-

mit the appropriate forms no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the appropriate enrollment forms no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the subscriber **must** submit the appropriate enrollment form no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with disabilities, the subscriber must submit the appropriate form(s) no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the appropriate forms no later than sixty days after the event that creates the special open enrollment.

~~((g) If the subscriber wants to remove a dependent from enrollment during an open enrollment, the subscriber must submit the appropriate forms. Unless otherwise approved by the PEBB program, enrollment will be removed prospectively.))~~

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

WAC 182-12-265 What options for continuing health plan enrollment are available to widows, widowers and dependent children if the employee or retiree dies? The surviving dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll in PEBB retiree insurance coverage as a surviving dependent. An eligible surviving spouse, Washington state registered domestic partner, or child must enroll in or defer enrollment in a PEBB medical plan no later than sixty days after the date of the employee's or retiree's death.

(1) Dependents who lose eligibility due to the death of an eligible employee may continue enrollment in a PEBB health plan enrollment as a survivor under retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or Washington state registered domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) If a surviving spouse, Washington state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit (or a lump-sum pay-

ment because the monthly pension payment would be less than the minimum amount established by the department of retirement systems) the dependent is not eligible for PEBB retiree insurance as a survivor. However, the dependent may continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) or WAC 182-12-270.

(d) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington sponsored retirement system for Washington State University extension service employees who were covered under PEBB insurance coverage at the time of death.

(2) Dependents who lose eligibility due to the death of a PEBB eligible retiree may continue health plan enrollment under retiree insurance.

(a) The retiree's spouse or Washington state registered domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(c) Dependents, who are not enrolled in a PEBB health plan at the time of the retiree's death, are eligible to enroll or defer enrollment in PEBB retiree insurance. A form to enroll or defer PEBB health plan enrollment must be hand-delivered or mailed to the PEBB program no later than sixty days after the retiree's death. To enroll in a PEBB health plan, the dependent must provide satisfactory evidence of continuous enrollment in other medical coverage from the most recent open enrollment for which enrollment in PEBB was deferred.

(3) Surviving spouses, Washington state registered domestic partners, or eligible children of a deceased school district or educational service district employee who were not enrolled in PEBB insurance coverage at the time of the subscriber's death may enroll in a PEBB health plan provided the employee died on or after October 1, 1993, and the dependent(s) immediately began receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW.

(a) The employee's spouse or Washington state registered domestic partner may continue health plan enrollment until death.

(b) Children may continue health plan enrollment until they lose eligibility under PEBB rules.

(4) Surviving dependents must notify the PEBB program of their decision to enroll or defer enrollment in a PEBB health plan no later than sixty days after the date of death of the employee or retiree.

Note:

If premium payment sufficient to maintain health plan enrollment continues after the employee's or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If PEBB health plan enrollment ended due to the death of the employee or retiree, PEBB will reinstate health plan enrollment without a gap subject to payment of premium. In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan under WAC 182-12-200 and 182-12-205. To notify the PEBB program of their intent to enroll or defer enrollment in a PEBB health plan, the surviving dependent must submit the

appropriate forms to the PEBB program no later than sixty days after the date of death of the employee or retiree.

AMENDATORY SECTION (Amending Order 09-02, filed 11/17/09, effective 1/1/10)

WAC 182-16-020 Definitions. As used in this chapter the term:

~~("Administrator" means the administrator of the health care authority (HCA) or designee;)~~

"Agency" means the health care authority;

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the health care authority (HCA) or designee;

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, tribal governments, school districts, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-230.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Health plan" or "plan" means a medical or dental plan developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability insurance, or property and casualty insurance administered as a PEBB benefit.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The ~~((administrator))~~ director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverage or other employee benefit administered by the PEBB program within the HCA.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees of the state (as defined in WAC 182-

12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-16-025 Where do members appeal decisions regarding eligibility, enrollment, premium payments, or the administration of benefits?

Note: Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to insurance coverage, as described in PEBB rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(1) Any employee of a state agency or his or her dependent aggrieved by a decision made by the employing state agency with regard to public employee benefits eligibility or enrollment may appeal that decision to the employing state agency by the process outlined in WAC 182-16-030.

(2) Any employee of an employer group or his or her dependent who is aggrieved by a decision made by an employer group with regard to PEBB eligibility or enrollment may appeal that decision to the employer group through the process established by the employer group.

Exception: Appeals by an employee of an employer group or his or her dependent based on eligibility or enrollment decisions regarding life insurance or long-term disability insurance must be made to the PEBB appeals committee by the process described in WAC 182-16-032.

(3) Any ~~((employee, self-pay enrollee, retiree,))~~ subscriber or dependent aggrieved by a decision made by the PEBB program with regard to public employee benefits eligibility, enrollment, or premium payments may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(4) Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, self-insured dental plan, insured dental plan, life insurance, long-term

care insurance, long-term disability insurance, or property and casualty insurance may appeal that decision by following the appeal provisions of those plans, with the exception of eligibility, enrollment, and premium payment determinations.

(5) Any PEBB enrollee aggrieved by a decision regarding the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision by the process described in WAC 182-16-036.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-16-032 How can ~~((an employee, retiree, self-pay enrollee, or dependent appeal))~~ a decision made by the PEBB program regarding eligibility, enrollment, or premium payments; or a decision made by an employer group regarding life insurance or long-term disability insurance be appealed? (1) An eligibility, enrollment, or premium payment decision made by the PEBB program may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(2) An eligibility or enrollment decision made by an employer group regarding life insurance or long-term disability insurance may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(3) The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

~~((4))~~ (4) The notice of appeal from an employee or employee's dependent must be received by the PEBB appeals manager within thirty days of the date of the denial notice ~~((by the PEBB program))~~.

~~((5))~~ (5) The notice of appeal from a retiree, self-pay enrollee, or dependent of a retiree or self-pay enrollee must be received by the PEBB appeals manager within sixty days of the date of the denial notice ~~((by the PEBB program))~~.

~~((6))~~ (6) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

~~((7))~~ (7) The PEBB appeals committee shall render a written decision within thirty days of receiving the notice of appeal. The written decision shall be sent to the appellant.

~~((8))~~ (8) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending Order 10-02, filed 10/6/10, effective 1/1/11)

WAC 182-16-050 How can an enrollee or entity request a hearing if aggrieved by a decision made by the PEBB appeals committee? (1) Any party aggrieved by a decision of the PEBB appeals committee, may request an administrative hearing.

(2) The request must be made in writing to the PEBB appeals manager. The PEBB appeals manager must receive the request for an administrative hearing within thirty days of the date of the written decision by the PEBB appeals committee.

(3) The agency shall set the time and place of the hearing and give not less than twenty days notice to all parties.

(4) The ~~((administrator))~~ director, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this chapter.

(5) All hearings must be conducted in compliance with these rules, chapter 34.05 RCW and chapter 10-08 WAC as applicable.

(6) Within ninety days after the hearing record is closed, the ~~((administrator))~~ director or his or her designee shall render a decision which shall be the final decision of the agency. A copy of that decision shall be mailed to all parties.

**WSR 11-19-108
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY**

[Filed September 21, 2011, 10:21 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations, Regulation 6, Rule 6.2.3 No residential or land clearing burning is allowed in the following cities and/or urban growth areas (UGAs).

