

WSR 11-22-009
PROPOSED RULES
SOUTH PUGET SOUND
COMMUNITY COLLEGE

[Filed October 21, 2011, 12:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-18-094.

Title of Rule and Other Identifying Information: Chapter 132X-10 WAC, Public records; chapter 132X-30 WAC, Use of college facilities; chapter 132X-40 WAC, Environmental protection; chapter 132X-50 WAC, Parking and traffic regulations—South Puget Sound Community College; chapter 132X-60 WAC, South Puget Sound code of student rights and responsibilities; chapter 132X-70 WAC, Faculty tenure; chapter 132X-80 WAC, Course materials sales; and chapter 132X-90 WAC, Process for hearings.

Hearing Location(s): Boardroom, Student and Administrative Services Building #25, South Puget Sound Community College, 2011 Mottman Road S.W., Olympia, WA 98512-6292, on December 7, 2011, at 3:00 p.m.

Date of Intended Adoption: December 7, 2011.

Submit Written Comments to: Diana Toledo, South Puget Sound Community College, 2011 Mottman Road S.W., Olympia, WA 98512-6292, e-mail dtoledo@spsc.ccc.edu, fax (360) 586-3570, by November 30, 2011.

Assistance for Persons with Disabilities: Contact Diana Toledo by November 30, 2011, TTY (360) 596-5439.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 132X-10 WAC, to reflect updates to the RCW numbers, update college title/office changes and language for clarification; chapter 132X-30 WAC, for inclusion of new language to update and clarify guidelines and procedural changes; chapter 132X-40 WAC, to change terminology from "policy" to "rule"; chapter 132X-50 WAC, to update college title changes and definitions and to update and clarify language; chapter 132X-60 WAC, to update and add definitions of college terms and for inclusion of new language to update and clarify guidelines and procedural changes; chapter 132X-70 WAC, new, to specify the governing authority for faculty tenure and dismissal and to clarify purposes of granting professional leave to faculty; chapter 132X-80 WAC, new, to identify and provide guidelines for course materials sales and cost savings; and chapter 132X-90 WAC, new, to provide process for brief and full adjudicative hearing.

Reasons Supporting Proposal: The proposed changes are necessary to update the rules and help keep current with operational procedures.

Statutory Authority for Adoption: Chapter 28B.50 RCW and RCW 42.56.040.

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

Name of Proponent: South Puget Sound Community College, public.

Name of Agency Personnel Responsible for Drafting: President's staff (vice-presidents), Buildings 25 and 23, (360) 596-5206; Implementation and Enforcement: President's staff, Buildings 25 and 23, (360) 596-5206.

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

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

October 20, 2011
 Gerald Pumphrey
 College President

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-10-010 Purpose. The purpose of this chapter shall be to ensure compliance by the South Puget Sound Community College District 24 with the provisions of chapter ((42.17)) 42.56 RCW, ((~~Disclosure Campaign finances Lobbying Records; and in particular with RCW 42.17.250 through 42.17.340, dealing with~~)) Public Records Act.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-10-020 Definitions. (1) Public records. "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) ((~~Writing~~)) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation((-)) including, but not limited to, letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents((-)) including existing data compilations from which information may be obtained or translated.

(3) South Puget Sound Community College District 24. The South Puget Sound Community College District 24 is an agency organized by statute pursuant to RCW 28B.50.040. Where appropriate, the term college also refers to the staff, the board of trustees, and the employees of the college.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-10-050 Public records available. All public records of the college, as defined in WAC 132X-10-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ((42.17.310, 42.17.315, 42.17.260(1))) 42.56.210, 42.56.230, 42.56.070, 42.56.510 and WAC 132X-10-100.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-10-060 Public records officer. The college's public records shall be in the charge of the public records officer designated by the president. The person so

designated at the college is the ~~((vice president for))~~ chief human resources officer. The public records officer shall be responsible for the following: The implementation of the college's rules and regulations regarding release of public records, coordinating the staff of the college in this regard, ~~((and generally ensuring))~~ servicing as a point of contact for members of the public in requesting disclosure of public records, and to oversee the college's compliance ((by the staff)) with the public records disclosure requirements of RCW ((42.17.250)) 42.56.001 through ((42.17.340)) 42.56.904.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-10-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the college. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through ~~((Friday))~~ Thursday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-10-080 Requests for public records. In accordance with requirements of RCW ~~((42.17.250))~~ 42.56.001 through ~~((42.17.340))~~ 42.56.904 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request should be made in writing upon a form prescribed by the college which shall be available at its ~~((administrative))~~ human resources office. The form shall be presented to the public records officer and/or his/her designees, at the ~~((administrative))~~ human resources office during customary office hours referenced in WAC 132X-10-070. The request shall include the following information:

(a) The name, signature, mailing address, telephone and e-mail address (if any) of the person requesting the record;

(b) The time of day and calendar date on which the request was made; and

(c) The nature of the request~~((;))~~

~~((d))~~ If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

~~((e))~~ If the requested matter is not identifiable by reference to the college's current index, an appropriate description of the record requested~~((;))~~ and the specific identifiable record(s) being sought.

(2) In all cases ~~((in which a member of the public is making a request, it shall be the obligation of))~~ the public records officer and/or his/her designees, ~~((to))~~ should, whenever possible, assist the ((member of the public)) requestor in appropriately identifying the public record requested.

(3) The public records officer and/or his/her designee to whom the request is presented shall, by the close of five business days:

(a) Make the requested document available; or

(b) Advise the requestor as to the estimated date of availability of the requested record(s); or

~~((c))~~ State that such a document does not exist; or

~~((d))~~ Ask for clarification of the document requested; or

~~((e))~~ Deny access because the document is exempt from public inspection under WAC 132X-10-050.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-10-090 Copying. No fee shall be charged for the inspection of public records. The college shall charge a fee of 15¢ per page of copy for providing copies of public records and for use of the college's copy equipment. This charge is the amount necessary to reimburse the college for its actual costs incident to such copying. If a particular request for copies requires ~~((an unusually large amount of time, or))~~ the use of any equipment not readily available, the college will provide copies at a rate sufficient to cover any additional cost. All fees must be paid by money order, cashier's check or cash either in advance or at the time of tender of the records.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-10-100 Exemptions. (1) The college reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 132X-10-080 is exempt under the provisions of ~~((RCW 42.17.310, 42.17.315 and 42.17.260))~~ chapter 42.56 RCW including, but not limited to, RCW 42.56.510.

(2) In addition, pursuant to RCW ~~((42.17.260))~~ 42.56.070, the college reserves the right to ~~((delete identifying details when it makes available or publishes any public record))~~ lawfully strike out information in public records it discloses, in ((any)) cases when ((there is reason to believe that)) disclosure of such details would ((be an invasion of personal privacy protected by chapter 1, Laws of 1973)) constitute personal information as defined in RCW 42.56.230 or would constitute an invasion of privacy as defined in RCW 42.56.050 and referenced in RCW 42.56.230(2). The public records officer and/or his/her designee will ~~((fully justify such deletion in writing))~~ reflect the relevant RCWs supporting such strikeouts either on the document at the point of striking out or in a strikeout log enclosed with or part of the transmittal letter accompanying the records.

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

(4) The release or disclosure of student educational records is governed by federal regulation (FERPA). Separate and different procedures are established by the college for student educational records.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-10-110 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer and/or his/her designees which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer and/or his/her designee denying the request shall refer it to the president. The president or his/her designee shall consider the college's obligation to comply with the intent of chapter ~~((42.17))~~ 42.56 RCW, the exemptions provided in ~~((RCW 42.17.310 or))~~ chapter 42.56 RCW including, but not limited to, RCW 42.56.070, 42.56.320, 42.56.510 and other pertinent statutes, ~~((and the))~~ along with statutory provisions which require the college to protect public records from damage or disorganization, prevent excessive interference with essential college functions, and prevent any unreasonable invasion of personal privacy by deleting identifying details. In any case, the request shall be returned with a final decision, within five business days following the original denial.

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

(4) Whenever the college concludes that a public record is exempt from disclosure and denies inspection and copying, the requestor may request a review of the matter by the office of the attorney general. A written request for review by the attorney general's office, along with a copy of the request and the college's written denial should be sent directly to the office of attorney general in Olympia, Washington. The office of the attorney general will conduct a prompt and independent review of the request and the college's denial and provide a written opinion as to whether the record requested is exempt from disclosure. This review is not binding upon the college or the requestor.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-10-120 Protection of public records. Requests for public records shall be to the public records officer and/or his/her designees in the ~~((appropriate location))~~ human resources office. Public records and a facility for their inspection will be provided by the public records officer and/or his/her designees. Such records shall not be removed from the place designated for their inspection. Copies shall be made at South Puget Sound Community College. If copying facilities are not available at the college, the college will arrange to have copies made commercially according to the provisions of WAC 132X-10-090.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-10-130 Records index. (1) Index. The public records officer and/or his/her designees have available to all persons a current index which provides identifying information as to those records adopted or promulgated and indexed since ~~((June 30, 1972))~~ January 2, 1973, in the following areas:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of ~~((policy))~~ rules and interpretations of ~~((policy))~~ rules, statute and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others;

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party;

(g) Financial records and budgets; and

(h) Board of trustees' minutes and reports.

(2) Availability. The current index promulgated by the college shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132X-10-150	Request for public records to South Puget Sound Community College.
-----------------	--

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-30-010 General ~~((policy))~~ rule. ~~((South Puget Sound Community College District 24 is an educational institution provided and maintained by the people of the state. Its campuses, buildings, properties and facilities shall be reserved at all times for those activities which are related to its broad educational objectives and goals. However, the facilities, when not required for scheduled college use, are available for rental by the public in accordance with specified fee schedules and other regulations and procedures for such use.))~~ The college allows but is not required to rent college facilities when they are not previously scheduled for college use to noncollege organizations or any individuals

upon approval by the president or designee, and in accordance with administrative procedures.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-30-020 ((Administrative control.) Use of designated public forums. ((The board of trustees delegates to the president authority to establish procedures for proper review and approval of the use of the college's facilities; to establish, within the framework of these policies, regulations governing such use; and to establish and revise fee schedules consistent with WAC 132X-30-070-)) (1) In the interest of permitting persons to lawfully exercise their First Amendment right to free speech and embracing the college as a marketplace of ideas, the college has designated the following areas of its campus and facilities as open public forums:

(a) The outside area between Buildings 31, 32, and 33; and

(b) The outside area behind Buildings 27 and 28.

(2) Within these designated public forums, individuals may protest, assemble, and/or demonstrate so long as the individuals' words or conduct do not:

(a) Interfere with the free passage of students, faculty, staff, and/or vehicular traffic; or

(b) Interfere with the ingress or egress of any buildings; or

(c) Include any sound amplification such as, but not limited to, bullhorns, microphones, or loud speakers; or

(d) Constitute a substantial and material physical disruption of the college's interest in maintaining peaceful functioning of its campus and its students' ability to learn.

(3) Within these designated public forums, individuals may distribute handbills, leaflets, and similar materials so long as the material is not obscene, libelous, or unlawful.

(4) The designated public forums enumerated in subsection (1) of this section are not open as public forums during the following days of the year:

(a) The first week and the final exam week of each term; and

(b) Advising day; and

(c) Kickoff and convocation weeks, or in other words, the two weeks immediately preceding each quarter; and

(d) All campus event days.

(5) College facilities, including designated public forums, may not be used for commercial sales, solicitations, advertising or promotional activities unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(6) A student, faculty member, or staff member who violates this regulation subjects himself or herself to discipline.

(7) A nonstudent, nonfaculty member, or nonstaff member who violates this regulation subjects himself or herself to discipline under WAC 132X-30-030 and may be subject to arrest for criminal trespass under RCW 9A.52.070 or 9A.52.080.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-30-030 Trespass regulations. ~~((1) In order to safeguard the right of every citizen to criticize and to seek meaningful change, each individual has an obligation to respect the rights of all members of the college community.~~

~~(2) In order to assure those rights to all members of the college community and to maintain a peaceful atmosphere, the following types of conduct are hereby prohibited on or in college property:~~

~~(a) Conduct which intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on the college campus;~~

~~(b) Physical abuse of any person or conduct which is intended unlawfully to threaten imminent bodily harm or to endanger the health or safety of any person on the college campus;~~

~~(c) Malicious damage to or malicious misuse of college property, or the property of any person where such property is located on the college campus;~~

~~(d) Refusal to comply with any order of the president, the president's designee, or a law enforcement officer to leave the college campus or any portion thereof;~~

~~(e) Intentionally inciting others to engage immediately in any of the conduct prohibited herein, which incitement leads directly to such conduct. (Inciting is that advocacy which prepares the group addressed for imminent action and steels it to the conduct prohibited herein.)~~

~~(3) Guests and visitors on college property who willfully refuse to obey an order of the president, the president's designee, or a law enforcement officer to desist from conduct prohibited by the above rules and regulations may be ejected from the premises.~~

~~Refusal to obey such an order will subject the person to arrest under the provisions of the Criminal Trespass Act, in addition to such other sanctions as may be applicable.~~

~~(4) Persons who repeatedly engage in any conduct prohibited above may be barred permanently from college property. Before being barred permanently, a person will be given the following:~~

~~(a) Written notice sent to the person's last known address specifying the charges against the person; and~~

~~(b) The opportunity to request a hearing with the president or the president's designee within two weeks from the date notice is sent.~~

~~The written notice shall inform the person that he or she may produce and question witnesses, and that failure to request a hearing within the time specified constitutes a waiver of the person's right to such hearing. The college shall have the burden of proving that the person repeatedly engaged in conduct prohibited by subsection (2) of this section. After the hearing, if one is requested, the president or the president's designee may decide to bar the person from college property permanently, to grant the person a limited license to enter onto college property, or to grant the person full access to college property. A copy of the decision will be sent to the person's last known address within two weeks after the hearing-)) (1) The college president or designee, acting through campus security, shall have the authority and power to:~~

(a) Prohibit the entry of, or withdraw the license or privilege of, any individual to enter onto or remain upon any portion of a college facility; or

(b) Give notice against trespass to any individual against whom the license or privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility; or

(c) Order any individual to leave or vacate all or any portion of a college facility.

(2) Authority under subsection (1) of this section may be exercised when:

(a) An individual who violates these regulations persists in the violation after notice of the specific nature of the violation has been given; or

(b) An individual or event is deemed to be substantial and material physical disruption of the peaceful functioning of the campus; or

(c) An individual or event threatens to disrupt the movement of persons within or to or from facilities owned and/or operated by the college; or

(d) An individual who threatens the safety or well-being of another person on campus or college activity.

Students, faculty, and staff of the college may be only ejected pursuant to this protocol where the duration of the ejection is for no more than a single day or where the ejection applies to a portion of the college facilities that the student or employee does not need to access in order to perform his or her studies or work.

(3) Students who violate WAC 132X-30-020 will be disciplined under chapter 132X-60 WAC.

(4) Faculty and staff members who violate WAC 132X-30-020 will be disciplined in accordance with established college policies.

(5) Individuals who are not students, faculty members, or college staff who violate WAC 132X-30-020 will be given notice of violation, and if the individuals persist in the violation, the college president or designee, acting through campus security, shall ask them to leave the college property.

This request to leave college property revokes any license or privilege the individuals may have had to enter onto or remain upon any portion of the college campus.

(6) Individuals who fail to leave campus after receiving notices of the violation shall be subject to arrest for criminal trespass under RCW 9A.52.070 or 9A.52.080.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 132X-30-040 Scheduling.
- WAC 132X-30-050 Users.
- WAC 132X-30-060 Limitations of use.
- WAC 132X-30-070 Fees.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-40-010 Environmental protection ((~~pol-~~icy)) rule. It shall be the ((~~policy~~)) rule of South Puget Sound Community College District 24 that capital projects proposed and developed by the college shall comply with the provisions of chapter 43.21C RCW, the State Environmental Policy Act (SEPA); chapter 197-11 WAC, SEPA rules; and WAC 131-24-030, SEPA implementation rules of the state board for community college education.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-40-020 Responsible officer. In compliance with WAC ((~~197-10-820~~)) 197-11-910, the vice-president for administrative services is designated to be the "responsible official" for carrying out this ((~~policy~~)) rule.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-50-010 Purpose for adopting parking and traffic regulations. Pursuant to the authority granted in RCW 28B.50.140(10), the board of trustees of South Puget Sound Community College District 24, on behalf of the college is granted authority to adopt rules and regulations for pedestrian and vehicular traffic upon public lands devoted to, operated by or maintained by the college. The objectives of these regulations are:

- (1) To protect and control pedestrian and vehicular traffic.
- (2) To assure access at all times for emergency traffic.
- (3) To minimize traffic disturbances ((~~during class hours~~)).
- (4) To facilitate the work of the college ((~~by assuring access to its vehicles and by assigning limited parking space for the most efficient use by all~~)).
- (5) To regulate the use of parking spaces.
- (6) To protect state-owned property.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-020 Applicable parking and traffic regulations. (1) All regulations in this chapter and all motor vehicle and other traffic laws of the state of Washington shall apply on the campus.

(2) The traffic code of the city of Olympia shall apply upon all lands located within the city of Olympia. The traffic codes of the city of Tumwater shall apply upon all lands located within the city of Tumwater. The traffic code of the city of Lacey shall apply upon all lands located within the city of Lacey.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-030 Definitions. As used in this chapter, the following words and phrases shall mean:

(1) "Annual permits": Permits which are valid from the date of issue until the first day of the following fall quarter. Annual permits are sold during fall quarter.

(2) "Board": The board of trustees of South Puget Sound Community College, District 24.

(3) "Campus": All lands and buildings devoted to, operated by, or maintained by South Puget Sound Community College, District 24.

(4) "Campus security officer": An employee of the college who is responsible for campus traffic control, parking, security, and safety.

(5) "College": South Puget Sound Community College, District 24.

(6) "Director of security": The college's safety and security supervisor.

(7) "Employee": Any individual appointed to the faculty, staff, or administration of the college. Student employment positions or college work study positions are not considered employees of the college in these definitions.

~~((7))~~ (8) "Full-time employee": An employee of the college employed twenty hours or more per week on a permanent regular basis.

~~((8))~~ (9) "Full-time student": Any person who is enrolled at this college and is taking ~~((ten))~~ twelve credit hours or more ~~((on the main campus))~~.

~~((9))~~ (10) "Guests/visitors": ~~((A person or))~~ Persons who ~~((come upon the campus as guests and person or persons who lawfully))~~ visit the campus.

~~((10))~~ "~~Main campus~~": ~~All lands and buildings located at 2011 Mottman Road S.W., Olympia, WA.-)~~

(11) "Part-time employee": An employee of the college employed less than twenty hours per week. Student employees or college work study employees are not classified as part-time employees under these definitions.

(12) "Part-time student": Any person who is enrolled at this college and is taking ~~((nine))~~ eleven credits ~~((hours))~~ or less ~~((on the main campus))~~.

(13) ~~((Safety and security supervisor~~: ~~The college's safety and security supervisor.~~

(14)) "Security office": The college's campus security office.

~~((15))~~ (14) "Temporary permits": Permits which are valid for a specific period designated on the permit.

~~((16))~~ (15) "Vehicle": Automobile, truck, motor-driven cycle, scooter or any vehicle otherwise powered.

~~((17))~~ (16) "Vice-president for administrative services": The vice-president for administrative services for South Puget Sound Community College, District 24.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-040 Authorization for issuance of permits. The ~~((safety and))~~ director of security ~~((supervisor))~~, or designee, is authorized to issue parking permits ~~((to students, administrators, exempt employees, faculty, staff, guests and visitors to the college,))~~ pursuant to the following regulations:

(1) ~~((A person may be issued a parking permit))~~ Upon the proper registration of his/her vehicle with the college.

~~((2))~~ ~~((The safety and security supervisor, or a designee, may issue temporary, permanent or special parking permits))~~ When such permits are necessary to enhance the business or operation of the college.

~~((3))~~ ~~((Additional permits are available at the current fee schedule to individuals who have registered other vehicles.))~~ Only one vehicle registered to an individual under one permit fee shall be permitted to park on campus at any one time.

(4) Persons who pay the current fee for parking permits and who later request a refund shall receive refunds according to the college's refund ~~((policy published in the college catalogues and bulletins))~~ rule. The person must first turn in the current quarter/annual permit to the cashier's office, before a refund will be issued.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-050 Parking fees for vehicle permits.

All students and employees of the college ~~((wanting to park on campus))~~ shall obtain and properly display a valid parking permit ~~((as issued by the college))~~ by the first day of the quarter on all vehicles ~~((parked or left standing unattended upon the college campus for both day and night classes,))~~ in accordance with WAC 132X-50-040. ~~((A valid temporary, daily, quarterly, or annual parking permit must be visibly displayed on the vehicle by the first day of the quarter.))~~ Day permits can be purchased at the pay station.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-060 Parking fee exceptions. All guests/visitors (including, but not limited to, salespersons, contractors or service personnel) will park in appropriate parking areas without paying a fee after obtaining a temporary permit from the security office or ~~((they may park in metered parking (all users must pay) or))~~ purchase a daily permit at the pay station(s). ~~((These exceptions include, but are not limited to:~~

~~(1) Federal, state, county, city, school district and similar governmental personnel on official business in vehicles with tax exempt licenses.~~

~~(2) Vehicles owned by contractors and their employees working on campus construction may be parked within available construction sites or areas.~~

~~(3) Members of the press, television, radio and wire services, on official business.~~

~~(4) Taxis and commercial delivery vehicles for the pick up and delivery of passengers, supplies and equipment.~~

~~(5) Persons attending special college events.~~

~~(6) Guests/visitors invited to the campus for the purpose of rendering services to the college. Visitors parking spaces are reserved for visitors/guests. These spaces are time restricted and vehicles with a valid permit are not permitted to park in these spaces.~~

~~(7) Students and faculty participating in Friday evening (after 4:30 p.m.) and/or weekend classes only. Friday evening and weekend classes are not required to obtain temporary permits.))~~

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-50-090 Transfer of permits. Parking permits are not transferable. If a vehicle is sold or traded, the new vehicle must be registered with the security office and the permit will be reissued ~~((or a new permit will be issued to the permit holder after paying the replacement cost))~~.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-50-100 Permit revocation. Permits are licenses and the property of the college, and may be ~~((recalled for any of the following))~~ revoked for reasons including, but not limited to:

- (1) When the purpose for which the permit was issued changes or no longer exists.
- (2) When a permit is used on an unregistered vehicle or by an unauthorized person.
- (3) Falsification on a vehicle registration application.
- (4) Continued violations of parking regulations.
- (5) Counterfeiting or altering of permits.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-130 Delegation of authority. The authority and powers conferred upon the vice-president for administrative services by these regulations shall be subject to delegation to that individual's subordinates.

~~((Campus))~~ The director of security or ~~((their))~~ designee(s) have the authority ~~((in appropriate circumstances))~~ to demand and receive identification ~~((in appropriate circumstances))~~ from any person on owned or rented college property.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-150 Violation of parking and traffic regulations. (1) Operators of illegally operated or parked vehicles shall be warned or cited ~~((through an appropriate means))~~ that they are in violation of these regulations. ~~((All fines are payable at the cashier's office.))~~

(2) In instances where violations are repeated (five or more ~~((unpaid/outstanding))~~ citations); or, vehicle is parked in such a manner as to endanger the college community; or, vehicle is parked in a fire lane or other posted tow-away, said vehicle(s) may be impounded and or immobilized.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-160 Issuance of traffic tickets or summons. (1) Upon ~~((probable cause to believe))~~ reasonable belief that a violation of these regulations has occurred, the ~~((safety and))~~ director of security ~~((supervisor))~~ or designee ~~((s))~~, may issue a warning or citation.

(2) Such warning or citation may be served by attaching ~~((or affixing))~~ a copy ~~((thereof in some prominent place))~~

outside such vehicle or by personally serving the operator/owner or by mailing the citation.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-170 Fines and penalties. The ~~((safety and))~~ director of security ~~((supervisor,))~~ or designee ~~((s))~~ is authorized to impose the following ~~((fines and penalties for violation of the regulations contained in this chapter))~~:

(1) Fines may be levied for all violations of the regulations contained in this chapter. All fines are payable at the cashier's office.

(2) Vehicles parking in a manner so as to obstruct traffic, including access to and from parking spaces and areas, may be subject to a fine, immobilized or may be impounded and taken to such place for storage as the safety and security supervisor, or designee, selects. The expenses of such impounding and storage shall be the responsibility of the registered owner or driver of the vehicle.

(3) The college shall not be liable for loss or damage of any kind resulting from immobilizing or impounding and storage of vehicles.

(4) Vehicles involved in violations of these regulations may be impounded or immobilized with a wheel lock as provided for in these regulations.

(5) A schedule of fines shall be set by the board of trustees.

(6) In the event a person fails or refuses to pay an uncontested fine which has been outstanding, the vice-president for administrative services or designee, shall initiate the following actions:

(a) Students will not be able to obtain a transcript of credits until all fines are paid.

(b) Students will not receive a degree/diploma or grades until all fines are paid.

(c) Students will not be able to register for subsequent quarters until all fines are paid.

(d) Staff, administrator or faculty members with outstanding fines may be turned over to a ~~((private))~~ collection agency for the collection of past due fines ~~((or other appropriate collection procedures))~~ ~~((such as garnishing wages may be used))~~.

(7) The following violations will be assessed ~~((in accordance with the fees and fine schedules as established by the board of trustees))~~:

(a) No valid permit displayed.

(b) Metered parking violation.

(c) No parking zone/area (not designated for parking).

(d) Carpool violation.

(e) Blocking vehicles/roadway.

(f) Parked in a fire lane.

(g) Disabled parking violation.

(h) Visitor parking violation.

(i) Occupying more than one space.

~~((Other parking violations of the college's parking regulations and its objectives.~~

~~((k))~~ Driving wrong way on a one-way roadway.

~~((H))~~ (k) Failure to yield right of way.

~~((m))~~ (l) Exceeding the posted speed limit or as conditions warrant.

~~((n))~~ (m) Failure to stop at sign or signal.

~~((o))~~ (n) Improper lane change.

~~((p))~~ (o) Reckless driving.

~~((q))~~ (p) Other violations of the college's traffic regulations and its objectives.

~~((r))~~ (q) Wheel lock removal fee.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-180 Appeals proceedings—Appeal of fines and penalties. (1) The alleged violator must submit the appeal in writing, giving full particulars, listing witnesses, evidence, etc.

(2) The appeal must be submitted to the security office within five days from date of citation.

(3) If the appeal is not resolved to the satisfaction of the alleged violator, he or she ~~((shall have five additional days from receipt of the decision by the security office to appeal to the vice-president for administrative services))~~ may appeal for a brief adjudicative proceeding in accordance with chapter 132X-90 WAC.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-210 Designation of parking. The parking spaces available on campus may be allocated and designated by the vice-president for administrative services in such a manner as will best achieve the objectives of these rules and regulations.

(1) Provisions will be made for ~~((disabled employees, visitors, and students. The college will meet or exceed the Americans with Disabilities Act requirement as to the number of disabled spaces available. Disabled individuals utilizing))~~ people with disabilities. People with disabilities using disabled parking spaces must display ((in that vehicle)) a valid state issued disabled parking permit or license plate on that vehicle. In addition to the disabled permit, a valid college parking permit must be purchased and displayed on the vehicle.

(2) Visitors parking shall be limited to spaces so designated.

(3) Parking spaces may be designated for special purposes as deemed necessary.

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-50-220 Parking within designated spaces. (1) No vehicle shall be parked on the campus except in those areas ~~((set aside and))~~ designated for parking.

(2) No vehicle shall be parked ~~((so as to occupy any portion of))~~ in more than one parking space or stall.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-240 Speed limit. No vehicle, except for emergency vehicles, shall be operated on the campus at a speed in excess of ~~((twenty miles per hour))~~ the posted speed limit, or such slower speed as is reasonable and prudent ~~((to))~~ under the circumstances. No vehicle of any type shall at any time use the campus parking lots for testing, racing, or other unauthorized activities. Exception may be granted by the vice-president for administrative services.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-260 Two-wheeled motorbikes or bicycles. (1) All two-wheeled vehicles powered by an engine shall park in areas designated for motorcycles only and will not use spaces assigned to automobiles or bicycles. All motorcycles parked on campus must ~~((purchase))~~ have a parking permit displayed.

(2) Bicycles and other nonengine powered cycles are to be parked in bicycle racks where provided. No person shall park a bicycle inside a building, by a doorway, on a path, sidewalk, walkway, or in such a manner as to block or obstruct the normal flow of pedestrian traffic. Bicycles and motorcycles may be cited, immobilized or impounded if in violation of this section.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-270 Report of accidents. ~~((+))~~ The operator of any vehicle involved in an accident on campus ~~((resulting in injury or death of any person or claimed damage to either or both vehicles exceeding five hundred dollars))~~ shall immediately report such accident to the security office. ~~((The operator shall within twenty-four hours after such an accident file all required state of Washington vehicle collision reports.~~

~~((2) Other minor accidents may be reported to the security office.))~~

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-50-280 Disabled and inoperative vehicles—Impounding. (1) ~~((Disabled or))~~ Inoperative vehicles shall not be parked on the campus for a period exceeding twenty-four hours, without authorization from the vice-president for administrative services, or designee.

(2) Vehicles parked more than forty-eight hours without authorization may be impounded and stored at the expense of either or both the owner and operator thereof.

~~((3) The security office will attempt to contact the owners and/or operator and advise that vehicle will be impounded, if not removed.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132X-50-080	Display of permits.
WAC 132X-50-190	Parking advisory committee.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-010 Preamble. South Puget Sound Community College is dedicated not only to learning and the advancement of knowledge but also the development of ethically sensitive and responsible persons. It seeks to achieve these goals through a sound educational program and policies concerning conduct that encourage independence and maturity while strengthening the spirit of mutual cooperation and responsibility shared by all members of the college community. Sharing goals held in common, the students, faculty, and staff of South Puget Sound Community College are joined in voluntary association in an educational community.

~~((The student is, first of all, a member of the community at large, and as such, is entitled to the rights and responsibilities of any citizen of comparable age and maturity. In addition, students, as members of the college, are in the unique position of being citizens of two communities, subject to the regulations imposed by both and accountable to both. South Puget Sound Community College expects that students will respect the laws of the greater society. As an agency of the state of Washington, the college must respect and adhere to the regulations established by local, state, and federal authorities. As an educational institution, it has the added responsibility for assisting students in gaining an understanding of the law and its function, and the responsibilities imposed upon each individual in a democratic society to respect and support the legal structure which protects the individual and the society. As a functioning organization, it also has the responsibility to develop a set of regulations to assure the orderly conduct of the affairs of the college.))~~

Admission to the college carries with it the expectation that students will conduct themselves as responsible members of the college community, that they will comply with the rules and regulations of the college, maintain high standards of integrity and honesty, respect the rights, privileges and property of other members of the college community and will not interfere with legitimate college affairs.

~~((An atmosphere of learning and self-development is created by appropriate conditions in the college community. The rights and responsibilities in this document are critical ingredients in the free, creative, and spirited educational environment to which the students, faculty and staff at South Puget Sound Community College are committed.))~~

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-015 Definitions. As used in this *Code of Student Rights and Responsibilities* the following words and phrases shall mean:

(1) **Associated student body (ASB) SPSCC senate** means the representative governing body for students, also referred to as student government, at South Puget Sound Community College recognized by the board of trustees.

(2) **Assembly** means any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or ~~((disseminated))~~ disseminate information to any person, persons or group of persons.

(3) **Board** means the board of trustees of South Puget Sound Community College District 24, state of Washington.

(4) **College** means South Puget Sound Community College ~~((located within Community College)), District 24((state of Washington)).~~

(5) **College facilities** means and includes any or all real and personal property owned or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto.

(6) **College personnel** refers to any person employed by Community College District 24 on a full-time or part-time basis ~~((, except those who are faculty members)).~~

(7) **Disciplinary action** means and includes dismissal or any lesser sanction of any student by the vice-president for student services, the student ~~((hearing committee))~~ judicial board, or the college president((, or the board of trustees)) for the violation of any of the provisions of the code of student rights and responsibilities for which such sanctions may be imposed.

(a) The college president or designee shall have the authority to take any disciplinary action including the authority to suspend any student of the college for a period not to exceed ten academic calendar days.

(b) The college president or designee shall have the authority to take any disciplinary action including the authority to dismiss any student of the college.

(8) **District** means Community College District 24, state of Washington.

(9) ~~((Faculty member(s) means any employee of South Puget Sound Community College who is employed on a full-time or part time basis as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments.~~

~~((10))~~ **Hazing** includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the college. Hazing does not include customary athletic events or other similar contests or competitions.

(10) **Initiation** means the ceremonies or rites by which a person is admitted into a club, organization, or living group not amounting to hazing. Initiation conduct may include embarrassments, ridicule, sleep deprivation, verbal abuse or personal humiliation.

(11) **President** means the duly appointed chief executive officer of South Puget Sound Community College, District 24, state of Washington, or in his/her absence, the designee.

~~((11))~~ (12) Recognized student organization means and includes any group or organization composed of students which is recognized formally by ~~((the student government of))~~ the college.

~~((12))~~ (13) A sponsored event or activity means any activity that is scheduled by the college or a recognized student organization and is supervised and controlled by ~~((the college's faculty members or))~~ college personnel. Such sponsorship shall continue only as long as the event is supervised and controlled by ~~((the college faculty member or))~~ college personnel. When the sponsored event or activity is of a prolonged nature, and free time periods are permitted to the students participating in the event, any activity taking place during such a free time period outside of the supervision and control of ~~((the college's faculty member or))~~ college personnel responsible for the event or activity shall be deemed to be a nonsponsored activity.

~~((13))~~ (14) Student, unless otherwise qualified, means and includes any person who is enrolled for classes ~~((or formally in the process of applying for admission to the college)).~~

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-020 Jurisdiction. All rules herein adopted shall apply to every student whenever said student is present upon or in any college facility and whenever said student is present at or engaged in any college or recognized student organization sponsored activity or function which is held on or in noncollege facilities ~~((not open to attendance by the general public)).~~

Persons aiding or abetting a student's breach of this code shall be subject to having their privilege removed as to remaining on college property or engaging in college-sponsored activities, and/or appropriate disciplinary action pursuant to ~~((HEPB rules or faculty and administrative rules and regulations of conduct))~~ this code, college policies and procedures, and/or state civil or criminal law. If the privilege to remain on campus is revoked, trespassers shall be subject to possible arrest and prosecution under the state criminal trespass law.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-035 ((Authority to prohibit) Trespass regulations. (1) The college president ~~((is authorized in the instance of any event that the college president deems impedes the movement of persons or vehicles or which the college president deems to disrupt or threatens to disrupt the ingress and/or egress of persons from college facilities, and the college president acting through the vice president for student services, or such other designated person, shall have the authority and power to:~~

~~((a) Prohibit the entry of, withdraw the license or privilege of a person or persons or any group of persons to enter onto or remain upon any portion of a college facility; or~~

~~((b) Give notice against trespass to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from entering~~

~~onto or remaining upon all or any portion of a college facility; or~~

~~((e) Order any person, persons or group of persons to leave or vacate all or any portion of a college facility.~~

~~((2) Any student who shall disobey a lawful order given by the campus president or designee pursuant to the requirements of subsection (1) of this section shall be subject to disciplinary action)) or designee, acting through campus security, shall have the authority and power to:~~

~~((a) Prohibit the entry of, or withdraw the license or privilege of, any individual to enter onto or remain upon any portion of a college facility; or~~

~~((b) Give notice against trespass to any individual against whom the license or privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility; or~~

~~((c) Order any individual to leave or vacate all or any portion of a college facility.~~

~~((2) Authority under subsection (1) of this section may be exercised when:~~

~~((a) An individual who violates these regulations persists in the violation after notice of the specific nature of the violation has been given;~~

~~((b) Or an individual or event is deemed to be substantial and material physical disruption of the peaceful functioning of the campus;~~

~~((c) An individual or event threatens to disrupt the movement of persons within or to or from facilities owned and/or operated by the college; or~~

~~((d) An individual threatens the safety or well-being of another person on campus or college activity.~~

Students, faculty, and staff of the college may only be ejected pursuant to this protocol where the duration of the ejection is for no more than a single day or where the ejection applies to a portion of the college facilities that the student or employee does not need to access in order to perform his or her studies or work.

(3) Students who violate WAC 132X-30-020 will be disciplined under chapter 132X-60 WAC.

(4) Faculty and staff members who violate WAC 132X-30-020 will be disciplined in accordance with established college policies.

(5) Individuals who are not students, faculty members, or college staff and who violate WAC 132X-30-020 will be given notice of violation, and if the individuals persist in the violation, the college president or designee, acting through campus security, shall ask them to leave the college property.

This request to leave college property revokes any license or privilege the individuals may have had to enter onto or remain upon any portion of the college campus.