Hearing Location(s): Olympic Region Clean Air Agency, 2940 B Limited Lane N.W., Olympia, WA 98502, on November 9, 2011, at 10:00 a.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: Robert Moody, 2940 B Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orcaa.org, fax (360) 539-7610, by November 4, 2011.

Assistance for Persons with Disabilities: Contact Dan Nelson by November 4, 2011, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA proposes to add the Irondale/Port Hadlock Urban Growth Area to our Rule 6.2.3 which does not allow residential or land clearing burning in the listed locations.

Reasons Supporting Proposal: When the Irondale/Port Hadlock Urban Growth Area was established by Jefferson County in 2009, it became subject to WAC 173-425-040(2) which bans residential burning and land clearing burning in UGAs. Adding the Irondale/Port Hadlock UGA to ORCAA's Rule 6.2.3 does not change existing rules.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Moody, 2940 B Limited Lane N.W., (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not sub-

ject to the Regulatory Fairness Act (chapter 19.85 RCW) because air pollution control authorities are not deemed state agencies (RCW 70.94.141).

A cost-benefit analysis is not required under RCW 34.05.328. Air pollution control authorities are not deemed to be state agencies (RCW 70.94.141).

September 21, 2011
 Francea L. McNair
 Executive Director

AMENDED SECTION

Rule 6.2.3 No residential or land clearing burning is allowed in the following cities and/or UGAs:

Clallam	Grays Harbor	Jefferson	Mason	Pacific	Thurston
Carlsborg Clallam Bay Forks Joyce Port Angeles Sekiu Sequim	Aberdeen Hoquiam	Port Townsend <u>Irondale/Port Hadlock</u>	Allyn Belfair Shelton	Ilwaco Long Beach Raymond Seaview South Bend	Bucoda Grand Mound Lacey Olympia Rainier Tenino Tumwater Yelm

WSR 11-19-109
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed September 21, 2011, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-094.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-1400 WorkFirst—Community service.

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 October 25, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 26, 2011.

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 October 25, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 12, 2011, 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 department is proposing to expand the definition of WorkFirst community service to include a recipient's self-initiated volunteer service at a childcare or preschool licensed under chapter 43.215 RCW, or at an elementary school in which the recipient's child is enrolled.

Reasons Supporting Proposal: This change is being proposed to expand the opportunity for parents to bond with their children and gain employment related experience while providing a benefit to the community. These changes are necessary to conform to ESSB 5921, section 8.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250.

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: Kerry Judge-Kemp, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4630.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. The proposed amendment clarifies that TANF/SFA families who participate in the WorkFirst program may volunteer in self-directed activities at a childcare, licensed preschool, or elementary school attended by their child as an approved WorkFirst activity.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." The proposed rule clarifies that parents participating in the WorkFirst program may choose to volunteer at their child's licensed childcare or preschool or elementary school as an approved WorkFirst activity.

September 16, 2011
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1400 WorkFirst—Community service. (1) What is community service?

Community service is unpaid work (such as the work performed by volunteer workers) that:

(a) You perform for a charitable nonprofit organization, federal, state, local or tribal government or district, including traditional activities that perpetuate tribal culture and customs; or

(b) You self-initiate at a childcare or preschool facility licensed under chapter 43.215 RCW, or at an elementary school in which your child is enrolled.

(2) What other activities may be approved, even though they are not considered community service, because they benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?

~~((The following types [of] activities may be approved, even though they are not considered community service, because they benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:))~~

(a) Caring for a disabled family member;

(b) Caring for a child, if you are fifty-five years old or older and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);

(c) Providing childcare for another WorkFirst participant who is doing community service;

(d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW;

(e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law);

(f) Participating in the pregnancy to employment pathway; and/or

(g) Job preparation.

WSR 11-19-110

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed September 21, 2011, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-034.

Title of Rule and Other Identifying Information: WAC 314-40-040 Guest and courtesy cards—Visitors and 314-40-095 Endorsements to private club licenses.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on October 26, 2011, at 10:00 a.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by October 26, 2011.

Assistance for Persons with Disabilities: Contact Karen McCall by October 26, 2011, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions were needed to WAC 314-40-095 to implement SSB 5788 from the 2011 legislative session. Revisions to WAC 314-40-040 and 314-40-050 were requested by stakeholders to clarify the WAC.

Reasons Supporting Proposal: Implement legislation from the 2011 legislative session for WAC 314-40-095 and clarifying WAC 314-40-040 [and] 314-40-050 to make it easier for our licensees to understand and stay in compliance.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.450.

Statute Being Implemented: RCW 66.24.450.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has a positive impact on private club liquor licensees.

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

September 21, 2011

Sharon Foster

Chairman

AMENDATORY SECTION (Amending WSR 10-16-056, filed 7/28/10, effective 8/28/10)

WAC 314-40-040 Guest and courtesy cards—Visitors. (1) Guest cards are intended for invited guests residing outside of the immediate area.

(a) Guest cards shall be issued no more than three times per year for a period not to exceed fourteen consecutive days, and must be numbered serially, with a record of the issuance of each such card to be filed in a manner as to be readily accessible to the agents of the board;

(b) Contestants in golf or tennis tournaments conducted on the grounds of a licensed club will be considered a visitor for the day(s) of the event.

(2) Visitors may be introduced when accompanied at all times by a member, who is not an on duty employee, and may remain as long as such member is present in the club. Any such visitor may only enjoy the privileges of the club six times in any one calendar year unless a different number of times is allowed in the club by-laws.

(3) Persons who are members in good standing of a national veterans organization may enjoy the privileges of any licensed club affiliated with any national veterans organization, and persons who are members in good standing of a national fraternal organization may enjoy the privileges of any club affiliated with that particular national fraternal organization if the bylaws of such clubs authorize reciprocal priv-

ileges. Subsections (1) and (2) of this section shall not apply to members of such organizations.

(4) Persons who are members in good standing of organizations licensed as private nonfraternal clubs may enjoy the privileges of other licensed nonfraternal clubs if the bylaws of such clubs authorize reciprocal privileges. Subsections (1) and (2) of this section shall not apply to members of such clubs.

(5) Courtesy cards may be issued to the adult members of the immediate family of any member with or without charge upon application being made to the club by the member.

(6) In order to recruit new members and build club membership, a private club may hold a public membership function for two days per calendar year where club liquor may be given or sold to those attending as a part of the membership drive activities. The function must be advertised as a membership drive. Membership drives may not be held on consecutive days.

(7) A person issued a guest card by the club manager pursuant to subsection (1) of this section may introduce visitors into the club provided:

(a) The visitors are accompanied at all times by the sponsoring guest card holder;

(b) The visitors remain in the club only as long as the sponsoring guest card holder is present; and

(c) The house rules or bylaws of the club provide guest card holders the privilege of introducing visitors into the club.

AMENDATORY SECTION (Amending WSR 10-16-056, filed 7/28/10, effective 8/28/10)

WAC 314-40-050 Records. (1) In addition to the requirements of WAC 314-16-160, clubs shall maintain a complete system of bookkeeping covering all operations of the club, with the operations thereof pertaining to liquor being kept separate in a manner prescribed by the board. All such records shall be accessible and be available for inspection and audit by agents of the board. Board agents shall be entitled to make copies or abstracts or, upon furnishing a proper receipt, remove the originals for such purposes as the board deems necessary.