(6) Individuals who fail to leave campus after receiving notices of the violation shall be subject to arrest for criminal trespass under RCW 9A.52.070 or 9A.52.080.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-046 Student participation in college governance. As members of the college community, students will be free, individually and collectively, to express their

views on college ~~((policy))~~ rules, and on matters of general interest to the student body. The ASB-SPSCC constitution and the college's administrative procedures provide clear channels for student participation in the formulation and application of institutional policies regarding academic and student affairs. Individuals affected by a ~~((policy))~~ rule shall have a representative voice in the formulation of that ~~((policy))~~ rule.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-050 Student records. In compliance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g and its implementing regulations, ~~((45))~~ 34 CFR § 99, this ~~((policy))~~ rule has been created to ~~((insure))~~ provide confidentiality of student records at the college and govern the release of personally identifiable information contained within.

(1) Education records. Education records are defined as those records, files, ~~((and))~~ documents and other materials containing information directly ~~((pertaining))~~ related to a student ~~((At South Puget Sound Community College these are:~~

~~((a) Records pertaining to admission, advisement, registration, grading and progress to a degree that are maintained by enrollment services.~~

~~((b) Testing information used for advisement purposes by the counseling center.~~

~~((c) Information concerning payment of fees as maintained by the treasurer.~~

~~((d) Financial aid information as collected by the financial aid office.~~

~~((e) Information regarding students participating in student government or athletics that is maintained by the student programs office)) and which records are maintained by the college or by a person acting for the college.~~

(2) Access to education records. Students who are or have attended the college have the right to examine or review their ~~((personal))~~ education records, as defined above, by submitting to the registrar a written request indicating education records to which access is desired.

(3) Directory information. The following information is considered "directory information" and thus may be disclosed without consent of the student, unless otherwise directed by the student ~~((:))~~ in writing, to the registrar ~~((in writing))~~: The student's name, address, telephone number, date and place of birth, major field of study, ~~((eligibility for and))~~ participation in officially recognized activities, organizations, and sports, weight and height of members of athletic teams, dates of attendance, academic honors, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(4) Disclosure from education records. In addition to directory information the college will, at its discretion, make disclosures from education records of students ~~((with the student's prior written consent or))~~ without the consent of the student to the following listed parties

~~((a) To other college officials (including college administrative and clerical staff, faculty, and students where officially elected or appointed to the ASB-SPSCC senate or~~

~~employed by the college. Access or release of records to the above is permissible only when the information is required for the advisement, counseling, recordkeeping, reporting, or other)) who have legitimate educational interests ((consentant with their specific duties and responsibilities-)) in the information, including the educational interests of the student for whom consent would otherwise be required;~~

~~((b) To officials of ((another)) other schools or school systems in which the student seeks or intends to enroll((-)), upon condition that the student receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;~~

~~((c) To authorized federal, state, or local officials as required or authorized by law((-));~~

~~((d) In connection with financial aid for which the student has applied or received((-));~~

~~((e) To accrediting organizations, or organizations conducting studies ((for)) of or on behalf of the ((institution-)) college as qualified by FERPA;~~

~~((f) To appropriate parties in a health or safety emergency((-) if the knowledge of such information is necessary to protect the health or safety of the student or other persons;~~

~~((g) To persons in compliance with a judicial order or a lawfully issued subpoena((-)) provided that the college first ((makes a reasonable effort to notify)) notifies the student((-) before complying with the subpoena or court order;~~

~~((h) To parents of a dependent student((-)) as defined in 26 U.S.C. section 152 ((of the Internal Revenue Code of 1954)), upon receipt of a written affidavit stating that the student is a dependent for income tax purposes((- This, however, will not affect the other rights of the student)); and~~

~~((i) To other parties authorized by FERPA to receive such information without the student's consent.~~

In cases where consent of the student is required for release of education records, the student shall in writing, signed and dated by the student, specify: The records to be disclosed, the purpose or purposes of the disclosure, and the name of the party or parties to whom the disclosure can be made.

When personally identifiable information is released without prior consent of the student, other than directory information and information released to college officials or the student, the college official in charge of these records will record the names of the parties who have requested information from educational records and the nature of the interest in that information.

Education records released to third parties shall be accompanied by a statement indicating that the information cannot be subsequently released in a personally identifiable form to other parties without obtaining the written consent of the student. The college is not precluded from permitting third party disclosures to other parties ~~((listed in (a) through (h) of this subsection))~~ as permitted by law.

(5) Challenge of education records. Students who believe that information contained in their education records is inaccurate, misleading or violates the privacy ~~((or other rights))~~ of the student may request in writing to the appropriate college official that the college amend their record(s). The college official(s) will make every effort to settle disputes through informal meetings and discussion with the student.

In instances where disputes regarding contents of education records cannot be resolved by the parties concerned, the college official involved shall advise the student of the right to a ~~((hearing by the academic standards committee through a written request to the administrator for enrollment services. Should the academic standards committee deem that the education records in question are inaccurate or misleading, the committee can ask that the records be amended by the appropriate college official. If the education records are held to be accurate, the student shall be granted the opportunity to place within those records a personal statement commenting upon the information contained within))~~ brief adjudicative procedure.

~~((Each eligible))~~ Students ~~((is))~~ are afforded the right to file a written complaint concerning alleged ~~((failures))~~ violations under FERPA by the college ~~((to comply with the requirements of the act))~~. The address of the office designated to investigate, process, and review violations and complaints which are filed is:

~~((The Family Educational Rights and Privacy Act Office (FERPA) Department of Health, Education and Welfare 330 Independence))~~
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue S.W.
Washington, D.C. ((20201)) 20202

Copies of the Federal Register pertaining to the Family ~~((Education))~~ Educational Rights and Privacy Act may be obtained from:

Superintendent of Documents
 U.S. Government Printing Office
732 N. Capitol Street N.W.
 Washington, D.C. 20402

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-060 Student publications. The college will establish a student publications ~~((policy))~~ code relating to officially sponsored publications and create a student publications board charged with the enforcement of the ~~((policy))~~ code. The publications board shall be composed of an administrator and three faculty appointed by the college president, and three students appointed by the associated student body president. These students shall not, while serving on the board, hold any student publications position appointed by the student publications board and shall not serve on any superior budgetary body.

The student publications ~~((policy))~~ code shall protect the students' freedom to deal with any ideas and to express any opinions in the student publications without fear of their censorship. Editors and managers of student publications are protected from arbitrary suspension and removal. Only for proper and stated causes, as outlined in the statement of purpose or philosophy adopted for each student publication, or

for violation of responsible journalism practices should editors and managers be subject to removal and then by orderly and prescribed procedures.

The student editors and managers must practice responsible journalism and have freedom of expression as outlined in the "South Puget Sound Community College Student Publications Code," ~~((June 1999, Article I, A and B.~~

~~The operational responsibilities of the publication board are outlined in the "South Puget Sound Community College Student Publications Code" June 1999, Article IX:~~

- ~~(1) Appointment of each publication's editor.~~
- ~~(2) Reviewing budget requests of each student publication, prior to the submittal of those requests, recommending action on funding.~~
- ~~(3) Review any complaints pertaining to student publications.~~
- ~~(4) Resolve complaints about student editors and managers.)~~

AMENDATORY SECTION (Amending WSR 03-03-089, filed 1/16/03, effective 2/16/03)

WAC 132X-60-065 ~~((Distribution and))~~ Posting of materials. Permission for the posting of materials and literature on college property is not required in designated public posting areas on the campus.

Permission for the posting of materials and literature on ~~((college property))~~ nondesignated public posting areas shall be obtained from the following college officials:

- (1) The dean of student ~~((programs))~~ life for the posting of materials in nondesignated areas in the student union building, the college center, hallways, within buildings and those areas located on campus outside of college buildings.
- (2) No posting will be allowed on railings unless paint protection devices are used. Permission for any such postings must have the prior approval of the dean of student ~~((programs))~~ life.
- (3) The appropriate college vice-president for permission for the ~~((dissemination and distribution))~~ posting of materials in other areas of the college campus, buildings, or facilities.

In addition, the following apply to the posting of materials:

- (4) No posting of obscene materials.
- (5) No materials will be posted or tacked on trees or the covered walkway gazebo(s).

AMENDATORY SECTION (Amending Order 88-1, filed 10/18/88)

WAC 132X-60-070 Use of college facilities. Any ~~((recognized associated students of South Puget Sound Community College))~~ chartered student club or organization may request use of available college facilities for authorized activities. Facilities ~~((will))~~ may be provided free of charge to the student club or organization except when such use necessitates staffing and services beyond regular college requirements. ~~((Standard))~~ College fees will be charged in these cases.

Use of facilities for purposes other than those approved or in an irresponsible manner may result in withdrawal of this privilege for ~~((an))~~ the student club or organization.

Use of college facilities by noncollege organizations or individuals is addressed separately under WAC 132X-30-010.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

**WAC 132X-60-080 Student complaints ~~((and griev-
ances))~~.** The purpose of these procedures is to establish a process where a student may express and resolve misunderstandings ~~((;))~~ or complaints ~~((or grievances))~~ with any college employee or procedure in a fair and equitable manner. ~~((This procedure emphasizes an informal resolution.))~~

A complaint is any expression of dissatisfaction with the performance of a college employee or procedure. The student who has a complaint about an action of a college employee should use the following procedure:

Nonacademic complaints

(1) Initiating ~~((a))~~ an informal nonacademic complaint:

(a) The student complainant and the college employee should make a good faith effort to resolve the ~~((grievance))~~ complaint on a one to one basis within fifteen ~~((instruc-
tional))~~ calendar days from the date of the complaint. In the event of absence from campus by the employee or if the stu-
dent feels that he/she cannot meet face-to-face with the
employee, the student ~~((shall))~~ may contact the organiza-
tional unit administrator for advice on how to proceed with the complaint. ~~((If the student feels that he/she cannot meet
face-to-face with the employee he/she may directly contact
the organizational unit administrator.))~~

(b) If the student determines that a complaint cannot be resolved appropriately with the employee concerned, the student may contact the organizational unit administrator of the employee to facilitate a solution to the ~~((grievance))~~ com-
plaint.

(c) If a complaint filed with the appropriate organiza-
tional unit administrator has not been resolved, the student may proceed with a formal complaint.

(2) Proceeding with a formal nonacademic complaint:

(a) Office to address: Complaints regarding an instruc-
tional employee, procedure or ~~((policy))~~ rule shall be
addressed to the vice-president ~~((of))~~ for instruction or desig-
nee. Complaints regarding an administrative services
employee, procedure or ~~((policy))~~ rule shall be addressed to
the vice-president ~~((of))~~ for administrative services or desig-
nee. Complaints regarding a student services employee ~~((s)),
procedure~~ or ~~((other college personnel))~~ rule shall be
addressed to the vice-president ~~((of))~~ for student services or
designee. Complaints regarding all other employees, proce-
dures or rules shall be addressed to the chief human resources
officer.

(b) The vice-president/chief human resources offi-
cer/designee shall discuss with the student the concerns and
options available to resolve the concern. If the student should
elect to proceed with the formal complaint the student must
outline in writing the complaint, identifying dates and per-
sons involved ~~((as accurately as possible)).~~

~~((c))~~ ~~((The vice-president shall also inform the student that
the student may ask the vice-president for student services or
another person the student chooses to act as an advocate in
assisting the student in the completion of the complaint pro-
cess.~~

~~((d))~~ The student's written complaint shall be forwarded
to the employee concerned who shall provide a written
response to the vice-president/chief human resources officer
within ten ~~((instructional))~~ calendar days.

~~((e))~~ If the written response does not resolve the com-
plaint to the satisfaction of the student, the vice-president
shall convene a conference of all the involved parties within
ten instructional days to (i) attempt to resolve to the satisfac-
tion of all parties the complaint and/or (ii) hear the issue(s)
and take appropriate action(s) to resolve the complaint.

~~((f))~~ (d) The vice-president/chief human resources offi-
cer/designee shall provide a written response to the student
within ten calendar days of the receipt of the employee
response or the complaint concerning a procedure or rule.

(e) Action taken by the vice-president ~~((, if any,))~~/chief
human resources officer/designee may be appealed to the
president ~~((, and must be done))~~ in writing within ten
~~((instructional))~~ calendar days. The decision of the president
is final.

(3) ~~((Discrimination grievances:~~

~~Students who believe they have been discriminated
against as defined in Title VII and Title IX of the Higher Edu-
cation Act or Section 504 of the Handicapped Assistance Act
may file a grievance through the human resources office.))
Academic complaints:~~

Students with an academic complaint including, but not
limited to, grade disputes, should contact the faculty member
within ten calendar days of the incident and attempt to
resolve the issue(s). If unable to resolve the issue(s), the stu-
dent should contact the appropriate dean or director within
ten calendar days of contact with the faculty. If still unable to
resolve the issue(s), the student should contact the supervising
vice-president within ten calendar days within contacting
the dean or director. The decision of the vice-president shall
be final.

(4) ~~((Academic grievances:~~

~~Students with an academic grievance should first contact
the instructor and attempt to resolve the issue(s). If unable to
resolve the issue(s), the student should contact the appropri-
ate division chair. If still unable to resolve the issue(s), the
student should contact the vice-president for instruction. The
decision of the vice-president shall be final.)) Discrimination
complaints:~~

Students who believe they have been discriminated
against, including sexual harassment, may pursue an institu-
tional complaint under the procedures outlined in the South
Puget Sound Community College nondiscrimination policy
and discrimination complaint/grievance procedures and/or
may pursue other remedies provided by law. Procedures for
filing discrimination complaints, other than those related to
disability discrimination or denial of accommodations, may
be found at [http://www.spscc.ctc.edu/getting-to-know-
us/policies](http://www.spscc.ctc.edu/getting-to-know-us/policies).

Procedures for filing disability discrimination com-
plaints or denial of accommodations are addressed by the

South Puget Sound Community College procedures and appeals process for accommodating students with disabilities and disability discrimination complaints. Those procedures may be found at <http://www.spscc.ctc.edu/getting-to-know-us/policies>.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-090 Violations. Any student ~~((shall be subject to disciplinary action who, either as a principal actor or aider or abettor commits any of the following which are hereby prohibited))~~ found to have committed or to have attempted to commit any of the following violations on college-owned or controlled property or at college-sponsored or supervised functions is subject to the disciplinary sanctions outlined in WAC 132X-60-120:

(1) Abusive conduct: Physical and/or verbal abuse of any person or conduct, including hazing and initiations which is intended ~~((unlawfully))~~ to threaten imminent bodily harm or to endanger the health or safety of any person ~~((on college-owned or controlled property or at college sponsored or supervised functions)).~~

(2) Destroying or damaging property: Malicious damage to or malicious misuse of college property, or the property of any person ~~((where such property is located on the college campus)).~~

(3) Dishonesty: All forms of dishonesty including: Cheating; plagiarism; knowingly furnishing false information to the college; intentionally initiating or causing to be initiated any false report, warning, or threat of fire, explosion, or other emergency, ~~((on college premises or at any college-sponsored activity));~~ forgery; alteration or use of college documents or instruments of identification with intent to defraud.

(4) Disorderly conduct: Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college.

(5) Drugs: Using, possessing, furnishing, or selling any narcotic or dangerous drug as those terms are used in Washington statutes, except when the use or possession of a drug is specifically prescribed to the student as medication by an authorized medical practitioner.

(6) Inciting others: Intentionally inciting others to engage in any prohibited conduct as defined herein, which incitement directly leads to such conduct. Inciting is the advocacy which prepares the group or individual addressed for immediate action and compels that individual or group to engage in the prohibited conduct.

(7) Insubordination: Failure to comply with lawful directions of college personnel acting in performance of their ~~((lawful))~~ official duties.

(8) Liquor: Possessing, consuming, or furnishing of alcoholic beverages ~~((on college-owned or controlled property or at college-sponsored or supervised functions))~~ where prohibited by law or college rules.

(9) Theft: Theft or conversion of college property or private property.

(10) Trespass/unauthorized presence: Entering or remaining unlawfully, as defined by state law, or using college premises, facilities, or property, without authority.

(11) Sexual harassment: ~~((It is the policy of the college that employees and students must be allowed to work and learn in an environment free from sexual harassment. Sexual harassment is expressly prohibited and will not be tolerated.~~

~~Sexual harassment is))~~ Unwelcome sexual advances, requests for sexual favors, other ~~((verbal or physical))~~ conduct ~~((of))~~ soliciting sexual favors, or other ~~((verbal or physical))~~ conduct of ~~((the))~~ a sexual nature which conduct objectively and subjectively creates a hostile environment that substantially interferes with a student's educational performance, or substantially interferes with an individual's work, regardless of whom is initiating or receiving that conduct. That is, sexual harassment conduct of employees toward students, supervisors toward supervisees, students toward students, ~~((of))~~ students toward employees. Sexual harassment complaints are covered by the college's Nondiscrimination Policy and Discrimination Complaint/Grievance Procedures at <http://www.spscc.ctc.edu/getting-to-know-us/policies>.

~~((Complaints of sexual harassment should be made orally or in writing to the vice-president for human resources (eases involving staff) or the vice-president for student services (eases involving students). Complaints should be reported promptly (within thirty days) in order to help ensure effective investigation and resolution. Complaints will be promptly investigated in a full and fair manner. The vice-president for human resources, serving as the college's affirmative action officer, is ultimately responsible for ensuring resolution of any sexual harassment complaints.~~

~~Anyone who is found to have violated this policy is subject to the normal and applicable disciplinary procedures of the college.))~~

(12) Weapons: Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(13) Computers - Misuse of technology: Use of college computers and/or computer programs for any purpose other than legitimate college business.

(14) Other violations: Students may be accountable to ~~((both))~~ civil and criminal authorities and to the college for acts which constitute violations of federal, state, or local law as well as college rules and policy. The college may refer any such violation to ~~((civilian))~~ civil and criminal authorities for disposition.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-100 ~~((Initial))~~ Disciplinary proceedings. (1) Initiation of disciplinary action. ~~((Anyone may report, orally or in writing, violations to the vice-president for student services, or designee, who may initiate disciplinary action.))~~ Alleged violations shall be reported in writing to the vice-president for student services within ten calendar days of occurrence.

(2) Notice requirements. Any student charged with ~~((a))~~ an alleged violation shall receive written notice from the

office of the vice-president for student services delivered to the student personally or by registered or certified mail to the student's last known address no later than two calendar weeks after a reported violation. The notice shall not be ineffective if presented later due to student's absence. ~~((Such))~~ The notice to the accused student shall:

(a) Inform the student ~~((that a report has been filed alleging that the student violated specific provisions of college policy and the date of the violation; and~~

(b) Set forth those provisions allegedly violated; and

~~(e))~~ what provision(s) of the student code he/she is charged with allegedly violating; and

(b) Specify the exact time and date the student is required to meet with the vice-president for student services; and

~~((d) Specify the exact time, date, and location of the formal hearing with the student judicial board, if one is required; and~~

~~(e) Inform the student that he/she may question witnesses, that he/she may have anyone appear in his/her behalf to defend him/her, that he/she may have a maximum of three character witnesses appear in his/her behalf; and~~

~~(f))~~ (c) Inform the student that failure to appear at ~~((either of))~~ the appointed time~~((s at))~~ to meet with the vice-president for student ~~((services' office or at the hearing))~~ services may subject the student to suspension from the institution for a stated or indefinite period of time.