(2) After initial licensure, house rules and bylaws shall be submitted to the board whenever changes are made. A copy of the house rules and/or bylaws must be available for inspection by any law enforcement officer or agent of the board during any premises check of the club.

(3) In addition to WAC 314-40-040 visitor records with date and time and sponsoring member must be kept for a minimum of ~~((two))~~ three years.

(4) In addition to WAC 314-40-040 guest records must contain the full name, date of birth, and address of the guest receiving the temporary membership card.

AMENDATORY SECTION (Amending WSR 10-16-056, filed 7/28/10, effective 8/28/10)

WAC 314-40-095 Endorsements to private club licenses. (1) Under RCW 66.24.450, the board may issue an

endorsement allowing the club to hold ~~((up to forty))~~ non-club, member-sponsored events using club liquor.

(a) Each event must have a sponsoring member from the club.

(b) Each visitor and/or guest may only attend the event by invitation of the sponsoring member(s).

(c) Event may not be open to the general public.

(d) At least seventy-two hours prior to any nonclub event, the sponsoring member, or any club officer, must provide to the board: The date, time, and location of the event, the name of the sponsor of the event, and a brief description of the purpose of the event.

(e) A list of all invited guests and visitors must be available for inspection during the nonclub event.

(2) Under RCW 66.24.450, the board may issue an endorsement allowing the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption.

(a) Spirits and beer may not be sold for off-premises consumption.

(b) Bottled wine may only be sold to members, visitors, and guests defined under WAC 314-40-005. Bottled wine may not be sold to the general public.

WSR 11-19-111

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed September 21, 2011, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-032.

Title of Rule and Other Identifying Information: Chapter 314-02 WAC, Requirements for retail liquor licensees.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on October 26, 2011, at 10:00 a.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by October 26, 2011.

Assistance for Persons with Disabilities: Contact Karen McCall by October 26, 2011, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is the result of legislation that passed in the 2011 legislative session. SSB 5788, HB 1465, and SSB 5156 made changes to retail [liquor licenses,] created additional allowances for some retail licenses and created a new VIP Airport Lounge liquor license. Current rules need to be revised to reflect the changes and new rules need to be written to implement the new liquor license type. Retail liquor license fees revert back to what they were prior to the temporary increase passed in the 2009 legislature.

Reasons Supporting Proposal: Clarification of 2011 legislation.

Statutory Authority for Adoption: RCW 66.08.030, chapter 66.24 RCW.

Statute Being Implemented: RCW 66.24.320, 66.24.-330, 66.24.350, 66.24.354, 66.24.360, 66.24.371, 66.24.410, 66.24.420, 66.24.590.

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

Name of Proponent: Washington state liquor control board.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation and Enforcement: Justin Nordhorn, Chief, Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has no negative financial impact to liquor licensees.

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

September 21, 2011
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

- (a) Serve spirits by the individual glass for on-premises consumption;
- (b) Serve beer by the bottle or can or by tap for on-premises consumption;
- (c) Serve wine for on-premises consumption;
- (d) Allow patrons to remove recorked wine from the licensed premises;
- (e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and
- (f) Sell kegs of malt liquor with the appropriate endorsement. This endorsement also allows the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 8:00 a.m. and 11:00 p.m., five days a week. The board may consider written requests for exceptions to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" is defined in RCW 66.24.410(2).

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-020 What are the fee categories for a spirits, beer, and wine restaurant license? (1) Per RCW

66.24.420, the annual fee for a spirits, beer, and wine restaurant license is graduated, as follows:

Amount of customer service area dedicated to dining	Annual fee
100%	\$(1,105) <u>1,000</u>
50 - 99%	\$(1,768) <u>1,600</u>
Less than 50%	\$(2,210) <u>2,000</u>

(2) In order for an area to qualify as a dedicated dining area it must be a separate and distinct portion of a restaurant that is used primarily for the sale, service, and consumption of food, and have accommodations for eating, e.g., tables, chairs, booths, etc. Areas dedicated to live music or entertainment, such as dance floors or stages are not considered dedicated dining areas. Dedicated dining areas may not contain:

- (a) Liquor bars (see definition under WAC 314-02-010(2)); or
 - (b) Areas dedicated to games or gaming devices.
- (3) The fee for a spirits, beer, and wine restaurant license outside of an incorporated city or town will be prorated according to the calendar quarters the licensee is open for business. This proration does not apply in the case of a suspension or revocation of the license.

(4) A duplicate license is required in order to sell liquor from more than one site on your property. These sites must be located on the same property and owned by the same licensee. The following types of businesses may apply for a duplicate license:

Type of Business	Annual fee per duplicate license
Airport terminal	25% of annual license fee
Civic center (such as a convention center)	\$(++) <u>10</u>
Privately owned facility open to the public	\$20

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-041 What is a hotel license? (1) Per RCW 66.24.590, this license allows a hotel to:

- (a) Serve spirits by the individual serving for consumption on the licensed premises;
- (b) Serve beer, including strong beer, and wine for consumption on the licensed premises;
- (c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;
- (d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;
- (e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occu-

pants of private residential units which are part of the buildings or complex of buildings, that include the hotel;

(f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises; ~~((and))~~

(g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container; and

(h) Sell beer to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap in the restaurant area by the licensee at the time of sale.

(2) The annual fee for a hotel license is two thousand dollars.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-0411 What are the food service requirements for a hotel license? (1) A hotel licensee must have the ability to serve at least eight complete meals to hotel guests or any other patron of the hotel who is offered alcohol service for on-premise consumption at a food outlet on the hotel premises. Food outlets include room service, banquets, bars/lounges, restaurants, or coffee shops. "Complete meal" is defined in WAC 314-02-035.

(2) Complete meals must be prepared on the hotel premises.

(3) A menu must be available to hotel guests and patrons offered alcohol service that lists, at a minimum, the required complete meals.

(4) The food items required to maintain the menu must be located on the licensed premises. These items must be edible.

(5)(a) Licensees must maintain complete meal service for a minimum of five hours a day between the hours of 11:00 a.m. and 2:00 a.m. on any day that liquor is served. The board may consider written requests for exceptions to this requirement due to a demonstrated hardship and may allow exceptions under terms and conditions the board determines are in the best interests of the public.

(b) Minimum food service must be available during hours of alcohol service when complete meal service is not offered. Minimum food service includes items such as hamburgers or fry orders. Snacks such as peanuts, popcorn, and chips do not qualify as minimum food service.

(6) Hours of complete meal service must be listed on the menu. If applicable, a statement must be posted or listed on the menu that minimum food service is available when alcohol is served and complete meal service is unavailable.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-042 Spirits, beer and wine restaurant restricted—Qualifications. (1) Spirits, beer and wine restaurant restricted licensees shall govern their operations in selling liquor in accordance with the regulations set forth in Title 66 RCW. Such licensees may sell liquor in accordance with these regulations, only to members, invited guests, and holders of cards as authorized by chapter 314-40 WAC.

(2)(a) Applications for new spirits, beer and wine restaurant restricted licenses shall be accompanied by proof that:

(i) The business has been in operation for at least one year immediately prior to the date of its application. Such proof should include records of membership as well as an indication as to numbers and types of membership.