(3) Meeting with the vice-president for student services.

(a) At the meeting with the vice-president for student services the student shall be ~~((informed))~~ reinformed of the provision(s) of the code of student rights and responsibilities that are involved, and that the student may appeal any sanction imposed by the vice-president for student services ~~((and that if a hearing with the student judicial board is required the student may have that hearing open to the public))~~ as outlined in WAC 132X-60-105.

(b) After considering the evidence in the case and, as appropriate, interviewing the student or students involved, the vice-president for student services may take any of the following actions:

(i) Terminate the proceedings exonerating the student or students; or

(ii) Impose disciplinary sanctions as provided for in WAC 132X-60-120~~((or~~

~~((iii) Refer the matter to the student judicial board for appropriate action)).~~

(c) A student accused and found guilty of violating any provision of ~~((college policy))~~ this code shall, within ten calendar days, be given ~~((immediate))~~ notification of any disciplinary action taken by the vice-president for student services, including a brief statement of the reasons for the decision and notice of their right to appeal to the student judicial board within ten calendar days of the disciplinary action taken by the vice-president.

(d) ~~((No))~~ Disciplinary action taken by the vice-president for student services is final unless the student ~~((fails to))~~ exercises the right of appeal ~~((as provided for in these rules))~~ to the student judicial board.

~~((4) Student judicial board.~~

~~(a) Composition. The college shall have a standing student judicial board composed of nine members, who shall be chosen and appointed to serve as a standing committee until their successors are appointed. The membership of the board shall consist of three members of the administration, excepting the vice-president for student services, appointed by the president; three faculty members appointed by the faculty organization; and three students appointed by the associated students of South Puget Sound Community College senate. Any student entitled to a hearing before the student judicial board shall choose, in writing, five members of the board to hear and decide the appeal or disciplinary case, provided, the student must choose at least one student, one faculty member and one member of the administration from the nine member board. In the event that unforeseen circumstances prevent a previously selected board member from attending the hearing, the student must choose a replacement from among the balance of the standing committee.~~

~~(b) Hearing procedures.~~

~~(i) The five members of the student judicial board will hear, de novo, all disciplinary cases appealed to the committee by the student or referred to it by the vice-president for student services.~~

~~(ii) The five members of the student judicial board shall elect from among themselves a chairperson for the purpose of presiding at the disciplinary hearing.~~

~~(iii) The student shall be given written notice of the time, date, and location of the hearing; the specific charges against him/her; and shall be accorded reasonable access to the case file, which will be retained by the vice-president for student services.~~

~~(iv) Hearings will be closed to the public except for the vice-president for student services and/or designee, immediate members of the student's family, and the student's representative. An open hearing may be held, in the discretion of the chairperson, if requested by the student. All parties, the witnesses, and the public shall be excluded during the student judicial board's deliberations.~~

~~(v) The chairperson shall exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the student, who disrupts a hearing or who fails to adhere to the rulings of the chairperson or committee advisor may be excluded from the proceedings and may be subject to disciplinary action as set forth in this policy.~~

~~(vi) The student may question witnesses, bring an advocate to defend him/her, and have a maximum of three character witnesses appear on his/her behalf.~~

~~(vii) The burden of proof shall be on the vice-president for student services who must establish the guilt of the student by a preponderance of the evidence.~~

~~(viii) Formal rules of evidence and procedure shall not be applicable in disciplinary proceedings conducted pursuant to this code. The chairperson shall admit all matters into evidence which reasonable persons would accept as having probative value in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded.~~

~~(ix) The vice-president for student services may appoint a special presiding officer to the student judicial board in complex cases or in any case in which the respondent is rep-~~

resented by legal counsel. Special presiding officers may participate in committee deliberations but shall not vote.

~~(x) In order that a complete record of the proceeding, including all evidence presented, can be made, hearings may be tape recorded or transcribed. If a recording or a transcription is not made, the decision of the student judicial board must include a summary of the testimony and shall be sufficiently detailed to permit appellate review.~~

~~(xi) After considering the evidence in the case and interviewing the student or students involved, the student judicial board shall decide by majority vote whether to:~~

~~(A) Terminate the proceedings exonerating the student(s); or~~

~~(B) Impose disciplinary sanctions as provided in WAC 132X-60-120.~~

~~(xii) Final decisions of the student judicial board, including findings of fact or reasons for the decision, shall be delivered to the student personally or by registered or certified mail to the student's last known address and a copy filed with the office of the vice-president for student services.)~~

NEW SECTION

WAC 132X-60-105 Student judicial board appeals process. (1) Composition. The college shall have a student judicial board composed of six members, who shall be chosen and appointed to serve until their successors are appointed. The membership of the board shall consist of two members of the exempt staff, excepting the vice-president for student services, appointed by the president; two faculty members appointed by the faculty senate; and two students appointed by the associated student body president. Any student entitled to a hearing before the student judicial board shall choose, in writing, three members of the board to hear and decide the appeal, provided the student must choose at least one student, one faculty member and one exempt staff from the six-member board. In the event that unforeseen circumstances prevent a previously selected board member from attending the hearing, the student must choose a replacement from among the balance of the board.

(2) Disciplinary hearing procedures.

(a) The three members of the student judicial board will hear the appeal within ten days of receipt of the appeal from the student.

(b) The three members of the student judicial board shall elect from among themselves a chairperson for the purpose of presiding at the disciplinary hearing.

(c) At least seven calendar days in advance, the student shall be given written notice of the time, date, and location of the hearing; the specific charges against him/her; and shall be given reasonable access to a list of witnesses who will appear with a brief summary of the witness expected testimony and other evidence. The evidence will be retained by the vice-president for student services.

(d) Student judicial board hearings shall be held in closed session. The complainant, accused student and their representative/advocate, if any, the vice-president for student services, college counsel, counsel for the judicial board, and a court reporter or person operating audio recording equipment shall be allowed to attend the entire portion of the stu-

dent judicial board hearing, excluding deliberation. Admission of any other person to the student judicial board hearing shall be at the election of the accused student.

(e) The chairperson shall exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the accused student, who disrupts a hearing or who fails to adhere to the rulings of the chairperson or board may be excluded from the proceedings and may be subject to disciplinary action as set forth in this code.

(f) The accused student has the right to be assisted by any person they choose, at their own expense. The chosen person is not permitted to speak or participate directly in any hearing before the judicial board. If the accused student chooses a licensed attorney, the accused student must notify the vice-president for student services at least five calendar days prior to the hearing, of the attorney's intended appearance.

(g) The accused student, vice-president for student services and/or their counsel may arrange for witnesses to present pertinent information to the student judicial board. Witnesses will provide information under oath and answer questions.

(h) Formal rules of evidence and procedure shall not be applicable in disciplinary proceedings conducted under this code. Pertinent records, exhibits, and written statements may be accepted as information for consideration by the student judicial board at the discretion of the chairperson. All procedural questions are subject to the final decision of the chairperson of the student judicial board.

(i) There shall be a single verbatim record, such as a tape recording or transcript, of all student judicial board hearings, excluding deliberations. The record shall be the property of the college.

(3) Hearing conclusions. After considering the evidence in the case, the student judicial board shall decide by majority vote whether to:

(a) Affirm the disciplinary sanctions imposed by the vice-president for student services; or

(b) Terminate the proceedings exonerating the student(s); or

(c) Impose other appropriate disciplinary sanctions as provided in WAC 132X-60-120.

Final decisions of the student judicial board, reasons for the decision, including findings of fact, and conclusions of law, shall be delivered within ten calendar days of the hearing by return receipt requested mail to the student's last known address and a copy filed with the office of the vice-president for student services.

The decision of the student judicial board is final.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-120 Disciplinary sanctions. The following sanctions may be imposed by the vice-president for student services or the student judicial board upon any student found to have violated the code of student rights and responsibilities:

(1) Warning. Notice to a student, either verbally or in writing (~~that the student has been in violation of college~~

rules or regulations or has otherwise failed to meet the college's standards of conduct)). Such warnings will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary ~~((actions))~~ sanctions described below.

(2) Reprimand. Formal action censuring a student for violation of the college ~~((rules or regulations or has otherwise failed to meet the college's standards of conduct))~~ code. Reprimands shall be made in writing to the student ~~((as appropriate by the vice president for student services or the student judicial board))~~ with copies filed in the office of the ~~((dean of students))~~ vice-president for student services. A reprimand will include the statement that continuation or repetition of the specific conduct involved or other misconduct will normally result in one of the more serious disciplinary ~~((actions))~~ sanctions described below.

(3) Fines. ~~((The vice president for student services and/or the student judicial board may))~~ Assess monetary fines ((up to a maximum of one hundred dollars per violation)) against individual students for violation of the college ((rules and regulations or for the failure to meet the college's standards of conduct)) code. The fines imposed will be deposited in the appropriate college account. Failure to pay such fines within thirty days ~~((with))~~ may, at the discretion of the vice-president for student services, result in suspension for an indefinite period of time as set forth in subsection (6) of this section, provided that a student may be reinstated upon payment of the fine.

(4) Restitution. An individual student may be required to make restitution for damage or loss to college or other property and for injury to persons. Failure to make restitution within thirty days ~~((with))~~ may, at the discretion of the vice-president for student services, result in suspension for an indefinite period of time as set forth in subsection ~~((6))~~ (8) of this section, provided that a student may be reinstated upon payment.

(5) Forfeit of state-funded grants, scholarships or awards. A person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(6) Deprivation of official recognition of organization, association, student living group or club. Any organization, association, student living group or club that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(7) Disciplinary probation. Formal action placing conditions upon the student's continued attendance for violations of the college ((rules or regulations or other failure to meet the college's standards of conduct)) code. Written notice of disciplinary probation will specify the period of probation and any conditions, such as limiting the student's participation in extracurricular activities or access to specific areas of the college's facilities. Copies of the notice shall be kept on file in the office of the vice-president for student services and, at the discretion of the vice-president for student services, in the student's official educational records. Disciplinary probation ~~((may))~~ will be for a specified term ~~((or for an indefinite~~

period which may extend to graduation or other termination of the student's enrollment in the college)).

~~((6))~~ (8) Suspension/dismissal. Temporary, ((indefinite,)) summary or permanent dismissal of a student from the college ((of a student)) for violation of college ((rules and regulations)) code. The written notification suspending a student will ~~((indicate, in writing,))~~ state the term of the suspension ~~((and))~~, any special conditions which must be met before readmission, and the provision for appeal for readmission as outlined in WAC 132X-60-130. ~~((Copies of the notification))~~ Notice shall be ~~((kept))~~ on file in the office of the vice-president for student services and in the student's official education record.

~~((Refund of fees for the quarter in which disciplinary action is taken shall be in accord with the college's refund policy.))~~

Students who are suspended from the college may be denied access to all or any part of the campus or other facility during the duration of the period of suspension.

Refund of tuition and fees for the quarter in which disciplinary action is taken shall be in accordance with the college's refund rules.

(9) Withholding transcripts and/or degree. The college may withhold issuing transcripts or awarding a degree otherwise earned until completion of the process set forth in this code.

(10) More than one of the sanctions listed above may be imposed for any single violation.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-130 Readmission after suspension/dismissal. If the student has been suspended ~~((for an indefinite period))~~ /dismissed, or feels that circumstances warrant reconsideration of the ~~((temporary))~~ suspension/dismissal prior to its expiration, the student may be readmitted following approval of a written petition submitted to the vice-president for student services. Such petition~~((s))~~ must state reasons, including appropriate documentation, which support a reconsideration of the matter. The vice-president for student services will respond in writing within ten calendar days of receiving the written petition for readmission.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-140 Summary suspension procedures. (1) Initiation of summary suspension procedures. The vice-president for student services, or designee, may suspend any student of the college for not more than ten ~~((academic))~~ calendar days pending investigation, action or ~~((prosecution on charges))~~ initiating disciplinary proceedings of alleged violation~~((s))~~ ((or violations)) of the college ((policy)) code, if the vice-president for student services has reason to believe the student's ~~((physical or emotional safety and well-being, or the safety and well-being of other college community members, or the safety and well-being of the college property requires such suspension))~~ presence presents an immediate danger to the public health, safety or welfare requiring immediate action.

(2) Permission to enter or remain on campus. During the period of summary suspension, the suspended student shall not enter the campus of the college or any facility under the operation of the college other than to meet with the vice-president for student services or to attend the disciplinary hearing. However, the vice-president for student services may grant the student special permission to enter a campus for the express purpose of meeting with faculty, staff, or students in preparation for the disciplinary hearing.

(3) Notice of order of summary suspension proceedings.

(a) If the vice-president for student services or designee finds it necessary to exercise the authority to summarily suspend a student, he/she shall ~~((give the student notice, orally or in writing, stating: The time, date, place, and nature of the alleged misconduct; the evidence in support of the charge(s));~~

(i) Send a notice including a brief statement of reason for the decision (findings of fact and conclusions of law); and

(ii) The corrective action or punishment which may be imposed against the student; that anything the student says to the vice-president may be used against the student; and that the student may either accept the disciplinary action or, within forty-eight hours or two ~~((work))~~ academic days following receipt of ~~((this notification))~~ the notice, file at the office of the vice-president for student services, ~~((a written request for a hearing by))~~ an appeal to the student judicial board. If the ~~((request))~~ appeal is not filed within the prescribed time, it will be deemed ~~((as))~~ waived. The college shall maintain its official record all documents considered or prepared regarding the matter.

(b) Appeal and disciplinary hearing. ~~((If oral notice is given, it shall be followed by written notice within forty-eight hours or two working days.))~~ The hearing shall be ~~((accomplished))~~ held according to the ~~((procedures))~~ process set forth in WAC ~~((132X-60-100))~~ 132X-60-105. Failure by the student to appear at the hearing with the student judicial board ~~((shall))~~ may result in the vice-president for student services or designee suspending the student from the college.

~~((e))~~ (4) Classroom summary suspension and appeal process. Nothing herein shall prevent faculty members from taking ~~((reasonable))~~ summary action as may be reasonably necessary to maintain order when they have reason to believe that such action is necessary for the ~~((physical safety and well-being of the student, or the safety and protection of other students or of college property))~~ public health, safety or welfare requiring immediate college action or where the student's conduct materially and substantially disrupts the educational process.

(a) Such summary action in the form of removal from the classroom shall be effective for a period not to exceed ~~((two))~~ three scheduled classroom days.

(b) The faculty member must immediately report such suspension to the vice-president for student services who will follow the process in subsections (1), (2) and (3) of this section.

(c) Any summary action may be appealed immediately in writing by the student to the vice-president for student services ~~((for an informal hearing))~~.

(d) The vice-president for student services must decide the appeal within twenty-four hours' receipt of the appeal and their decision is final.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-150 Emergency procedures. In the event of activities which interfere with the orderly operation of the college, the vice-president for student services or the president, or their designees shall determine the course of action which appears to offer the best possibility for resolution of the problem. The emergency procedures outlined below will be followed if deemed essential:

(1) Inform those involved in such activities that they are in violation of college ~~((and/or))~~ code or civil/criminal laws or regulations.

(2) Inform them that they should cease and desist. Indicate an area on campus where they are able to conduct their activities without interfering with the operation of the college, if such an area is available.

(3) If they do not respond within a reasonable time, call ~~((the civil authorities))~~ campus security.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-160 Athletics—Grounds for ineligibility. Any student found to have violated chapter 69.41 RCW, which prohibits the unlawful sale, delivery or possession of prescription drugs, shall, after hearing and any appeals, be disqualified from participation in any college-sponsored athletic events or activities.

AMENDATORY SECTION (Amending WSR 00-05-023, filed 2/8/00, effective 3/10/00)

WAC 132X-60-170 Initiation of athletic ineligibility proceedings. The vice-president for student services or ~~((his or her))~~ designee ~~((shall have the authority to request commencement of))~~ can initiate athletic ineligibility proceedings whenever he or she has reasonable cause to believe that the student has violated chapter 69.41 RCW or ~~((has))~~ been advised that the student has been convicted of a crime involving the violation of chapter 69.41 RCW. ~~((The))~~ A notice of the alleged violations ~~((and))~~, proposed ~~((suspension))~~ disqualification from participation and the opportunity for a ~~((hearing))~~ brief adjudicative proceeding shall be given to the student at least ten calendar days before the hearing. ~~((A student convicted of violating chapter 69.41 RCW in a separate criminal proceeding may be given by the vice president for student services or his or her designee an interim suspension pending final determination of any administrative proceeding held under these rules.))~~ Should the student desire not to go forward with the hearing, the disqualification for participation in athletic events or activities shall be imposed as set forth in the notice of hearing to the student.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132X-60-075	Commercial and promotional activities.
WAC 132X-60-110	Appeals of disciplinary action.
WAC 132X-60-178	Noncollege speaker policy.
WAC 132X-60-180	Ineligibility proceedings.

Chapter 132X-70 WAC**FACULTY TENURE**NEW SECTION

WAC 132X-70-010 Tenure and dismissal. It is the rule of the board of trustees of Community College District XXIV that all matters related to tenure and dismissal of academic employees shall be governed by the laws of the state of Washington and the terms of the negotiated agreement between the board of trustees of Community College District XXIV and the South Puget Sound Community College federation of teachers as contained in that agreement.

NEW SECTION

WAC 132X-70-020 Professional leave. It is the rule of the college that faculty be granted professional leave for the purpose of providing opportunities for study, research and creative activities for the enhancement of the college's instructional programs and services per RCW 28B.10.650.

Chapter 132X-80 WAC**COURSE MATERIALS SALES**NEW SECTION

WAC 132X-80-010 Purpose. This rule governs affiliated bookstores in materials for courses.

NEW SECTION

WAC 132X-80-020 Definitions. (1) **Materials** means any supplies or texts required or recommended by faculty or staff for a given course.

(2) **Bundled** means a group of objects joined together by packaging or required to be purchased as an indivisible unit.

NEW SECTION

WAC 132X-80-030 Course materials and cost savings. (1) The college bookstore will provide students the option of purchasing materials that are unbundled, when possible.

(2) The college bookstore will publicly disclose to faculty, staff and students the title, authors, edition, International

Standard Book Number (ISBN), and retail price of materials on a per course basis four weeks before each term begins.

(3) The college bookstore will disclose publicly how new editions vary from previous editions by providing the contact information for the publisher when requested.

(4) When a new edition of a textbook is ordered by faculty, the bookstore will provide new text pricing for the faculty when contacted directly. The bookstore will also inquire if students may use the old edition if it is available.

(5) The college bookstore will promote and publicize book buy-back programs.

(6) Faculty and staff are encouraged to consider the least costly practices in assigning course materials such as:

(a) Adopting the least expensive edition available when educational content is comparable as determined by the faculty;

(b) Working closely with publishers and bookstore staff to get bundled materials if such packaging delivers cost savings to students; and

(c) Working with the bookstore staff to disseminate open source course materials when such open source materials are adopted and required for the course.

Chapter 132X-90 WAC**PROCESS FOR HEARINGS**NEW SECTION

WAC 132X-90-010 Purpose. The purpose of this chapter is to provide process for brief and full adjudicative hearings.

NEW SECTION

WAC 132X-90-020 Model rules of procedure. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use at the college. Those rules may be found at chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and procedural rules adopted in this title, the procedural rules adopted by the college shall govern.

NEW SECTION

WAC 132X-90-030 Variation from time limits. The college finds that in light of its governance structure it may be necessary from time to time to change the time limits set forth in chapter 34.05 RCW for adjudicative or brief adjudicative hearings. The college is hereby authorized to provide for emergency variation of the time limits as required in a specific case(s). Any modification in the time limits shall be to new time limits that are reasonable under the specific circumstances. The presiding or reviewing officer shall give reasonable and adequate notice of the pertinent time limits to the affected persons. Affected persons may also waive any rights conferred upon them by chapter 34.05 RCW.

NEW SECTION**WAC 132X-90-040 Brief adjudicative procedure.**

This rule adopts the provision of RCW 34.05.482 through 34.05.494. Brief adjudicative procedures may, at the election of college, be used in all appeals related to:

- (1) Residency classifications made pursuant to RCW 28B.15.013;
- (2) Outstanding debts of college employees or students;
- (3) Loss of eligibility to participate in athletic events;
- (4) Contents of educational records pursuant to 34 C.F.R. section 99.21;
- (5) Denial of mandatory tuition and fee waivers;
- (6) Denial of tuition and fee refunds;
- (7) Use of college facilities;
- (8) Any other rule adopted by college which specifically provides for a brief adjudicative procedure.

NEW SECTION**WAC 132X-90-050 Appointment of presiding officers.**

The president or his/her designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington Bar Association, a panel of individuals, the president or his/her designee, or any combination of the above. Where more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, witness exclusion, means of recording adjudicative proceedings, and similar matters.

NEW SECTION**WAC 132X-90-060 Application for adjudicative proceeding.**

An application for adjudicative proceeding shall be in writing and should be submitted to the following address within twenty-one days of the college action giving rise to the application, unless provided for otherwise by statute or rule: President's Office, South Puget Sound Community College, 2011 Mottman Road S.W., Olympia, Washington 98512-6292.

NEW SECTION**WAC 132X-90-070 Discovery and prehearing conferences.**

Discovery including investigation in adjudicative proceeding may be permitted at the discretion of the presiding officer. In permitting discovery, the presiding officer shall make reference to the civil rules of procedure. The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

Prehearing conferences or other conferences may be held for the settlement or simplification of issues at the discretion of the presiding officer, or pursuant to a motion by either of the parties for a prehearing conference. The prehearing conference may be conducted by telephone, television or other electronic means, in the discretion of the presiding officer and where the rights of the parties will not be prej-

udiced. Each participant in the conference shall have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

NEW SECTION

WAC 132X-90-080 Method of recording. Proceedings shall be recorded by a method determined by the presiding officer, among those available pursuant to the model rules of procedure in WAC 10-08-170.

NEW SECTION

WAC 132X-90-090 Recording devices. No camera or recording devices shall be allowed in those parts of proceedings which the presiding officer has determined shall be closed pursuant to WAC 132X-90-050 and 132X-90-100, except for the method of official recording selected by the college.

NEW SECTION**WAC 132X-90-100 Procedure for closing parts of the hearing.**

The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer. A party may apply for a protective order to close part of a hearing. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed and state the reasons therefore in writing within twenty days of receiving the request.

NEW SECTION**WAC 132X-90-110 Process for excluding witnesses.**

A party may apply for an order excluding witnesses for good cause. If the other party opposes the request, a written response to the request shall be made within ten days of the request to the presiding officer. The presiding officer shall determine and may order, upon a showing of good cause, which, if any, witnesses should be excluded and state the reasons therefore in writing within twenty days of receiving the request.

NEW SECTION**WAC 132X-90-120 Petitions for stay of effectiveness or to stop action.**

A party may submit to the presiding or reviewing officer a petition for stay of effectiveness of a final order within ten days of service of the final order unless otherwise provided by statute or stated in the final order. Disposition of a petition for stay of effectiveness of a final order shall be made by the official, officer, or body of officers who entered the final order. Disposition denying a stay is not subject to judicial review.

WSR 11-22-029
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed October 25, 2011, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-18-024.

Title of Rule and Other Identifying Information: WAC 392-194-001 and 392-194-002, school personnel certificate fees, professional certification, office of superintendent of public instruction (OSPI).

Hearing Location(s): OSPI, Brouillet Conference Room, 600 Washington Street S.E., Olympia, WA 98504, on December 6, 2011, at 10:00.

Date of Intended Adoption: December 6, 2011.

Submit Written Comments to: David Kinnunen, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail David.Kinnunen@k12.wa.us, fax (360) 586-0145, by December 5, 2011.

Assistance for Persons with Disabilities: Contact Wanda Griffin by December 5, 2011, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This will be a new rule, WAC 392-194-001 and 392-194-002.

The purpose of this chapter is to establish the fee for processing initial educator certificate applications and subsequent actions. The legislature finds that the processing of certifications should be moved to an on-line system that allows educators to manage their certifications and provide better information to policymakers. The legislature intends to assess a certification processing fee to eliminate state-funded support of the cost to issue educator certificates.

Statutory Authority for Adoption: ESHB 1449 (chapter 23, Laws of 2011).

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

Name of Proponent: OSPI.

Name of Agency Personnel Responsible for Drafting and Implementation: David Kinnunen, OSPI, (360) 725-6406; and Enforcement: Martin Mueller, OSPI, (360) 725-6175.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

October 25, 2011

Randy Dorn

State Superintendent

Chapter 392-194 WAC

SCHOOL PERSONNEL CERTIFICATE FEES

NEW SECTION

WAC 392-194-001 Purpose and authority. The purpose of this chapter is to establish the fee for processing initial educator certificate applications and subsequent actions. The authority for this chapter is chapter 23 (ESHB 1449), Laws of 2011.

NEW SECTION

WAC 392-194-002 Fee for processing initial educator certificate applications and subsequent actions. Effective October 1, 2011, the superintendent of public instruction will charge a nonrefundable fee of thirty-three dollars for processing any certificate application or requests for administrative action which results in the issuance, renewal or reissuance of a permit or certificate pursuant to RCW 28A.410.010, 28A.410.025, 28A.410.210, and chapters 181-85 and 181-77 WAC; for issuance of a letter authorizing internship/student teaching pursuant to WAC 181-78A-130; and any subsequent action upon any certificate or permit referred to within this chapter. Educator certificates governed under this chapter include:

(1) Teacher. The teacher certificate, including teacher exchange permits as provided in WAC 181-79A-140, authorizes service as a classroom teacher.

(2) Career and technical. The career and technical education certificate authorizes service in career and technical education programs in accordance with the provisions of chapter 181-77 WAC.

(3) First people's language/culture. The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service as defined under WAC 181-78A-700(8).

(4) Administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: Provided, That nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations promulgated by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals under specific circumstances set forth in WAC 181-79A-231:

(a) Conditional certificate.

(b) Substitute certificate.

(c) Emergency certificate.

(d) Emergency substitute certificate.

(e) Nonimmigrant alien exchange teacher.

(f) Intern substitute teacher certificate.

(g) Transitional certificate.

(h) Provisional alternative administrative certificate.

WSR 11-22-032
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed October 26, 2011, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-104.

Title of Rule and Other Identifying Information: To implement ESHB 2082, Laws of 2011, the department is proposing to make the following changes:

- Amend WAC 388-273-0020, 388-406-0005, 388-406-0045, 388-406-0055, 388-408-0005, 388-416-0010, 388-424-0010, 388-424-0015, 388-436-0030, 388-442-0010, 388-450-0040, 388-450-0045, 388-450-0095, 388-450-0100, 388-450-0115, 388-450-0120, 388-450-0130, 388-450-0156, 388-450-0170, 388-460-0020, 388-460-0040, 388-468-0005, 388-473-0010, 388-474-0010, 388-474-0020, 388-476-0005, 388-478-0035, and 388-486-0005.
- Repeal WAC 388-400-0025, 388-404-0010, 388-408-0010, 388-418-0025, 388-424-0016, 388-448-0001, 388-448-0010, 388-448-0020, 388-448-0030, 388-448-0035, 388-448-0040, 388-448-0050, 388-448-0060, 388-448-0070, 388-448-0080, 388-448-0090, 388-448-0100, 388-448-0110, 388-448-0120, 388-448-0130, 388-448-0140, 388-448-0150, 388-448-0160, 388-448-0180, 388-448-0200, 388-448-0210, 388-448-0220, 388-448-0250, 388-450-0110, 388-450-0135, 388-450-0175, 388-462-0011, and 388-478-0030.
- Create WAC 388-400-0055, 388-400-0060, 388-408-0060, 388-449-0001, 388-449-0005, 388-449-0010, 388-449-0015, 388-449-0020, 388-449-0030, 388-449-0035, 388-449-0040, 388-449-0045, 388-449-0050, 388-449-0060, 388-449-0070, 388-449-0080, 388-449-0100, 388-449-0150, 388-449-0200, 388-449-0210, 388-449-0220, 388-449-0225, 388-450-0112, 388-450-0137, 388-450-0177, 388-478-0027, and 388-478-0033.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on December 27, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 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 December 27, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 13, 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 amending, repealing and creating new rules to terminate all components of the disability lifeline program, and to establish the aged, blind, or disabled assistance and the pregnant women assistance programs to comply with ESHB 2082, Laws of 2011.

Reasons Supporting Proposal: These changes are necessary to conform to ESHB 2082, Laws of 2011.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335.

Statute Being Implemented: ESHB 2082, 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: Aurea Figueroa-Rogers, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4623.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by defining eligibility for pregnant women assistance and aged, blind, or disabled cash assistance.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

October 18, 2011

Katherine I. Vasquez

Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-23 issue of the Register.

WSR 11-22-050

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 28, 2011, 1:14 p.m.]

Supplemental Notice to WSR 11-20-057.

Preproposal statement of inquiry was filed as WSR 11-13-073.

Title of Rule and Other Identifying Information: WAC 390-16-011A Sponsor of a political committee.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 8, 2011, at 9:30 a.m.

Date of Intended Adoption: December 8, 2011.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by December 6, 2011.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail at jana.greer@pdc.wa.gov or phone (360) 586-0544 or (360) 753-1111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed new WAC 390-16-011A clarifies how a political committee determines who is a sponsor under RCW 42.17A.005 (42)(b)(i) and supports proposed amendments to WAC 390-16-011 Forms—Registration statement for political committees.

Reasons Supporting Proposal: The proposed rule will provide guidance and clarification to political committees

subject to chapter 42.17A RCW and WAC 390-16-011 in connection with the implementation of chapter 145, Laws of 2011, effective January 1, 2012.

Statutory Authority for Adoption: RCW 42.17.370.

Statute Being Implemented: RCW 42.17A.005 (42)(b), effective January 1, 2012.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rule clarifies new disclosure requirements imposed by chapter 145, Laws of 2011.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, JARRC has not made section 201 applicable to the adoption of these rules.

October 27, 2011

Lori Anderson
Communication and
Training Officer

NEW SECTION

WAC 390-16-011A Sponsor of a political committee.

(1) This rule applies to political committees that are not authorized committees. This rule does not apply to political committees that filed final C-4 reports as of December 31, 2011.

(2) "Sponsor" of a political committee is defined under RCW 42.17A.005 (42)(b).

(3) A sponsored political committee that registers on or after January 1, 2012, shall include on its C-1pc the name of at least one sponsor in the committee's name.

(4) A political committee registered before January 1, 2012, shall amend its registration by January 31, 2012. A sponsored political committee shall include on its amended C-1pc the name of at least one sponsor in the committee's name.

(5) To determine if a political committee received eighty percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders under RCW 42.17A.005 (42)(b)(i):

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition shall consider all contributions received January 1, 2011, through the date of filing the amended C-1pc.

(b) A political committee organized to support or oppose a particular candidate or ballot proposition shall consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.

(6) A sponsored political committee must amend its C-1pc sixty days before an election in which it participates if the committee's name on its most recently filed C-1pc does not include at least one current sponsor. To determine if the committee received eighty percent or more of its contributions from a person or from the person's members, officers, employees, or shareholders under RCW 42.17A.005 (42)(b)(i) at the time of the amendment:

(a) A political committee not organized to support or oppose a particular candidate or ballot proposition will consider all contributions received in the previous twelve months through the date of filing the amended C-1pc.

(b) A committee organized to support or oppose a particular candidate or ballot proposition will consider all contributions received from the time the committee was organized or filed its initial C-1pc, whichever is earlier.

WSR 11-22-055

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed October 31, 2011, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-070.

Title of Rule and Other Identifying Information: The university is updating the standards of conduct for students, chapter 504-26 WAC.

Hearing Location(s): Lighty 405, WSU Pullman, Pullman, Washington, on December 8, 2011, at 4:00 p.m.

Date of Intended Adoption: January 27, 2012.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail jenks@wsu.edu, fax (509) 335-3969, by December 8, 2011.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by December 6, 2011.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update, edit, and clarify the standards of conduct for students.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Bernadette Buchanan, Director, Student Standards and Accountability, Lighty Services 260, Pullman, Washington 99164-1064, (509) 335-4532; and Enforcement: John Fraire, Vice-President for Student Affairs and Enrollment, Lighty Services 360, Pullman, Washington 99164-1066, (509) 335-5900.

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

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

October 31, 2011

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

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-100 Composition of conduct and appellate boards. (1) The university conduct board shall be composed of five individuals appointed by the vice-president for student affairs: Two students, two faculty members, and a fifth person, who may be any category of university employee and who shall be named by the vice-president for student affairs as the chairperson of the board.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be appointed by the vice-president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees ((appointed by the vice-president for student affairs)) or students, provided that the student members have had at least one academic year of service on the university conduct board. Three persons constitute a quorum of the appeals board.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-218 Computer abuses or theft. Theft or other abuse of computer facilities and resources, including but not limited to:

- (1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
- (2) Unauthorized transfer of a file.
- (3) Unauthorized use of computer hardware.
- (4) Use of another individual's identification and/or password.
- (5) Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.

(6) Use of computing facilities and resources to send obscene, harassing, or threatening messages.

(7) Use of computing facilities and resources to interfere with normal operation of the university computing system.

(8) Use of computing facilities and resources in violation of any law, including copyright laws.

(9) Any violation of the university computer use policy found at (http://www.wsu.edu/~forms/HTML/EPM/EP4_Electronic_Publishing_Policy.htm) http://public.wsu.edu/~forms/HTML/EPM/EP4_Electronic_Communication_Policy.htm

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-402 Conduct officer actions. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the following procedures.

(a) The conduct officer provides notice by personal delivery or by regular United States mail addressed to the student or student organization at his, her, or its last known address. Duplicate notice may be provided by electronic mail.

(b) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files. The student or student organization is responsible for maintaining an updated mailing address on file with the registrar.

(c) Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding, thereby exonerating the student or students;

(b) Dismiss the case;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter to the university conduct board pursuant to WAC 504-26-401(3).

(4) The conduct officer may consider the student's past contacts with the office of student standards and accountability in determining an appropriate sanction and/or deciding whether to refer the case for a university conduct board hearing.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student that suspension or expulsion may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary

period. A student on probation is not eligible to run for or hold an office in any student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor, and she or he is not eligible to serve on the university conduct board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to successfully complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of an organization).

(g) Residence hall suspension. Separation of the student from the residence halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from the residence halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this standards of conduct for students, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on his or her misconduct.

(n) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services, privileges or administrative approval from a student organization. Services, privileges and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a student conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be imposed. Fines are established each year prior to the beginning of the academic year and are approved by the vice-president for student affairs.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) In determining an appropriate sanction for a violation of the standards of conduct for students, a student's or student organization's past contacts with the office of student standards and accountability may be considered.

(4) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(5) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in any conduct officer hearing.

(6) Academic integrity violations.

No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-407 Review of decision. (1) A decision reached by the university conduct board or a sanction imposed by the student conduct officer may be appealed by the complainant or accused student(s) in the manner prescribed in the decision letter containing the university's decision and sanctions. Such appeal must be made within twenty-one days of the date of the decision letter.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim

record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and make determinations based on the following:

(a) Affirm, reverse or modify the conduct board's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board.

(4) The appeal board's decision shall be personally delivered or mailed via U.S. mail to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s). It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeal board's decision letter is the final order and shall advise the student or student organization that judicial review may be available. If the appeal board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed, except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.

(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or student organization no later than ten calendar days from the date the appeals board decision is signed.

(a) This review is limited to the record and purposes stated in subsection (2) of this section.

(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative

hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the (~~appeals board~~) president or designee, they shall do so in writing.

(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available.

(7) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the U.S. mail. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

(8) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

WSR 11-22-056

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 10-09—Filed October 31, 2011, 11:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-113.

Title of Rule and Other Identifying Information: Dam safety, chapter 173-175 WAC, the rule provides for the comprehensive regulation and supervision of dams in order to secure safety to life and property, including:

- Designates the types of dams the rule applies to.
- Provides for the design, construction, operation, maintenance, and supervision of dams consistent with accepted engineering practice.
- Establishes a fee schedule based on dam size for the engineering review of plans and specifications and the inspection of dam construction.
- Establishes requirements for planning and implementation for dam operation and maintenance, owner inspection, and emergency actions.
- Establishes a program for periodic safety inspection of existing dams and fee schedule based on downstream hazard classification.

Hearing Location(s): Department of Ecology Regional Offices: SWRO, 300 Desmond Drive S.E., Lacey, WA 98503, on December 7, 2011, at 6:00 p.m.; and at the CRO, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902, on December 8, 2011, at 6:00 p.m.

Date of Intended Adoption: December 23, 2011.