(ii) Membership or admission will not be denied to any person because of race, creed, color, national origin, sex or the presence of any sensory, mental or physical handicap.

(b) Spirits, beer and wine restaurant restricted applicants and licensees must meet the provisions of WAC 314-02-035.

(3) Under RCW 66.24.450, the board may issue an endorsement allowing the club to hold ~~((up to forty))~~ non-club, member-sponsored events using club liquor.

(a) Each event must have a sponsoring member from the club.

(b) Each visitor and/or guest may only attend the event by invitation of the sponsoring member(s).

(c) Event may not be open to the general public.

(d) At least seventy-two hours prior to any nonclub event, the sponsoring member, or any club officer, must provide to the board: The date, time, and location of the event, the name of the sponsor of the event, and a brief description of the purpose of the event.

(e) A list of all invited guests and visitors must be available for inspection during the nonclub event.

(4) Under RCW 66.24.450, the board may issue an endorsement allowing the holder of a spirits, beer, and wine private club license to sell bottled wine for off-premises consumption.

(a) Spirits and beer may not be sold for off-premises consumption.

(b) Bottled wine may only be sold to members, visitors, and guests defined under WAC 314-40-005. Bottled wine may not be sold to the general public.

(5) See chapter 314-40 WAC for additional rules on clubs.

NEW SECTION

WAC 314-02-043 What is a VIP airport lounge license? (1) Per RCW 66.24.XXX, a VIP airport lounge liquor license allows a VIP airport lounge licensee to sell or provide spirits, wine, and beer for on-premises consumption as a retail licensed premises.

(a) A VIP airport lounge is a retail establishment in an international airport, beyond security checkpoints.

(b) The VIP airport lounge liquor licensee must be the entity in control of the day-to-day operations of the VIP airport lounge.

(c) Spirits, beer, and wine to be sold or provided complimentary by the individual serving for on-premises consumption to persons at least twenty-one years of age or older.

(d) Customers may not remove spirits, beer, and wine from the premises at any time.

(e) The VIP airport lounge licensee may only serve liquor from a service bar. A service bar is a work station primarily used to prepare and sell alcoholic beverages that are picked up by the customer. Customers are not permitted to

mix their own drinks, sit or consume food or alcohol at the service bar.

(f) All alcohol servers must have a valid MAST permit.

(2) The annual fee for this license is two thousand dollars.

NEW SECTION

WAC 314-02-044 Application process and guidelines for a VIP airport lounge liquor license. (1) RCW 66.24.010 states the board will only issue licenses and permits to applicants and locations that meet certain qualifications. Please see chapter 314-07 WAC for liquor license qualifications and application process.

(2) An applicant for a VIP airport lounge license must include a sketch of the VIP airport lounge area including the service bar area and where the alcohol inventory will be stored.

(3) All alcohol inventory must be stored on the VIP airport lounge licensed premises.

(4) All spirits must be purchased from the board at the assigned liquor store. Beer and wine must be purchased from a licensed distributor or retail outlet. A VIP lounge licensee may purchase wine directly from a licensed manufacturer if the licensee holds an endorsement to receive direct shipments from a manufacturer.

(5) Access to a VIP airport lounge is generally limited to:

(a) Ticketed airline passengers of any age who have first class, executive, or business class tickets;

(b) Qualified members or guests of loyalty incentive programs, members or guests of enhanced amenities programs;

(c) Passengers or airline employees issued a pass by the airline for access; and

(d) Airport, airline employees, government officials, and attendees of airport authority or airlines for business promotion with controlled access by the VIP airport lounge licensee.

(6) Between the hours of 2 a.m. and 6 a.m., licensees or employees may not:

(a) Provide, offer, or sell liquor;

(b) Deliver liquor (except that beer and/or wine distributors may deliver beer and/or wine to retail licensees between the hours of 2 a.m. and 6 a.m.);

(c) Allow liquor to be consumed on the premises; or

(d) Possess liquor, except that persons working on the premises may possess liquor between the hours of 2 a.m. and 6 a.m. while in the performance of their official duties.

(7) A local government subdivision may fix later opening hours or earlier closing hours than those specified in this rule, so long as the hours apply to all licensed premises in the local government subdivision's jurisdiction. See WAC 314-12-215(3) for exceptions when a premises is in a board recognized alcohol impact area.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-045 What is a beer and/or wine restaurant license? (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$(224) <u>200</u>
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	\$(224) <u>200</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$(433) <u>120</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30).

(a) Minimum food service is required, as defined in WAC 314-02-010(14).

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, five days a week. The board may consider written requests to this requirement due to demonstrated hardship, and may grant an exception under such terms and conditions as the board determines are in the best interests of the public.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-060 What is a caterer's endorsement?

(1) A spirits, beer, and wine restaurant and a beer and/or wine restaurant applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at approved locations other than the licensed premises. See RCW 66.24.420(6) and RCW 66.24.320(2) for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred ~~(eighty-seven)~~ fifty dollars.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-065 What is a snack bar license? (1) Per RCW 66.24.350, a snack bar license allows a licensee to

serve beer by the opened bottle or can for on-premises consumption only.

(2) Snack bar licensees must have snack food, as defined in WAC 314-02-010(15), available whenever beer is sold or served.

(3) Snack bars must have designated seating for on-premises consumption of beer.

(4) The annual fee for this license is one hundred ~~((thirty-eight))~~ twenty-five dollars.

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

WAC 314-02-070 What is a tavern license? (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$ ((22+)) <u>200</u>
(b) Serve wine for on-premises consumption.	\$ ((22+)) <u>200</u>
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$ ((433)) <u>120</u>
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in subsection (c).
(e) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in subsection (c).

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-100 What is a grocery store license? (1) Per RCW 66.24.360, a grocery store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred ~~((sixty-six))~~ fifty dollars.

(3) In order to obtain and maintain a grocery store license, the premises must be stocked with an inventory of at least three thousand dollars wholesale value of food for human consumption, not including soft drinks, beer, or wine. This minimum inventory must be:

- (a) Stocked within the confines of the licensed premises; and
- (b) Maintained at the premises at all times the business is licensed, with the exception of:

(i) The beginning and closing inventory for seasonal operations; or

(ii) When the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(5) A grocery store licensee may sell beer and wine over the internet. See WAC 314-03-020 regarding internet sales and delivery.

(6) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(7) A grocery store applicant or licensee may apply for a beer and wine tasting endorsement which allows beer and wine tastings on the grocery store premises. The annual fee for this endorsement is two hundred dollars.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred ~~((eleven))~~ dollars.

(3) Qualifications for license—To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

- (a) Stocked within the confines of the licensed premises; and
- (b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample—A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either (a) or (b) of this subsection:

- (a) A licensee's gross retail sales of beer and/or wine exceeds fifty percent of all gross sales for the entire business; or
- (b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:
 - (i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).
 - (ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board's enforcement and education division at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this rule may sample under the following conditions:

(a) No more than a total of eight ounces of alcohol may be provided to a customer during any one visit to the premises;

(b) Each sample must be two ounces or less; and

(c) No more than one sample of any single brand and type of beer or wine may be provided to a customer during any one visit to the premises.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(7) A beer and/or wine specialty store licensee may receive an endorsement to permit the sale of beer to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and filled at the tap by the licensee at the time of sale under the following conditions:

(a) The beer and/or wine specialty store sales must exceed fifty percent of their total sales; or

(b) The board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty store maintains a wholesale alcohol inventory that exceeds fifteen thousand dollars.