Submit Written Comments to: Ben Bonkowski, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-

7600, e-mail bbon461@ecy.wa.gov, fax (360) 407-6574, by 5:00 p.m., December 16, 2011.

Assistance for Persons with Disabilities: Contact Barbara Anderson at (360) 407-6607, by December 1, 2011, TTY 771 or 1-877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment will increase fees for the engineering review of dam construction plans and for periodic safety inspections to better reflect the actual cost of providing these services, and update the mailing address for submitting fees.

Reasons Supporting Proposal: Fees set in the current rule do not collect sufficient revenue to offset costs per RCW 90.03.470. Furthermore, the legislature authorized the department of ecology (ecology) to increase dam safety fees by up to thirty-five percent in fiscal year (FY) 2012 and up to 4.62 percent in FY 2013 as necessary to meet the actual costs of conducting business (2ESHB 1087.SL). Based on this proviso, the office of financial management directed ecology to increase collected fees to recoup actual costs.

Statutory Authority for Adoption: Chapters 43.21A, 43.27A, 86.16, 90.03, 90.28, and 90.54 RCW. RCW 43.135.055 requires a majority vote of the legislature to raise or add fees. The 2011 legislature authorized ecology in section 302(2) of 2ESHB 1087.SL to increase dam safety fees by up to thirty-five percent in FY 2012, and 4.62 percent in FY 2013 as necessary to recover costs.

Statute Being Implemented: Section 302(2) of 2ESHB 1087.SL and RCW 90.03.470.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Rebecca Inman, 300 Desmond Drive, Lacey, WA 98503, (360) 407-6450; Implementation and Enforcement: Jerald LaVassar, 300 Desmond Drive, Lacey, WA 98503, (360) 407-6625.

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

Small Business Economic Impact Statement

Executive Summary: Ecology is proposing to amend chapter 173-175 WAC, Water resource program for dam safety. The key elements of the proposed rule amendment include:

- Changing construction permit fees and periodic inspection fees.
- Removing the fiscal growth factor with annual fee escalation.
- Updating the mailing address for fee payments.

This small business economic impact statement (SBEIS) evaluates the various requirements and costs that the proposed rule might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rule amendment impose a disproportionate impact on the state's small businesses.

The proposed plan review and construction inspections fees for new dams and modifications vary based on dam

height and crest length. If a small company and a large company both build the same size dam, then the impact is likely disproportionate when measured as a percentage of employees and or revenue. For example, if a small firm and a large firm both build an intermediate dam with equivalent fees, then that fee is a larger percentage of the small firm's revenue and ratio of employees. The relative size and revenue of large firms provides them with a scale advantage. The potential for a disproportionate impact would only disappear if larger companies generally built sufficiently larger dams than small companies.

The proposed fees for periodic inspections vary by the level of downstream hazard risk posed by the dams. They are based on three hazard categories. Low hazard dams are not subject to periodic inspection fees, while high hazard dams pay higher periodic inspection fees than significant hazard dams. If a small business owns a low hazard dam there will be no disproportionate effect since a small and large business owning such a dam would not be subject to the payments. If a small business owns a high or significant hazard dam, they could be subject to disproportionate impacts compared to large businesses.

Ecology has determined there will be disproportionate impacts to small versus large businesses. Ecology does not believe the proposed fee increases will cause businesses to lose sales or revenues. Although the fee increases do not "meet the actual costs of conducting business" for dam safety and inspections as described by RCW 90.03.470 and 2ESHB 1087, they represent the closest ecology is able to come when faced with the limitations of thirty-five percent increases in FY 2012 and 4.62 percent in FY 2013 set forth in the bill.

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rules are consistent with legislative policy.

Purpose of this Document: Ecology is proposing to amend chapter 173-175 WAC, Water resource program for dam safety.

The objective of this SBEIS is to identify and evaluate the various requirements and costs that the proposed rules might impose on businesses. In particular, the SBEIS examines whether the costs on businesses from the proposed rules impose a disproportionate impact on the state's small businesses. RCW 19.85.040 describes the specific purpose and required contents of an SBEIS.¹

Ecology is developing and issuing this SBEIS as part of its rule adoption process and to meet chapter 19.85 RCW. Ecology intends to use the information in the SBEIS to ensure that the proposed rule is consistent with legislative policy.

Introduction: The key elements of the proposed rule amendment include:

- Changing construction permit fees and periodic inspection fees.
- Removing fiscal growth factor with annual fee escalation.
- Updating the mailing address for fee payments.

The amendments to chapter 173-175 WAC, Dam safety, are driven by legislative instructions in the operating budget for FYs 2012 and 2013. Fee increases authorized by 2ESHB 1087 are not sufficient to cover program costs. The 2012-2013 Washington state budget authorizes ecology to increase fees for dam safety and inspection to meet the actual costs of conducting business, but not more than thirty-five percent in FY 2012 and 4.62 percent in FY 2013.

Ecology has chosen to do rule making to implement the thirty-five percent and 4.62 percent increases.

Analysis of Compliance Costs for Washington Businesses: We have assessed the proposed rule amendment's impact by analyzing and comparing dam safety management under the proposed rule in contrast to current practices. The current framework or "baseline" includes the current chapter 173-175 WAC and legislative directives. The amendments to chapter 173-175 WAC that ecology is proposing are in response to these legislative directives [in] 2ESHB 1087.

Chapter 50, Laws of 2011 1st sp. sess.

2011-2013 OPERATING BUDGET

(2) Pursuant to RCW 43.135.055, the department is authorized to increase the following fees as necessary to meet the actual costs of conducting business and the appropriation levels in this section: Wastewater discharge permit, not more than 4.34 percent in FY 2012 and 4.62 percent in FY 2013; biosolids permit fee, not more than ten percent during the biennium; and air contaminate source registration fee, not more than thirty-six percent during the biennium; **and dam safety and inspection fees, not more than thirty-five percent in FY 2012 and 4.62 percent in FY 2013.**

Process and procedure requirement language is unchanged except for the correction of the mailing address for submitting fee payments. The amendment also removes the use of a fiscal growth factor for annual fee escalation. This discussion focuses on rule changes regarding fee increases proposed in response to the legislative directives described here.

We provide a brief description of compliance requirements below. You can find further details of existing practices and the proposed rule in Appendix A.

Defining the Regulated Community: Ecology's inventory of dams potentially subject to this rule includes over one thousand dams. Approximately three hundred eighty are currently subject to periodic inspection fees. Some of the activities covered by this analysis are done by both the private and public sector. The public entities from within the electric utilities, water purveyors, irrigation districts, solid waste facilities, and the like are not subject to this analysis. Removing these cut the size of the list approximately in half. Ecology used the remainder to develop a set of illustrative entities for this discussion.

The remaining dam operations were reviewed by program and agency staff in order to identify the economic sector (standard industrial classification or SIC) into which these fell. (See "The SIC codes of Potentially Impacted Industries" section below.) In some cases, this could be done with reasonable confidence. In others, best judgment estimates were made. Some could not be identified.

Businesses use dams for a range of uses, from basic agriculture to recreation. The sectors included below are repre-

sented at least once in the ecology dam inventory. Not every industry having at least one dam that comes under this rule is included here. In some cases, data limitations prevented inclusion of industries. However, this list indicates the range of uses to which the dams or reservoirs might be put. Readers whose industry of interest is not included on this list should be able to find another industry performing comparable work.

Impacts to Businesses Operating Dams: The direct impact of the proposed rule is that businesses subject to these fees will be required to pay higher fees for periodic inspections of dams and plan review and inspections for newly constructed dams and modifications.

Periodic Inspection Fees: For periodic inspections high hazard dams will pay an additional \$352 in fees annually under the proposed rule. Significant hazard dams will pay an additional \$256 annually under the proposed rule. Existing low hazard dams pay no periodic inspection fees and will remain unchanged.

Table 1. Periodic Inspection Fees

Hazard Class	Current Annual	Proposed 35% and 4.62% Combined Beginning with July 2012 Bill (FY 2013)
High 3 > Homes Downstream	\$856	\$1,208
Significant 1-2 Homes Downstream	\$625	\$881
Low	\$0	\$0

New Construction and Modification Plan Review and Inspection Fees: For plan review and inspections of new construction or modifications, small dams will pay an additional \$3,510 in fees under the proposed rule. Owners of an intermediate size dam would pay an additional \$7,940 under the proposed rule and owners of a large dam an additional \$14,284 after both fee increases take effect.

Table 2. New Construction and Modification Review Fees

Size	Current	35% Increase FY 2012	4.62% Increase FY 2013
Small <15 Feet High	\$8,511	\$11,490	\$12,021
Assume 14 feet high, 800 feet long (Circle Fruit Koehn Ranch Reservoir)			

Size	Current	35% Increase FY 2012	4.62% Increase FY 2013
Intermediate >15 < 50 Feet High Assume 26 feet high, 2200 feet long (SVID MP 37.1 Regulation Reservoir)	\$19,255	\$25,994	\$27,195
Large >50 Feet High Assume 60 feet high, 500 feet long, (Pend Oreille Mine, NE Tailings Dam)	\$34,638	\$46,761	\$48,922

Impacts to Businesses Dependant on Dam Safety Program: Fees for plan review and construction inspections for new dams and modifications vary based on dam height and crest length. If a small company and a large company both build the same size dam, then the impact is likely disproportionate when measured as a percentage of employees and or revenue. For example, if a small firm and a large firm both build an intermediate dam with equivalent fees, then that fee is a larger percentage of the small firm's revenue and ratio of employees. The relative size and revenue of large firms provides them with a scale advantage. The potential for a disproportionate impact would only disappear if larger companies generally built sufficiently larger dams than small companies.

The proposed fees for periodic inspections vary by the level of downstream hazard risk posed by the dams. They are based on three hazard categories. Low hazard dam[s] are not subject to periodic inspection fees, while high hazard dams pay higher periodic inspection fees than significant hazard dams. If a small business owns a low hazard dam there will be no disproportionate effect since a small and large business owning such a dam would not be subject to the payments. If a small business owns a high or significant hazard dam, they could be subject to disproportionate impacts compared to large businesses.

Reporting and Recordkeeping: The proposed rule amendment adds no additional reporting or recordkeeping requirements for small businesses.

Additional Professional Services: Ecology anticipates no additional professional services under the proposed rule.

Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: We expect no additional equipment, supplies, labor, or administrative costs from the proposed rule.

Other Compliance Requirements: We expect no other compliance requirements from the proposed rule.

Quantification of Costs and Ratios: It is the purpose of this section to evaluate whether:

- Compliance with the proposed rule will cause businesses to lose sales or revenue.
- The proposed rule will have a disproportionate impact on small businesses.

Known Costs: Businesses will pay additional fees for periodic inspection of existing high and significant hazard dams and for the review and inspection of new construction and modifications. See Section above: "Impacts to Businesses Operating Dams" for details.

Periodic Inspection Fees: For periodic inspections, owners of high hazard dams will pay an additional \$352 in fees annually under the proposed rule. Owners of significant hazard dams will pay an additional \$256 annually under the proposed rule. Existing low hazard dams pay no periodic inspection fees and will remain unchanged.

Fees for Plan Review and Inspection of New Construction and Modifications: For plan review and construction inspections of new construction or modifications, owners constructing small dams will pay an additional \$3,510 in fees under the proposed rule. Owners constructing intermediate size dams will pay an additional \$7,940 under the proposed rule. Fees for constructing large dams will increase \$14,284 after both fee increases take effect.

Will complying with the proposed rule cause businesses to lose sales or revenue? Ecology does not anticipate any lost sales or revenue under the proposed rule for businesses.

Will the proposed rule have a disproportionate impact on small businesses? As stated above, a disproportionate impact can occur when small firms build or modify dams. In many cases, the fees prescribed under the revised rule would be expected to be small relative to the number of employees or revenue estimated for many typical firms in these sectors; i.e., smaller projects are correlated with smaller businesses. On the other hand, relatively small businesses (as measured by employment) may choose to undertake larger projects at higher costs based on an economic/financial analysis of the effects upon their activity. Similarly, disproportionate impact can occur when small firms own significant or high hazard dams and are required to pay the same periodic annual inspection fees as large firms owning high hazard or significant dams.

Table 5 describes the industries that will be potentially affected by the rule. Some industries will be affected more or less by the rule depending on which businesses have or will build dams required to comply with the proposed rule. In order to calculate if disproportionalities exist, ecology has chosen sawmills (Industry 3211) as a representative industry for this analysis. There are fifty-three businesses in Washington state in industry 3211 (sawmills). Ecology will also use cost per employee to describe impacts on small businesses versus the top ten percent largest businesses required to comply with the proposed rule.

Table 3. Proportional Periodic Inspection Costs to Businesses (Sawmills 3211)

		Average # of Employees		Cost Per Employee	
Fee Schedule	Fee Increase	Small Business	10% Largest Business	Small Business	10% Largest Business
High Hazard	\$352	6	175	\$59	\$2
Significant Hazard	\$256	6	175	\$43	\$1
Low Hazard	\$0	6	175	\$0	\$0

The estimated increased cost per employee for a high hazard small business is \$59, and for the top ten percent of high hazard large business is \$2. The estimated increased cost per employee for significant hazard small business is \$43, and for the top ten percent of significant hazard large business is \$2. Low hazard dam owners would be unchanged.

Table 4. Proportional New Construction Costs to Businesses (Sawmills 3211)

		Average # of Employees		Cost Per Employee	
Fee Schedule	Fee Increase	Small Business	10% Largest Business	Small Business	10% Largest Business
Small Dam	\$3,510	6	175	\$585	\$20
Intermediate Dam	\$7,940	6	175	\$1323	\$45
Large Dam	\$14,284	6	175	\$2381	\$82

In these examples, for both periodic inspections and new construction, the data suggests that the impacts of the proposed rule will impose disproportionate costs to small businesses under a large range of scenarios.

Conclusions: Ecology has determined there will be disproportionate impacts to small versus large businesses. Ecology does not believe the proposed fee increases will cause businesses to lose sales or revenues. Although the fee increases do not "meet the actual costs of conducting business" for dam safety and inspections as described by RCW 90.03.470 and 2ESHB 1087, they represent the closest ecology is able to come when faced with the limitations of thirty-five percent increases in FY 2012 and 4.62 percent in FY 2013 set forth in the bill.

Actions Taken to Reduce the Impact of the Rules on Small Business: Given that the department has found a disproportionate impact, mitigation is required where legal and feasible. The proposed changes to chapter 173-175 WAC are responses to legislative directives as reflected in the budget notes cited above. The directives are to develop fee systems adequate to fund the department's activities related periodic safety inspections and the review of plans and construction for new projects and modifications of existing projects. These directives are sufficiently explicit that only limited mitigative modifications are feasible. The department has provided the following cost minimizing features:

- This rule amendment relies on provisions in the current rule and statute to reduce costs of the rule on small businesses.
- Very small dams (under ten acre-feet capacity) are not subject to this regulation including fees.
- Low hazard dams are not subject to periodic inspections or related fees.

- There are free inspections (no fees) for significant and high hazard dams for the first ten years after review and construction.
- High hazard dams pay lower inspection fee from year eleven through year twenty after construction equal to the lower significant hazard dam periodic inspection fee.
- The fee schedule for planning and construction of new dams is based on size. Smaller dams pay lower fees even though they typically require more assistance from the dam safety office.

Small Business Involvement in Developing the Proposed Amendment: The dam safety office manager made a presentation to the water resource advisory committee (WRAC). A number of small business-related groups are members of the WRAC, such as the Small Business Association of Washington, the Washington Farm Bureau, the Washington Dairy Federation, the Association of Washington Business, the NW Food Processors Association, the Building Industry Association of Washington, the Pacific Coast Federation of Fishermen's Associations, and others.

The SIC Codes of Potentially Impacted Industries: There are currently more than one thousand dams potentially subject to this rule amendment, about three hundred of them required to pay the periodic inspection fees. Some of the activities covered by this analysis are done by both the private and public sector. The department removed the public entities such as electric utilities, water purveyors, irrigation districts, solid waste facilities and the like, which are not subject to this analysis. Removing these cut the size of the list approximately in half. The remainder was used to develop a set of illustrative entities for this discussion.

The remaining dam operations were reviewed by program and agency staff in order to identify the economic sector (SIC) into which these fell. In some cases, this could be

done with reasonable confidence. In others, best judgment estimates were made. Some could not be identified.

Businesses use dams for a range of uses, from basic agriculture to recreation. The sectors listed below are represented at least once in the ecology dam inventory. Not every industry having at least one dam that comes under this rule is included here. In some cases, data limitations prevented inclusion of industries. However, this list provides indication of the range of uses to which the dams or reservoirs might be put. Readers whose industry of interest is not included on this list should be able to find another industry performing comparable work.

Disproportionate impacts can occur when small firms build large dams. In many cases, the fees implied by the revised rule would be expected to be small relative to the revenue estimated for many typical firms in these sectors; i.e., smaller projects are correlated with smaller businesses. On the other hand, relatively small businesses (as measured by employment) may choose to undertake larger projects at higher costs based on an economic/financial analysis of the effects upon their activity. In short, it has been assumed that the magnitudes and ranges of impacts displayed here are generally representative of a larger scope, and that the results here might be usable on a broader basis.

Table 5. Industries Potentially Affected by the Proposed Rule Amendment
(North American Industry Classification System²)

Industry Type	NAICS#
Crop production	111
Animal production	112
Forestry and logging	113
Fishing and hunting	114
Mining	212
Residential building construction	2361
Food processing	311
Real estate property managers	53131
Offices of bank holding companies	551111
Waste treatment and disposal	56221
Technical and trade schools	61151
Nature parks and similar institutions	712190
Golf courses and country clubs	713910
Hotels and motels	721110
RV parks and recreational camps	7212
Religious organizations	813110
Environment, conservation, and wildlife organizations	813312
Civic and social organizations	813410
Sawmills	3211
Pulp, paper, and paperboard mills	3221
Petroleum and coal product manufacturing	3241
Basic chemical manufacturing	3251
Glass and glass product manufacturing	3272

Industry Type	NAICS#
Aluminum production	3313
Software reproduction	334611
Aircraft manufacturing	336411

Expected Jobs Created or Lost/Impacts on Jobs:
Ecology does not expect any jobs will be lost or created as a result of the proposed fee increase.

¹Due to size limits for filing documents with the code reviser, the SBEIS does not contain the appendices that further explain ecology's analysis. Nor does it contain the raw data used in this analysis, or all of ecology's analysis of this data. However, the rule-making file contains this information and it is available upon request.

²Ecology has used NAICS codes rather than SIC codes. It is a comparable system, used at the federal and state level, and has replaced SIC codes in common use.