WSR 11-19-112

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed September 21, 2011, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-096.

Title of Rule and Other Identifying Information: Amending WAC 180-51-066 Minimum credit requirement for high school graduation—Students entering the ninth grade on or after July 1, 2009, through June 30, 2012; and new WAC 180-51-067 Minimum credit requirement for high school graduation—Students entering the ninth grade on or after July 1, 2012.

Hearing Location(s): Educational Service District #112, 2500 N.E. 65th Avenue, Vancouver, WA 98661-6812, on November 9, 2011, at 1:00 p.m.

Date of Intended Adoption: November 10, 2011.

Submit Written Comments to: Loy McColm, Washington State Board of Education, P.O. Box 47206, 600 Washington Street, Olympia, WA 98504-7206, e-mail loy.mccolm@k12.wa.us, fax (360) 586-2357, by November 4, 2011.

Assistance for Persons with Disabilities: Contact Loy McColm, (360) 725-6027, by November 2, 2011, TTY (360) 664-3631 or (360) 725-6027.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Language is proposed amending WAC 180-51-066 to apply only to those students entering the ninth grade on or after July 1, 2009, through June 30, 2012. New WAC 180-51-067 is added that changes the high school graduation requirements for those students entering the ninth grade on or after July 1, 2012 to provide as follows: (1) The number of English credits is increased to four, the number of social studies credits is increased to three, and the number of elective credits is decreased to four. (2) The social studies credits earned must include .5 credit in civics. (3) Washington state history and government is changed to a noncredit required course that must be successfully completed and noted on a student's transcript. (4) The two credits of health and fitness now specify that .5 credits must be in health and 1.5 credits in fitness. (5) A "two for one" policy is established that enables students taking a CTE equivalent course to satisfy two graduation requirements while earning one credit. WAC 180-51-067 also provides for satisfaction of the state's high school graduation requirements for those students who earn an international baccalaureate diploma. In addition, the proposed language in WAC 180-51-067 varies from the requirements in WAC 180-51-066 in that it does not contain requirements for graduation required by statute (with the exception of the language from RCW 28A.230.090), and includes an overarching statement regarding alignment with the state learning standards and a single clause providing for course content to be determined by the local school district.

Reasons Supporting Proposal: The amendments to WAC 180-51-066 are necessary so that graduation requirements are in place for students who enter the ninth grade on or after July 1, 2009, and before July 1, 2012, when WAC 180-51-067 takes effect requiring an additional credit of English and an additional one half credit of social studies as well as the other changes noted above. These changes to the state's high school graduation requirements are intended to make Washington state high school students career and college ready and put them on par with the vast majority of other states in the nation that require four credits of English and three credits of social studies to graduate from high school. Reducing the number of electives by 1.5 credits maintains the total number of credits required for graduation at twenty and allows for reallocation of credits by school districts to meet the increased credit requirements in English and social studies. The Washington state history and government requirement is changed to a noncredit requirement. This provides greater flexibility to districts to teach Washington state history and government at the middle or high school, and in accordance with the state's grade level expectations for this subject. The addition of a .5 credit of civics is required under RCW 28A.230.093. A reference to the number of health and fitness credits is provided for clarity. The "two for one" CTE policy provides greater flexibility for students to satisfy graduation requirements and allows an eligible student to take an additional elective credit. Requirements for students receiving an international baccalaureate diploma are based on leg-

islation enacted in 2011. The proposed new rule also eliminates certain language contained in WAC 180-51-066 that is unnecessary. The other referenced changes between the two rules are intended to avoid duplicity and any confusion regarding the state's high school graduation requirements.

Statutory Authority for Adoption: RCW 28A.230.090, 28A.230.093, 28A.230.050, 28A.230.170, 28A.230.060, 28A.305.215(8).

Statute Being Implemented: RCW 28A.230.090, 28A.-230.093, 28A.230.050, 28A.230.170, 28A.230.060, 28A.-305.215(8).

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

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

Name of Agency Personnel Responsible for Drafting: Loy McColm, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027; Implementation and Enforcement: Ben Rarick, 600 Washington Street, Olympia, WA 98504-7206, (360) 725-6027.

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

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

September 21, 2011
Ben Rarick
Executive Director

AMENDATORY SECTION (Amending WSR 10-19-118, filed 9/21/10, effective 10/22/10)

WAC 180-51-066 Minimum requirements for high school graduation—Students entering the ninth grade on or after July 1, 2009, through June 30, 2012. (1) The statewide minimum subject areas and credits required for high school graduation (~~(-beginning July 1, 2009;-)~~) for students who enter the ninth grade or begin the equivalent of a four-year high school program as of July 1, 2009, through June 30, 2012, shall total twenty as listed below.

(a) Three **English** credits (reading, writing, and communications) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. Assessment shall include the tenth grade Washington assessment of student learning beginning 2008.

(b) Three **mathematics** credits that align with the high school mathematics standards as developed and revised by the office of superintendent of public instruction and satisfy the requirements set forth below:

(i) Unless otherwise provided for in (b)(iv) through (vii) of this subsection, the three mathematics credits required under this section must include:

- (A) Algebra 1 or integrated mathematics I;
- (B) Geometry or integrated mathematics II; and
- (C) Algebra 2 or integrated mathematics III.

(ii) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III if all of the following requirements are met:

(A) The student's elective choice is based on a career oriented program of study identified in the student's high school

and beyond plan that is currently being pursued by the student;

(B) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra 2 or integrated mathematics III because it will better serve the student's education and career goals;

(C) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two and four year college level mathematics courses; and

(D) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed, and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

(iii) Courses in (b)(i) and (ii) of this subsection may be taken currently in the following combinations:

(A) Algebra 1 or integrated mathematics I may be taken concurrently with geometry or integrated mathematics II.

(B) Geometry or integrated mathematics II may be taken concurrently with algebra 2 or integrated mathematics III or a third credit of mathematics to the extent authorized in (b)(ii) of this subsection.

(iv) Equivalent career and technical education (CTE) mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (b)(i) of this subsection if the CTE mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

(v) A student who prior to ninth grade successfully completed algebra 1 or integrated mathematics I; and/or geometry or integrated mathematics II, but does not request high school credit for such course(s) as provided in RCW 28A.230.090, may either:

- (A) Repeat the course(s) for credit in high school; or
- (B) Complete three credits of mathematics as follows:

(I) A student who has successfully completed algebra 1 or integrated mathematics I shall:

- Earn the first high school credit in geometry or integrated mathematics II;
- Earn the second high school credit in algebra 2 or integrated mathematics III; and
- Earn the third high school credit in a math course that is consistent with the student's education and career goals.

(II) A student who has successfully completed algebra 1 or integrated mathematics I, and geometry or integrated mathematics II, shall:

- Earn the first high school credit in algebra 2 or integrated mathematics III; and

- Earn the second and third credits in mathematics courses that are consistent with the educational and career goals of the student.