A copy of the statement may be obtained by contacting Water Resources Program Publications, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6872, fax (360) 407-7162, e-mail WRPublications@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Water Resources Program Publications, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6872, fax (360) 407-7162, e-mail WRPublications@ecy.wa.gov.

October 28, 2011

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending Order 03-08, filed 8/4/04, effective 9/4/04)

WAC 173-175-360 Construction permit fees for new project construction. (1) Fees for the review of plans and specifications and for construction inspection for new project construction shall be the amounts shown in Table 4A through June 30, 2012, and as shown in Table 4B thereafter, as ~~((adjusted by the fiscal growth factor, and))~~ determined by the nearest values of dam height and crest length, in feet, which correspond to the project's planned dam height and crest length.

~~(2) ((The fees in Table 4 are automatically adjusted annually on July 1st by the fiscal growth factor as calculated under chapter 43.135 RCW. After July 1st of each year, the department shall publish the adjusted fees by providing notice on its internet site and by providing written notification by mail or electronic mail to permit applicants.~~

~~(3))~~ Fees for the review of plans and specifications and for construction inspection for new dairy waste impoundments, and conservation dams, shall be ~~((in the amount of one thousand four hundred dollars))~~ one thousand eight hundred ninety dollars through June 30, 2012, and one thousand nine hundred seventy-seven dollars thereafter, provided the project meets the following requirements:

- (a) The facility has a low downstream hazard classification;
- (b) The maximum embankment height is less than fifteen feet;

(c) The facility conforms with a set of standard plans and specifications prepared by the Natural Resource Conservation Service (NRCS) and approved by the department; and

If the project fails to meet any of the above requirements, the standard fees as described under subsection (1) of this section shall apply.

(d) The NRCS or its designee provides periodic oversight of construction to ensure that the facility conforms to the standard plans.

TABLE 4A. CONSTRUCTION PERMIT FEES
For use through June 30, 2012

Dam Height (ft)	Crest Length (ft)															
	50	100	150	200	250	300	350	400	500	600	700	800	1000	1500	2000	4000
400	74451	83068	86270	88200	89756	90979	92016	92911	94181	94181	94181	94181	94181	94181	94181	94181
300	64420	76381	81561	84245	85893	87118	88155	89095	90602	91827	92863	93804	94181	94181	94181	94181
250	57215	71107	77087	80950	82975	84669	85753	86647	88155	89425	90462	91357	92863	94181	94181	94181
200	47561	62442	70636	74827	78217	80666	82032	83304	85187	86412	87447	88389	89896	92627	94181	94181
180	42052	58251	66351	71813	75062	77841	80195	81373	83444	85045	86082	86976	88484	91262	93193	94181
160	36401	53636	61877	67528	71720	74356	76663	78736	81326	82975	84434	85422	86930	89708	91639	94181
150	33670	51046	59287	64984	69553	72520	74780	76805	80195	81843	83257	84528	86082	88861	90791	94181
140	30939	47467	56509	62395	66775	70588	72802	74780	78171	80619	82032	83257	85187	87918	89896	94181
130	28301	43606	53684	59428	63902	67528	70730	72661	75957	78736	80713	81938	83963	86930	88908	93617
120	25664	39556	50245	56273	60889	64420	67528	70306	73603	76334	78736	80478	82551	85893	87824	92534
110	23074	35600	45866	52978	57357	61171	64138	66775	71201	73838	76146	78171	80995	84763	86694	91403
100	20579	31739	40875	48504	53684	57310	60512	63148	67575	71154	73368	75346	78783	83020	85422	90132
95	19354	29808	38426	45960	51846	55285	58440	61265	65550	69318	71955	73885	77229	82080	84763	89472
90	18130	27924	35977	43040	49021	53307	56273	59004	63525	67151	70353	72331	75628	81137	83775	86270
85	16906	26041	33575	40169	46149	50953	54108	56744	61406	64891	68046	70777	73980	80149	81561	81561
80	15728	24204	31221	37343	42947	47844	51894	54437	58911	62630	65645	68376	72284	76852	76852	76852
75	14551	22415	28867	34565	39745	44548	48597	52083	56367	60183	63196	65832	70448	72144	72144	72144
70	13374	20625	26559	31787	36590	40969	45112	48597	53778	57403	60605	63243	67433	67433	67433	67433
65	12243	18883	24298	29101	33434	37484	41299	44878	50764	54531	57639	60417	62725	62725	62725	62725
60	11113	17140	22086	26418	30373	34047	37531	40780	46761	51564	54579	57215	58016	58016	58016	58016
55	10030	15445	19919	23827	27406	30703	33810	36730	42240	47137	51235	53307	53307	53307	53307	53307
50	8947	13797	17753	21285	24440	27406	30186	32775	37720	42240	46431	48597	48597	48597	48597	48597
46	8100	12479	16105	19260	22133	24817	27313	29714	34141	38237	42147	44830	44830	44830	44830	44830
42	7252	11207	14457	17282	19872	22273	24534	26653	30655	34329	37813	41062	41062	41062	41062	41062
38	6451	9936	12808	15352	17659	19778	21802	23687	27218	30515	33575	36543	37296	37296	37296	37296
34	5651	8758	11254	13467	15492	17377	19118	20767	23874	26747	29478	32022	33528	33528	33528	33528
30	4897	7534	9701	11631	13374	14975	16482	17941	20625	23121	25428	27642	29762	29762	29762	29762
28	4521	6970	8947	10736	12337	13844	15210	16529	19024	21332	23450	25523	27877	27877	27877	27877
26	4144	6404	8240	9841	11302	12667	13938	15163	17423	19542	21520	23403	25994	25994	25994	25994
24	3861	5792	7487	8947	10312	11537	12714	13844	15916	17799	19637	21332	24111	24111	24111	24111
22	3626	5274	6781	8100	9324	10454	11489	12526	14362	16105	17753	19260	22180	22226	22226	22226
20	3343	4708	6075	7252	8334	9371	10312	11207	12856	14457	15869	17282	19872	20343	20343	20343
18	3107	4191	5368	6451	7393	8287	9135	9936	11396	12808	14080	15304	17612	18459	18459	18459
16	2872	3767	4708	5651	6451	7252	8005	8664	9983	11160	12337	13374	15398	16576	16576	16576
15	2778	3626	4379	5227	6027	6733	7439	8052	9277	10407	11442	12432	14315	15634	15634	15634
14	2683	3437	4050	4850	5556	6215	6875	7439	8571	9606	10596	11489	13232	14692	14692	14692
13	2590	3249	3813	4473	5132	5745	6309	6875	7911	8853	9748	10596	12150	13751	13751	13751
12	2543	3060	3626	4097	4708	5227	5792	6262	7204	8100	8900	9701	11113	12808	12808	12808
11	2496	2920	3391	3813	4284	4756	5227	5698	6546	7346	8100	8806	10125	11866	11866	11866
10	2448	2778	3154	3578	3908	4284	4708	5132	5886	6593	7299	7911	9088	10925	10925	10925
9	2401	2636	2967	3296	3626	3908	4237	4568	5274	5886	6498	7063	8100	9983	9983	9983
8	2354	2543	2778	3013	3343	3578	3813	4050	4614	5179	5698	6215	7110	9040	9040	9040
7	2354	2448	2590	2825	3013	3249	3484	3673	4002	4473	4945	5368	6169	7958	8100	8100
6	2354	2401	2496	2636	2778	2967	3107	3296	3626	3861	4191	4568	5227	6733	7157	7157
5	2354	2354	2401	2496	2590	2683	2825	2920	3202	3437	3673	3861	4332	5556	6215	6215

TABLE 4B. CONSTRUCTION PERMIT FEES
For use beginning July 1, 2012

Dam Height (ft)	Crest Length (ft)															
	50	100	150	200	250	300	350	400	500	600	700	800	1000	1500	2000	4000
400	77890	86905	90255	92274	93902	95182	96267	97203	98532	98532	98532	98532	98532	98532	98532	98532
300	67396	79909	85329	88137	89861	91142	92227	93211	94787	96069	97153	98137	98532	98532	98532	98532
250	59858	74392	80648	84689	86808	88580	89714	90650	92227	93556	94641	95577	97153	98532	98532	98532
200	49758	65326	73899	78284	81830	84392	85821	87152	89122	90404	91487	92472	94049	96906	98532	98532
180	43994	60942	69416	75130	78529	81437	83900	85132	87299	88974	90058	90994	92571	95478	97498	98532
160	38082	56113	64735	70647	75033	77791	80204	82373	85083	86808	88334	89368	90946	93852	95872	98532
150	35225	53404	62026	67986	72766	75870	78234	80353	83900	85624	87103	88433	90058	92966	94985	98532
140	32368	49659	59119	65277	69860	73849	76165	78234	81782	84343	85821	87103	89122	91979	94049	98532
130	29608	45620	56164	62173	66854	70647	73997	76017	79466	82373	84441	85723	87842	90946	93015	97942
120	26849	41383	52566	58872	63702	67396	70647	73554	77003	79860	82373	84196	86364	89861	91881	96809
110	24140	37244	47985	55425	60006	63997	67101	69860	74490	77249	79663	81782	84736	88679	90699	95625
100	21529	33205	42763	50744	56164	59957	63307	66065	70696	74441	76757	78826	82422	86855	89368	94296
95	20248	31185	40201	48083	54241	57839	61139	64095	68578	72520	75279	77298	80796	85872	88679	93605
90	18967	29214	37639	45028	51285	55769	58872	61729	66459	70253	73603	75672	79122	84885	87645	90255
85	17687	27244	35126	42024	48281	53307	56607	59365	64242	67888	71189	74046	77397	83851	85329	85329
80	16454	25322	32663	70454	44931	50054	54291	56951	61632	65523	68677	71534	75623	80402	80402	80402
75	15223	23450	30200	36161	41581	46606	50842	54489	58971	62963	66115	68873	73702	75477	75477	75477
70	13991	21577	27786	33255	38280	42861	47196	50842	56262	60055	63404	66164	70548	70548	70548	70548
65	12808	19755	25420	30445	34978	39215	43207	46951	53109	57050	60301	63208	65622	65622	65622	65622
60	11626	17931	23106	27638	31776	35619	39264	42664	48921	53946	57100	59858	60696	60696	60696	60696
55	10493	16158	20839	24927	28672	32121	35372	38426	44191	49314	53602	55769	55769	55769	55769	55769
50	9360	14434	18573	22268	25569	28672	31580	34289	39462	44191	48576	50842	50842	50842	50842	50842
46	8474	13055	16849	20149	23155	25963	28574	31086	35718	40003	44094	46901	46901	46901	46901	46901
42	7587	11724	15124	18080	20790	23302	25667	27884	32071	35915	39559	42959	42959	42959	42959	42959
38	6749	10395	13399	16061	18474	20691	22809	24781	28475	31924	35126	38231	39019	39019	39019	39019
34	5912	9162	11773	14089	16207	18179	20001	21726	24976	27982	30839	33501	35076	35076	35076	35076
30	5123	7882	10149	12168	13991	15666	17243	18769	21577	24189	26602	28919	31137	31137	31137	31137
28	4729	7292	9360	11232	12906	14483	15912	17292	19902	22317	24533	26702	29164	29164	29164	29164
26	4335	6699	8620	10295	11824	13252	14581	15863	18227	20444	22514	24484	27194	27194	27194	27194
24	4039	6059	7832	9360	10788	12070	13301	14483	16651	18621	20544	22317	25224	25224	25224	25224
22	3793	5517	7094	8474	9754	10936	12019	13104	15025	16849	18573	20149	23204	23252	23252	23252
20	3497	4925	6355	7587	8719	9803	10788	11724	13449	15124	16602	18080	20790	21282	21282	21282
18	3250	4384	5616	6749	7734	8669	9557	10395	11922	13399	14730	16011	18425	19311	19311	19311
16	3004	3941	4925	5912	6749	7587	8374	9064	10444	11675	12906	13991	16109	17341	17341	17341
15	2906	3793	4581	5468	6305	7044	7782	8424	9705	10887	11970	13006	14976	16356	16356	16356
14	2806	3595	4237	5074	5812	6502	7192	7782	8966	10049	11085	12019	13843	15370	15370	15370
13	2709	3399	3989	4679	5369	6010	6600	7192	8276	9262	10198	11085	12711	14386	14386	14386
12	2660	3201	3793	4286	4925	5468	6059	6551	7536	8474	9311	10149	11626	13399	13399	13399
11	2611	3054	3547	3989	4481	4975	5468	5961	6848	7685	8474	9212	10592	12414	12414	12414
10	2561	2906	3299	3743	4088	4481	4925	5369	6157	6897	7636	8276	9507	11429	11429	11429
9	2511	2757	3104	3448	3793	4088	4432	4779	5517	6157	6798	7389	8474	10444	10444	10444
8	2462	2660	2906	3152	3497	3743	3989	4237	4827	5418	5961	6502	7438	9457	9457	9457
7	2462	2561	2709	2955	3152	3399	3644	3842	4186	4679	5173	5616	6454	8325	8474	8474
6	2462	2511	2611	2757	2906	3104	3250	3448	3793	4039	4384	4779	5468	7044	7487	7487
5	2462	2462	2511	2611	2709	2806	2955	3054	3349	3595	3842	4039	4532	5812	6502	6502

AMENDATORY SECTION (Amending Order 03-08, filed 8/4/04, effective 9/4/04)

WAC 173-175-370 Construction permit fees for modifications of existing dams. (1) Fees for the review of plans and specifications and for construction inspections for project modifications involving significant enlargements

shall be the (~~greater of one thousand four hundred dollars or the~~) amount determined by those applicable percentages shown in Table 5A of the fees in Table 4A (~~as adjusted by the fiscal growth factor~~) through June 30, 2012, or Table 4B thereafter, but no less than one thousand eight hundred ninety dollars through June 30, 2012, or one thousand nine hundred

seventy-seven dollars thereafter. The appropriate Table 4A or B fee amount is to be determined using the nearest values of dam height and crest length, in feet, which correspond to the overall dimensions of the modified dam.

((TABLE 4. CONSTRUCTION PERMIT FEES – NEW PROJECT CONSTRUCTION

Table with columns: Dam Height (ft), 50, 100, 150, 200, 250, 300, 350, 400, 500, 600, 700, 800, 1000, 1500, 2000, 4000. Rows range from 400 ft to 5 ft dam height.

(2) Fees for the review of plans and specifications and for construction inspection for project modifications not involving significant enlargements shall be the ((greater of one thousand four hundred dollars or the)) amount determined by those applicable percentages shown in Table 5B of the fees in Table 4A((, as adjusted by the fiscal growth factor)) through June 30, 2012, or Table 4B thereafter, but no less than one thousand eight hundred ninety dollars through

June 30, 2012, or one thousand nine hundred seventy-seven dollars thereafter. The appropriate Table 4A or B fee amount is to be determined using the nearest values of dam height and crest length, in feet, which correspond to the overall dimensions of the modified dam.

(3) Fees for the review of plans and specifications and for construction inspection for repair of a dam with safety deficiencies as required by the department shall be ~~((one thousand four hundred dollars))~~ one thousand eight hundred ninety dollars through June 30, 2012, or one thousand nine hundred seventy-seven dollars thereafter.

(4) Fees for the review of plans and specifications and for construction inspection for the removal or partial removal of a dam with safety deficiencies for the purpose of eliminating a public safety hazard shall be the minimum fee of ten dollars.

(5) Fees for the review of plans and specifications and for construction inspection for the planned abandonment and reclamation of dams and reservoir areas used in mining operations shall be ~~((the minimum fee of one thousand four hundred dollars))~~ one thousand eight hundred ninety dollars through June 30, 2012, or one thousand nine hundred seventy-seven dollars thereafter.

TABLE 5. FEES FOR MODIFICATIONS OF DAMS

MODIFICATION FEE AS PERCENTAGE OF FEE FOR NEW DAM CONSTRUCTION

FEATURES MODIFIED	TABLE 5A MODIFICATIONS INVOLVING SIGNIFICANT ENLARGEMENTS	TABLE 5B MODIFICATIONS NOT INVOLVING SIGNIFICANT ENLARGEMENTS
Spillway(s)	35%	25%
Impounding Barrier	35%	25%
Appurtenant Works and Miscellaneous Construction Elements	10%	10%

AMENDATORY SECTION (Amending Order 03-08, filed 8/4/04, effective 9/4/04)

WAC 173-175-390 Payment of construction permit fees. (1) The amount of the construction permit fee will be determined by the department based upon procedures contained in WAC 173-175-360 and 173-175-370 and information contained in the construction plans.

(a) An initial payment, which may represent all or a portion of the construction permit fee shall be paid in conjunction with the submittal of the construction permit application described in WAC 173-175-120. The amount of the initial payment shall be:

(i) Ten dollars for the removal of a dam with safety deficiencies as described in WAC 173-175-370(3); or

(ii) One thousand ~~((four))~~ eight hundred ninety dollars for construction of a new dam or modification of an existing

dam or project through June 30, 2012, and one thousand nine hundred seventy-seven dollars thereafter.

(b) The balance of the fee amount (less the initial payment above) is to be paid following notification by the department of the balance due.

(c) All fees collected are nonrefundable.

(2) No fee shall be required for the review of conceptual plans which describe proposed repairs or improvements to existing dams to correct safety deficiencies. The normal construction permit process will apply at the time plans and specifications are submitted to the department.

(3) No additional fees shall be required for plan and specification changes and resubmittals required by the department as part of the review process.

(4) No additional fees shall be required for review of construction change orders.

AMENDATORY SECTION (Amending Order 05-11, filed 8/31/05, effective 10/1/05)

WAC 173-175-765 Periodic inspection fee schedule.

(1) The inspection fee amounts are based on the downstream hazard classification of the dam, as determined by the department ~~((, and incorporate the fiscal growth factor calculated under chapter 43.135 RCW)).~~ The inspection fees for each five-year inspection are prorated on an annual basis.

~~((a) Equation 1 below is used to calculate the annual inspection fees.~~

$$\text{Annual Inspection Fee} = (\text{COST}_{\text{FGF}}) \div (\text{Cycle}) \text{ Equation 1}$$

Where:

(i) Cycle = number of years between inspections, with five years being the minimum.

(ii) FGF = an annual fiscal growth factor expressed as a percentage, as determined under chapter 43.135 RCW.

(iii) COST_{FGF} = cost of inspection in dollars including a fiscal growth factor. The cost is obtained by multiplying the inspection cost in the preceding year by the current year's fiscal growth factor as follows:

$$\text{COST}_{\text{FGF}} = \text{Previous year's cost} \times [1 + (\text{FGF})] \text{ Equation 2}$$

(b) For implementation of the fiscal growth factor, the base year for dam inspection fees will be fiscal year 2004, ending June 30, 2004. In the base year, the FGF will be zero.