(vi) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I pursuant to a written district policy, but does not receive credit under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in geometry or integrated mathematics II;
- Earn the second high school credit in algebra 2 or integrated mathematics III; and
- Earn the third credit in a mathematics course that is consistent with the student's education and career goals.

(vii) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I and geometry or integrated mathematics II pursuant to a written district policy, but does not receive credit for the courses under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in algebra 2 or integrated mathematics III;
- Earn the second and third high school credits in courses that are consistent with the educational and career goals of the student.

(c) Two **science** credits (physical, life, and earth) that at minimum align with grade level expectations for ninth and tenth grade, plus content that is determined by the district. At least one credit in laboratory science is required which shall be defined locally. Assessment shall include the tenth grade Washington assessment of student learning beginning 2010.

(d) Two and one-half **social studies** credits that at minimum align with the state's essential academic learning requirements in civics, economics, geography, history, and social studies skills at grade ten and/or above plus content that is determined by the district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in social studies at the high school level by 2008-09. In addition, districts shall require students to complete a classroom-based assessment in civics in the eleventh or twelfth grade also by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095). The social studies requirement shall consist of the following mandatory courses or equivalencies:

(i) One credit shall be required in United States history and government which shall include study of the Constitution of the United States. No other course content may be substituted as an equivalency for this requirement.

(ii) Under the provisions of RCW 28A.230.170 and 28A.230.090, one-half credit shall be required in Washington state history and government which shall include study of the Constitution of the state of Washington and is encouraged to include information on the culture, history, and government of the American Indian people who were the first inhabitants of the state.

(A) For purposes of the Washington state history and government requirement only, the term "secondary student" shall mean a student who is in one of the grades seven

through twelve. If a district offers this course in the seventh or eighth grade, it can still count towards the state history and government graduation requirement. However, the course should only count as a high school credit if the academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors (RCW 28A.230.090(4)).

(B) The study of the United States and Washington state Constitutions shall not be waived, but may be fulfilled through an alternative learning experience approved by the local school principal under written district policy.

(C) Secondary school students who have completed and passed a state history and government course of study in another state may have the Washington state history and government requirement waived by their principal. The study of the United States and Washington state Constitutions required under RCW 28A.230.170 shall not be waived, but may be fulfilled through an alternative learning experience approved by the school principal under a written district policy.

(D) After completion of the tenth grade and prior to commencement of the eleventh grade, eleventh and twelfth grade students who transfer from another state, and who have or will have earned two credits in social studies at graduation, may have the Washington state history requirement waived by their principal if without such a waiver they will not be able to graduate with their class.

(ii) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or related courses with emphasis on current problems may be accepted as equivalencies.

(e) Two **health and fitness** credits that at minimum align with current essential academic learning requirements at grade ten and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in health and fitness at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095).

(i) The fitness portion of the requirement shall be met by course work in fitness education. The content of fitness courses shall be determined locally under WAC 180-51-025. Suggested fitness course outlines shall be developed by the office of the superintendent of public instruction. Students may be excused from the physical portion of the fitness requirement under RCW 28A.230.050. Such excused students shall be required to substitute equivalency credits in accordance with policies of boards of directors of districts, including demonstration of the knowledge portion of the fitness requirement.

(ii) "Directed athletics" shall be interpreted to include community-based organized athletics.

(f) One **arts** credit that at minimum is aligned with current essential academic learning requirements at grade ten

and/or above plus content that is determined by the local school district. The assessment of achieved competence in this subject area is to be determined by the local district although state law requires districts to have "assessments or other strategies" in arts at the high school level by 2008-09. The state superintendent's office has developed classroom-based assessment models for districts to use (RCW 28A.230.095). The essential content in this subject area may be satisfied in the visual or performing arts.

(g) One credit in **occupational education**. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as proposed or adopted in the career and technical education program standards of the office of the superintendent of public instruction. The assessment of achieved competence in this subject area is determined at the local district level.

(h) Five and one-half electives: Study in a world language other than English or study in a world culture may satisfy any or all of the required electives. The assessment of achieved competence in these subject areas is determined at the local district level.

(i) Each student shall complete a culminating project for graduation. The project shall consist of the student demonstrating both their learning competencies and preparations related to learning goals three and four. Each district shall define the process to implement this graduation requirement, including assessment criteria, in written district policy.

(j) Each student shall have a high school and beyond plan for their high school experience, including what they expect to do the year following graduation.

(k) Each student shall attain a certificate of academic achievement or certificate of individual achievement. The tenth grade Washington assessment of student learning and Washington alternate assessment system shall determine attainment.

(2) State board of education approved private schools under RCW 28A.305.130(5) may, but are not required to, align their curriculums with the state learning goals under RCW 28A.150.210 or the essential academic learning requirements under RCW 28A.655.070.

NEW SECTION

WAC 180-51-067 State subject and credit requirements for high school graduation—Students entering the ninth grade on or after July 1, 2012. The statewide subject areas and credits required for high school graduation, beginning July 1, 2012, for students who enter the ninth grade or begin the equivalent of a four-year high school program, shall total twenty as provided below. All credits are to be aligned with the state's essential academic learning requirements (learning standards) for the subject. The content of any course shall be determined by the local school district.

(1) Four **English** credits.

(2) Three **mathematics** credits that satisfy the requirements set forth below:

(a) Unless otherwise provided for in (d) through (g) of this subsection, the three mathematics credits required under this section must include:

(i) Algebra 1 or integrated mathematics I;

(ii) Geometry or integrated mathematics II; and

(iii) Algebra 2 or integrated mathematics III.

(b) A student may elect to pursue a third credit of high school-level mathematics, other than algebra 2 or integrated mathematics III, if all of the following requirements are met:

(i) The student's elective choice is based on a career oriented program of study identified in the student's high school and beyond plan that is currently being pursued by the student;

(ii) The student's parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection than algebra 2 or integrated mathematics III because it will better serve the student's education and career goals;

(iii) A meeting is held with the student, the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable), and a high school representative for the purpose of discussing the student's high school and beyond plan and advising the student of the requirements for credit bearing two- and four-year college level mathematics courses; and

(iv) The school has the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) sign a form acknowledging that the meeting with a high school representative has occurred, the information as required was discussed, and the parent(s)/guardian(s) (or designee for the student if a parent or guardian is unavailable) agree that the third credit of mathematics elected is a more appropriate course selection given the student's education and career goals.

(c) Courses in (a) and (b) of this subsection may be taken currently in the following combinations:

(i) Algebra 1 or integrated mathematics I may be taken concurrently with geometry or integrated mathematics II.

(ii) Geometry or integrated mathematics II may be taken concurrently with algebra 2 or integrated mathematics III or a third credit of mathematics to the extent authorized in (b) of this subsection.

(d) Equivalent career and technical education (CTE) mathematics courses meeting the requirements set forth in RCW 28A.230.097 can be taken for credit instead of any of the mathematics courses set forth in (a) of this subsection if the CTE mathematics courses are recorded on the student's transcript using the equivalent academic high school department designation and course title.

(e) A student who prior to ninth grade successfully completed algebra 1 or integrated mathematics I; and/or geometry or integrated mathematics II, but does not request high school credit for such course(s) as provided in RCW 28A.230.090, may either:

(i) Repeat the course(s) for credit in high school; or

(ii) Complete three credits of mathematics as follows:

(A) A student who has successfully completed algebra 1 or integrated mathematics I shall:

- Earn the first high school credit in geometry or integrated mathematics II;
- Earn the second high school credit in algebra 2 or integrated mathematics III; and
- Earn the third high school credit in a math course that is consistent with the student's education and career goals.

(B) A student who has successfully completed algebra 1 or integrated mathematics I, and geometry or integrated mathematics II, shall:

- Earn the first high school credit in algebra 2 or integrated mathematics III; and
- Earn the second and third credits in mathematics courses that are consistent with the educational and career goals of the student.

(f) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I pursuant to a written district policy, but does not receive credit under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in geometry or integrated mathematics II;
- Earn the second high school credit in algebra 2 or integrated mathematics III; and
- Earn the third credit in a mathematics course that is consistent with the student's education and career goals.

(g) A student who satisfactorily demonstrates competency in algebra 1 or integrated mathematics I and geometry or integrated mathematics II pursuant to a written district policy, but does not receive credit for the courses under the provisions of WAC 180-51-050, shall complete three credits of high school mathematics in the following sequence:

- Earn the first high school credit in algebra 2 or integrated mathematics III;
- Earn the second and third high school credits in courses that are consistent with the educational and career goals of the student.

(3) Two **science** credits, at least one of the two credits must be in laboratory science.

(4) Three **social studies** credits (2.5 credits prescribed courses, plus a .5 credit social studies elective) and a non-credit requirement. The social studies requirement shall consist of the following mandatory courses or equivalencies:

(a) One credit shall be required in United States history.

(b) Successful completion of Washington state history and government shall be required, subject to the provisions of RCW 28A.230.170; RCW 28A.230.090 and WAC 392-410-120, and shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state. Successful completion must be noted on each student's transcript. The Washington state history and government requirement may be waived by the principal for students who: (i) Have successfully completed a state history and government course of study in another state; and (ii) are in eleventh or twelfth grade and who have not completed a course of study in Washington's history and state government because of previous residence outside the state.

(c) One credit shall be required in contemporary world history, geography, and problems. Courses in economics, sociology, civics, political science, international relations, or

related courses with emphasis on contemporary world problems may be accepted as equivalencies.

(d) One-half credit shall be required in civics and include at a minimum the content listed in RCW 28A.230.093.

(5) Two **health and fitness** credits (.5 credit health; 1.5 credits fitness). Students may be excused from the fitness requirement under RCW 28A.230.050. Such excused students shall be required to demonstrate proficiency/competency in the knowledge portion of the fitness requirement, in accordance with written district policy.

(6) One **arts** credit. The essential content in this subject area may be satisfied in the visual or performing arts.

(7) One credit in **occupational education**. "Occupational education" means credits resulting from a series of learning experiences designed to assist the student to acquire and demonstrate competency of skills under student learning goal four and which skills are required for success in current and emerging occupations. At a minimum, these competencies shall align with the definition of an exploratory course as contained in the career and technical education (CTE) program standards of the office of the superintendent of public instruction.

(a) Students who earn a graduation requirement credit through a CTE course locally determined to be equivalent to a non-CTE course will not be required to earn a second credit in the non-CTE course subject; the single CTE course meets two graduation requirements.

(b) Students who earn a graduation requirement credit in a non-CTE course locally determined to be equivalent to a CTE course will not be required to earn a second credit in the CTE course subject; the single non-CTE course meets two graduation requirements.

(c) Students satisfying the requirement in (a) or (b) of this subsection will need to earn five elective credits instead of four; total credits required for graduation will not change.

(8) Four credits of electives.

(9) Each student shall complete a culminating project for graduation. The project shall consist of the student demonstrating both their learning competencies and preparations related to learning goals three and four. Each district shall define the process to implement this graduation requirement, including assessment criteria, in written district policy.

(10) Each student shall have a high school and beyond plan for their high school experience, including what they expect to do the year following graduation.

(11) Students who complete and pass all required International Baccalaureate Diploma Programme courses are considered to have satisfied state subject and credit requirements for graduation from a public high school, subject to the provisions of RCW 28A.230.090, 28A.230.170, and chapter 28A.230 RCW.

WSR 11-19-113

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed September 21, 2011, 11:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-033.

Title of Rule and Other Identifying Information: WAC 314-05-025 Application process for a special occasion license and 314-05-030 Guidelines for special occasion license events.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on October 26, 2011, at 10:00 a.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by October 26, 2011.

Assistance for Persons with Disabilities: Contact Karen McCall by October 26, 2011, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarification was needed in WAC 314-05-025 on what documentation the board requires; revisions to WAC 314-05-030 were needed to implement SSB 5788 from the 2011 legislative session.

Reasons Supporting Proposal: Implement legislation from the 2011 legislative session for WAC 314-05-030 and clarifying WAC 314-05-025 to make it easier for our licensees to understand and stay in compliance.

Statutory Authority for Adoption: RCW 66.08.030 and 66.24.380.

Statute Being Implemented: RCW 66.24.380.

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

Name of Proponent: Washington state liquor control board.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation and Enforcement: Justin Nordhorn, Chief, Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has a positive impact on special occasion liquor licensees.

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

September 21, 2011

Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 04-22-078, filed 11/2/04, effective 12/3/04)

WAC 314-05-025 Application process for a special occasion license. (1) Special occasion applications normally take forty-five days to process. The liquor control board may not be able to process your application in time for your event if you do not apply at least forty-five days before the event.

(2) Per RCW 66.24.010(8), when the board receives a special occasion application, it must send a notice to the local authority. The local authority has twenty days to respond with any input, and they may request an extension for good cause.

(3) The liquor control board may run a criminal history check on the organization's officers and/or managers.

(4) The liquor control board (~~((may request))~~) requires documentation to verify the organization is a bona-fide non-profit, who the true party(ies) of interest are in the organization, and that the organization meets the guidelines outlined in WAC 314-05-020 and 314-05-025.

(5) See chapter 314-07 WAC regarding possible reasons for denial of a special occasion license. Denials are subject to the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 09-02-013, filed 12/29/08, effective 1/29/09)

WAC 314-05-030 Guidelines for special occasion license events. (1) The special occasion license must be posted at the event.

(2) Special occasion licensees may get alcohol for the event only from the following sources:

(a) Spirits must be purchased from a Washington state-run or contract liquor store;

(b) Beer and wine must be purchased at retail from a licensed retailer, from a beer or wine distributor, from a domestic brewery, microbrewery, or winery, acting as a distributor of its own product, or from a certificate of approval holder with a direct shipping to Washington retailer endorsement. Special occasion licensees are allowed to pay for beer or wine used for the special occasion event immediately following the end of the special occasion event; and

(c) Per RCW 66.28.040, in state breweries and wineries (~~((and))~~), out-of-state breweries and wineries holding a certificate of approval license, domestic distillers or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate beer (~~((and))~~), wine, and spirits to special occasion licensees that are nonprofit 501 (c)(3) charitable organizations or nonprofit 501 (c)(6) organizations. Spirits donated to a special occasion licensee must be purchased from a state or contract liquor store.

(3) Special occasion licensees may not advertise or sell alcohol below cost. If donated product is sold by the special occasion licensee, it may not be advertised or sold below the manufacturers' cost.

(4) Per RCW 66.28.010, alcohol manufacturers, importers and distributors may provide advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, but may not provide money, goods, or services to special occasion licensees.

(a) Wineries and distilleries may pour at any special occasion event.

(b) Wineries or breweries that are participating in a special occasion event may pay reasonable booth fees to the special occasion licensee. Booth fees must be uniform for all participating wineries and breweries.

(5) Per RCW 66.24.380, the sale, service, and consumption of alcohol must be confined to a designated location(s).

(6) If a special occasion license function is held at an establishment that has a liquor license:

(a) The special occasion function must be held in an area of the premises separate from areas open to the general public during the time the special occasion function is occurring,

and the licensed premises' liquor cannot be sold or served in the same area(s) as the special occasion license function.

(b) The liquor licensee cannot charge for the liquor purchased by the special occasion licensee for service at the special occasion event, but can charge for room usage, services, etc. The liquor licensee must sign the special occasion application giving permission for the special occasion licensee to bring and sell their alcohol (~~on the~~) at the liquor licensed premises.

(c) The special occasion license will not be issued for use at premises whose liquor license will be suspended on the date(s) of the scheduled event.

WSR 11-19-114
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 21, 2011, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-094.

Title of Rule and Other Identifying Information: The department is proposing changes to WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and calculate the amount of my cash and Basic Food benefits? and 388-418-0005 How will I know what changes to report?

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 October 25, 2011, at 10:00 a.m.

Date of Intended Adoption: October 26, 2011.

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 5:00 p.m., October 25, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, 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 department is amending WAC 388-418-0005 and 388-450-0162 to update existing regulations to establish income eligibility for nonparental child-only TANF grants required by ESSB 5921 that go into effect November 1, 2011.

Reasons Supporting Proposal: These changes are necessary to conform to ESSB 5921, section 4.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, chapter 74.12 RCW.

Statute Being Implemented: ESSB 5921, section 4, chapter 42, Laws of 2011.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Berry, CSD headquarters, (360) 725-4617.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not a "significant rule" under RCW 34.05.328.

September 21, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-02-071, filed 1/5/11, effective 2/5/11)

WAC 388-418-0005 How will I know what changes to report? You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(1) If you receive assistance from any of the programs listed in subsection (1), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the **first** program you receive benefits from.

(a) If you receive **long term care** benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPES, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:

- (i) Residence;
- (ii) Marital status;
- (iii) Living arrangement;
- (iv) Income;
- (v) Resources;
- (vi) Medical expenses; and

(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.

(b) If you receive **medical benefits based on age, blindness, disability (SSI-related medical), or ADATSA** benefits, you need to tell us if:

- (i) You move;
- (ii) A family member moves into or out of your home;
- (iii) Your resources change; or
- (iv) Your income changes. This includes the income of you, your spouse or your child living with you.

(c) If you receive **cash** benefits, you need to tell us if:

- (i) You move;
- (ii) Someone moves out of your home;
- (iii) Your total gross monthly income goes over the:
 - (A) Payment standard under WAC 388-478-0030 if you receive general assistance; or
 - (B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than four thousand dollars; or

(v) You have a change in employment. Tell us if you:

(A) Get a job or change employers;

(B) Change from part-time to full-time or full-time to part-time;

(C) Have a change in your hourly wage rate or salary; or

(D) Stop working.

(d) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;

(ii) The child you are caring for moves out of the home;

(iii) ~~((The child's parent moves into your home;~~

~~(iv) The))~~ Anyone related to you or to the child you are caring for moves into or out of the home;

(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).

(v) There is a change in the recipient child's earned or unearned income (~~changes~~) (see WAC 388-450-0070 for how we count the earned income of a child);

~~((~~+~~))~~ (vi) The recipient child has liquid resources more than four thousand dollars;

(vii) A recipient child in the home becomes a foster child; or

(viii) You legally adopt the recipient child.

(e) If you receive **family medical** benefits, you need to tell us if:

(i) You move;

(ii) A family member moves out of your home; or

(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.

(2) If you do not receive assistance from any of the programs listed in subsection (1), but you do receive benefits from any of the programs listed in subsection (2), you must report changes for the people in your assistance unit under chapter 388-408 WAC, based on all the benefits you receive.

(a) If you receive **Basic Food** benefits, you need to tell us if:

(i) If your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or

(ii) For all other households tell us if your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or

(iii) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 ~~((and))~~ has their hours at work go below twenty hours per week.

(b) If you receive **children's medical** benefits, you need to tell us if:

(i) You move; or

(ii) A family member moves out of the house.

(c) If you receive **pregnancy medical** benefits, you need to tell us if:

(i) You move; or

(ii) You are no longer pregnant.

(d) If you receive **other medical** benefits, you need to tell us if:

(i) You move; or

(ii) A family member moves out of the home.

AMENDATORY SECTION (Amending WSR 09-07-054, filed 3/11/09, effective 4/11/09)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits? (1) Countable income is all income your assistance unit (AU) or your child-only means-testing AU has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170 and 388-450-0175;

(c) For **Basic Food**, deductions allowed under WAC 388-450-0185; and

(d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(3) Starting November 1, 2011, we may apply child-only means-testing to determine eligibility and your payment standard amount.

(a) Child-only means-testing applies when you are a non-parental relative or unrelated caregiver applying for or receiving a nonneedy TANF/SFA grant for a child or children only, unless at least one child was placed by a state or tribal child welfare agency and it is an open child welfare case.

(b) For the purposes of child-only means-testing only, we include yourself, your spouse, your dependents, and other persons who are financially responsible for yourself or the child as defined in WAC 388-450-0100 in your assistance unit (AU). We call this your child-only means-testing AU.

(c) As shown in the chart below, we compare your child-only means-testing AU's total countable income to the current federal poverty level (FPL) for your household size to determine your child-only means-testing payment standard. Your child-only means-tested payment standard is a percentage of the payment standards in WAC 388-478-0020.

<u>If your countable child-only means-testing AU income is:</u>	<u>Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:</u>
<u>200% FPL or less</u>	<u>100%</u>

<u>If your countable child-only means-testing AU income is:</u>	<u>Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:</u>
<u>Between 201% and 225% of FPL</u>	<u>80%</u>
<u>Between 226% and 250% of FPL</u>	<u>60%</u>
<u>Between 251% and 275% of FPL</u>	<u>40%</u>
<u>Between 276% and 300% of FPL</u>	<u>20%</u>
<u>Over 300% of the FPL</u>	<u>The children in your care are not eligible for a TANF/SFA grant.</u>

(d) If the children in your care qualify for a TANF/SFA grant once the child-only means-test is applied, the child's income is budgeted against the child-only means-tested payment standard amount.

(e) If the children in your care do not qualify for a TANF/SFA grant once the child-only means-test is applied, they may still qualify for medical assistance as described in WAC 388-408-0055 and WAC 388-505-0210.

(4) For cash assistance:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0030 or, for child-only means-tested cases, to the payment standard amount in subsection (3).

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard plus any authorized additional requirements.

(c) Your benefit level is the payment standard and authorized additional requirements minus your AU's countable income.

~~((4))~~ **(5) For Basic Food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regulations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for Basic Food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for Basic Food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is sixty years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for Basic Food.

(b) How we calculate your AU's monthly Basic Food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract thirty percent of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.