~~((a))~~ The cost for ~~((an))~~ a periodic inspection by the department ~~((in the base year))~~ starting July 1, 2012, will be as follows:

~~((i)) \$3440.00)~~ (a) For dams with high downstream hazard classifications the fee is six thousand forty dollars, with a prorated annual fee of ~~(((\$688.00))~~ one thousand two hundred eighty dollars for a five-year inspection cycle.

~~((ii)) \$2500.00)~~ (b) For dams with significant downstream hazard classifications the fee is four thousand four hundred five dollars, with a prorated annual fee of ~~(((\$500.00))~~ eight hundred eighty-one dollars if a five-year inspection cycle is implemented, or ~~(((\$250.00))~~ four hundred forty dollars and fifty cents if a ten-year inspection cycle is implemented.

(2) Exceptions to periodic inspection fee schedule.

(a) For any hydraulic works less than ten years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, there shall be no fee charged; or

(b) For any hydraulic works more than ten years old, but less than twenty years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, the fee charged shall equal the fee for a significant hazard dam.

(3) Inspection fee for impoundments with multiple dams. For reservoirs or impoundments with a main dam and one or more saddle dams, a single annual inspection fee will be charged for the facility. The dam with the highest downstream hazard rating will be used for fee computation.

(4) Inspection fee for multicell impoundments. For multicell impoundments, such as wastewater lagoons, where two or more cells are located side-by-side or share a common embankment, a single annual inspection fee will be charged for the facility. The cell with the highest downstream hazard classification will be used for fee computation.

(5) Inspection fee for nonroutine inspections. For nonroutine inspections as described in WAC 173-175-725, no fees will be charged to the dam owner.

(6) Inspection fee for inspections at public request. For inspections done at public request, as described in WAC 173-175-735, no fees will be charged to the dam owner.

AMENDATORY SECTION (Amending Order 03-08, filed 8/4/04, effective 9/4/04)

WAC 173-175-785 Periodic inspection fee payments.

(1) The applicable inspection fee shall be paid by check or money order payable to the department of ecology and mailed to the following address:

Department of Ecology
 ((~~Dam Safety Inspection Fee Program~~))
 Cashiering Unit
 P.O. Box ((~~5128~~)) 47611
 ((~~Lacey~~)) Olympia, Washington ((~~98509-5128~~)) 98504-7611.

(2) In the event a check is returned due to insufficient funds, the department shall consider the inspection fee to be unpaid.

(3) Delinquent accounts. Dam owners are considered delinquent in the payment of fees if the fees are not received by the first invoice billing due date. Delinquent accounts will be processed in the following manner:

(a) Municipal and government entities shall be notified by certified mail that they have one hundred eighty days to bring the delinquent account up-to-date. Regulatory orders may be issued to enforce a restriction of reservoir filling until all delinquent fees are paid on accounts that remain delinquent after ninety days.

(b) Nonmunicipal or nongovernment dam owners shall be notified by the department by certified mail that they have one hundred eighty days to bring the delinquent account up-to-date. Accounts that remain delinquent after one hundred eighty days may be turned over for collection. In addition, a

surcharge totaling twenty percent of the delinquent amount owed will also be added. The surcharge is to recover the costs for collection. If the collection agency fails to recover the delinquent fees after twelve months, the department may issue regulatory orders to enforce restriction of reservoir filling until all delinquent fees are paid.

WSR 11-22-078**PROPOSED RULES****DEPARTMENT OF****LABOR AND INDUSTRIES**

[Filed November 1, 2011, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-071.

Title of Rule and Other Identifying Information: Chapter 296-20 WAC, Medical aid rules, SSB 5801 (chapter 6, Laws of 2011) establishes a state-wide medical provider network and defines patterns of care that may remove a provider from the network. SSB 5801 directs the department of labor and industries (L&I) to establish a medical provider network to treat injured workers of employers ensured with L&I and with self-insured employers and to expand Centers for Occupational Health and Education (COHEs). Rules are necessary to implement the changes. The department will create and/or amend necessary rules in phases. This initial set of rules includes establishing minimum standards for credentials of medical providers and other requirements for network participation and to define "risk of harm."

Hearing Location(s): The Conference Center, Port of Seattle, SeaTac Airport, 17801 International Boulevard, Room 6012M, Seattle, WA 98158, on December 8, 2011, starting at 10:00 a.m.; at the Department of Labor and Industries, Headquarters, Room S118, 7273 Linderson Way S.W., Tumwater, WA 98501, on December 12, 2011, starting at 5:30 p.m.; and at the Center Place Event Center, 2426 North Discovery Place, Spokane Valley, WA 99216, on December 16, 2011, starting at 10:00 a.m.

Date of Intended Adoption: January 3, 2012.

Submit Written Comments to: Jami Lifka, Department of Labor and Industries, Office of the Medical Director, P.O. Box 44321, Olympia, WA 98504-4321 or Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501 or e-mail jami.lifka@lni.wa.gov, or fax (360) 902-6315, received no later than 5:00 p.m., December 16, 2011.

Assistance for Persons with Disabilities: Contact office of information and assistance by December 1, 2011, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department will create necessary rules in phases. This initial set of rules include:

(1) Establishing minimum standards for credentials of medical providers and other requirements for network participation.

(2) Clarifying what constitutes patterns of risk of physical or psychiatric harm or death that determines when the department may remove a provider from the network. Under the new statute, workers of state fund and self-insured employers must obtain health services through the medical provider network, except for the initial medical visit.

Reasons Supporting Proposal: SSB 5801 is expected to enable the department to set credentialing standards for medical providers, while still allowing injured workers to choose their provider. The changes will help return more workers to good health and get them back on the job after an injury, reducing costs for employers and workers.

Statutory Authority for Adoption: SSB 5801 (chapter 6, Laws of 2011), RCW 51.36.010, 51.04.020 and 51.04.030.

Statute Being Implemented: SSB 5801 (chapter 6, Laws of 2011), RCW 51.36.010.

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: SSB 5801 (section 1(10), chapter 6, Laws of 2011,) directs the department to adopt rules to implement this new statute.

This new law and associated agency rules are expected to enable the department to set standards for medical providers, while still allowing injured workers to choose their provider.

Name of Proponent: Governor Gregoire, 2011 legislators, the governor's interim workgroup made up of representatives of state fund and self-insured businesses and workers, department of labor and industries, private, public, and governmental.

Name of Agency Personnel Responsible for Drafting: Leah Hole-Curry, Medical Administrator, Office of the Medical Director, (360) 902-4996; Implementation: Janet Peterson, Program Manager for Health Services Analysis, (360) 902-6699; and Enforcement: Beth Dupre, Assistant Director for Insurance Services, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department did not prepare a small business economic impact statement because it determined that the proposed rules will not have a disproportionate impact on small businesses.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Leah Hole-Curry, Department of Labor and Industries, P.O. Box 44321, Olympia, WA 98504-4321, phone (360) 902-4996, fax (360) 902-6315, e-mail leah.hole-curry@LNI.wa.gov.

November 1, 2011

Judy Schurke

Director

NEW SECTION

WAC 296-20-01010 Scope of health care provider network. (1) The rules establish the development, enrollment, and oversight of a network of health care providers approved to treat injured workers. The health care provider

network rules apply to care for workers covered by Washington state fund and self-insured employers.

(2) As of January 1, 2013, the following types of health care providers must be enrolled in the network with an approved provider contract to provide and be reimbursed for care to injured workers in Washington state beyond the initial office or emergency room visit:

- (a) Medical physicians and surgeons;
- (b) Osteopathic physicians and surgeons;
- (c) Chiropractic physicians;
- (d) Naturopathic physicians;
- (e) Podiatric physicians and surgeons;
- (f) Dentists;
- (g) Optometrists;
- (h) Advanced registered nurse practitioners; and
- (i) Physician assistants.

(3) The requirement in subsection (2) of this section does not apply to providers who practice exclusively in acute care hospitals or within inpatient settings in the following specialties:

- (a) Pathologists;
- (b) Consulting radiologists working within a hospital radiology department;
- (c) Anesthesiologists or certified registered nurse anesthetists (CRNAs) except anesthesiologists and CRNAs with pain management practices in either hospital based or ambulatory care settings;
- (d) Emergency room physicians; or
- (e) Hospitalists.

(4) The department may phase implementation of the network to ensure access within all geographic areas. The department may expand the provider network scope to include additional health care providers not listed in subsection (2) of this section, listed in subsection (3) of this section, and to out-of-state providers. For providers outside the scope of the provider network rule, the department may reimburse for treatment beyond the initial office or emergency room visit.

NEW SECTION

WAC 296-20-01020 Health care provider network enrollment. (1) The department or its delegated entity will review the provider's application, supporting documents, and any other information requested or accessed by the department that is relevant to verifying the provider's application, clinical experience or ability to meet or maintain provider network requirements.

(2) The department will notify providers of incomplete applications, including when credentialing information obtained from other sources materially varies from information on the provider application. The provider may submit a supplement to the application with corrections or supporting documents to explain discrepancies within thirty days of the date of the notification from the department. Incomplete applications will be considered withdrawn within forty-five days of notification.

(3) The provider must produce adequate and timely information and timely attestation to support evaluation of the application. The provider must produce information and

responding to department requests for information that will help resolve any questions regarding qualifications within the time frames specified in the application or by the department.

(4) The department's medical director or designee is authorized to approve, deny, or further review complete applications consistent with department rules and policies. Providers will be notified in writing of their approval or denial, or that their application is under further review.

(5) Providers who meet the minimum provider network standards, have not been identified for further review, and are in compliance with department rules and policies, will be approved for enrollment into the network.

(6) Enrollment of a provider is effective no earlier than the date of the approved provider application. The department will not pay for care provided to workers prior to application approval, regardless of whether the application is later approved or denied, except as provided in this subsection.

(7) The department may pay a provider without an approved application only when:

(a) The provider is outside the scope of the provider network per WAC 296-20-01010; or

(b) The provider is provisionally enrolled by the department after it obtains:

(i) Verification of a current, valid license to practice;

(ii) Verification of the past five years of malpractice claims or settlements from the malpractice carrier or the results of the National Practitioner Data Bank (NPDB) or Healthcare Integrity and Protection Data Bank (HIPDB) query; and

(iii) A current and signed application with attestation.

(c) A provider may only be provisionally enrolled once and for no more than sixty calendar days. Providers who have previously participated in the network are not eligible for provisional enrollment.

NEW SECTION

WAC 296-20-01030 Minimum health care provider network standards. The department will deny an application if a provider does not meet minimum health care provider network standards. To be eligible for enrollment and participation in the provider network, a provider must meet and maintain the following minimum health care provider network standards:

(1) The provider must submit an accurate and complete provider application, including any required supporting documentation and sign without modification, a provider contract with the department.

(2) The provider must have current professional liability coverage, individually or as a member of a group, through a commercial carrier or provide documentation of self-insurance.

(a) Professional liability coverage must be at least in the amounts of one million dollars per occurrence and three million dollars annual aggregate or in the amounts otherwise specified by the department for the provider's scope of practice.

(b) Providers in a group practice who are self-insured for professional liability coverage must provide evidence that liabilities in amounts at least equivalent to liability limits in

(a) of this subsection are booked on audited financial statements in accordance with generally accepted accounting standards.

(3) The provider must not have had clinical admitting and management privileges denied, limited or terminated for quality of care issues.

(4) The provider must not have been excluded, expelled or suspended from any federally or state funded health care programs including, but not limited to, medicare or medicaid programs.

(5) The provider must not have made any material misstatement or omission to the department concerning licensure, registration, certification, disciplinary history or any other material matter covered in the application or credentialing materials.

(6) The provider must not have been convicted of a felony or pled guilty or no contest to a felony for a crime including, but not limited to, health care fraud, patient abuse and the unlawful manufacture, distribution, prescription or dispensing of controlled substances.

The department may grant an exception for a felony that the provider has had expunged (vacated criminal conviction) from the provider's record.

(7) The provider must be currently licensed, certified, accredited or registered according to Washington state laws and rules or in any other jurisdiction where the applicant treats injured workers.

(a) The license, registration or certification must be free of any restrictions, limitations or conditions relating to the provider's clinical practice.

(b) The provider must not have surrendered, voluntarily or involuntarily his or her professional state license in any state while under investigation or due to findings by the state resulting from the provider's acts, omissions, or conduct.

(c) The department may grant an exception for any restriction, limitation or condition deemed by the department to be minor or clerical in nature or for a case where the restriction, limitation, or condition has been removed.

(8) The provider must have a current Drug Enforcement Administration (DEA) registration, if applicable to the provider's scope of licensure.

(a) The DEA registration must be free of restrictions, limitations or conditions related to the provider's acts, omissions or conduct.

(b) The provider must not have surrendered, voluntarily or involuntarily his or her DEA registration in any state while under investigation or due to findings resulting from the provider's acts, omissions, or conduct.

(c) The department may grant an exception for any restriction, limitation or condition deemed by the department to be minor or clerical in nature or the restriction, limitation or condition has been removed.

NEW SECTION

WAC 296-20-01040 Health care provider network continuing requirements. To continue to provide care for workers and be paid for those services, a provider must:

(1) Provide services without unlawful discrimination;

(2) Provide services according to federal and state laws and rules, department rules, policies, and billing instructions;

(3) Maintain material compliance with minimum provider network standards, department credentialing and recredentialing standards, and department's evidence based coverage decisions and treatment guidelines;

(4) Inform the department or an applicable delegated credentialing entity of any material changes to the provider's application or contract within fourteen calendar days including, but not limited to, changes in:

(a) Ownership or business name;

(b) Address or telephone number;

(c) Professionals practicing under the billing provider number;

(d) Any informal or formal disciplinary order, decision, disciplinary action or other action(s), including any criminal action, in any state;

(e) Provider clinical privileges;

(f) Malpractice claims or professional liability coverage;

(5) Retain a current professional state license, registration, certification and/or applicable business license for the service being provided, and update the department of all changes;

(6) Comply with department recredentialing process; and

(7) Comply with the instructions contained in a department action, including documentation of compliance and participation in mentoring, monitoring, or restrictions.

NEW SECTION

WAC 296-20-01050 Health care provider network further review and denial. (1) The department may further review a complete provider application based on information within the application or credentialing information obtained from other sources.

(2) For complete applications requiring further review, the department's medical director or designee has the authority to approve or deny, and may seek advice, expertise, consultation or recommendations on applications from:

(a) Peer or clinical review individuals or entities;

(b) The industrial insurance medical or chiropractic advisory committee (including a subcommittee);

(c) A department appointed credentialing committee.

(3) The department may deny a provider application for enrollment in the provider network based on the provider's professional qualifications and practice history including, but not limited to, the following:

(a) The provider fails to meet minimum health care provider network standards;

(b) The provider has been disciplined based on allegation of sexual misconduct or admitted to sexual misconduct;

(c) The provider is noncompliant with the department of health's or other state health care agency's stipulation to informal disposition (STID), agreed order, or similar licensed restriction;

(d) The provider has any pending statement of charges or notice of proposed disciplinary action or equivalent from any state or governmental professional disciplinary board at the time of application or recredentialing;

(e) The provider is suspended or terminated by medicare, medicaid or any other state or federally funded health care program;

(f) The provider has a denial, suspension or termination of participation or privileges by any health care institution, insurance plan, facility, or clinic;

(g) The provider has surrendered, voluntarily or involuntarily, his or her hospital privileges in any state while under investigation or due to findings resulting from the provider's acts, omissions, or conduct;

(h) The provider performs invasive or surgical procedures without:

(i) Clinical admitting and management privileges, in good standing; or

(ii) An inpatient coverage plan with participating practitioner(s), hospitalists, or inpatient service teams for the purpose of admitting patients. Any inpatient coverage plan must be specified by the provider and found to be acceptable by the department.

(i) The provider has significant malpractice claims or professional liability claims (based on materiality to current practice, severity, recency, frequency, or repetition);

(j) The provider has been materially noncompliant with the department's rules, guidelines, evidence based best practice treatment guidelines, coverage policies, or administrative and billing policies (based on severity, recency, frequency, repetition, or any mitigating circumstances);

(k) The provider was or is found to be involved in acts of dishonesty, fraud, deceit or misrepresentation that, in the department's determination, could relate to or impact the provider's professional conduct or the safety or welfare of injured or ill workers;

(l) The provider was or is found to have committed negligence, incompetence, inadequate or inappropriate treatment or lack of appropriate follow-up treatment which results in injury to a worker or creates unreasonable risk that a worker may be harmed;

(m) The provider uses health care providers or health care staff who are unlicensed to practice or who provide health care services outside their recognized scope of practice or the standard of practice in Washington state;

(n) The provider with a history of alcohol or chemical dependency fails to furnish documentation demonstrating that the provider complied or is complying with all conditions limitations, or restrictions to the provider's practice both public and private and received or is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice;

(o) The provider has informal licensure actions, conditions, agreements, orders;

(p) The provider has a history of probation, suspension, termination, revocation or a surrendered professional license, certification, accreditation, or registration listed in the National Provider Data Bank/Healthcare Integrity and Protection Data Bank or any like entity; or by a nationally recognized specialty board; or by a state authority in any jurisdiction including, but not limited to, the Washington state department of health, when such charges involve conduct or behavior as defined under chapter 18.130 RCW, Uniform Disciplinary Act;

(q) The provider engaged in billing fraud or abuse or has a history of other significant billing irregularities;

(r) There are material complaints or allegations demonstrating a pattern of behavior(s) or misrepresentations including, but not limited to incidents, misconduct, or inappropriate prescribing of controlled substances;

(s) The provider has a criminal history which includes, but is not limited to, any criminal charges, criminal investigations, convictions, no contest pleas and guilty pleas; or

(t) A finding of risk of harm pursuant to WAC 296-20-01100.

(4) The department and self-insurers will not pay for any care to injured workers, other than an initial visit, by a provider whose application has been denied.

NEW SECTION

WAC 296-20-01060 Delegation of credentialing and recredentialing activities. (1) The department may delegate credentialing and recredentialing review activities to the following entities:

- (a) Medical and dental group(s) and clinics;
- (b) Physician organizations;
- (c) Credentials verification organizations (CVOs); or
- (d) Other organizations that employ and/or contract with providers.

(2) Any delegation by the department of credentialing or recredentialing review activities will be documented through a written delegation agreement.

(3) The department retains the right to review, approve, suspend, deny, or terminate any provider who has been credentialed by a delegated entity.

NEW SECTION

WAC 296-20-01070 Waiting periods for reapplying to the network. (1) Providers are not eligible to reapply for enrollment in the network if they have been denied or removed from network participation due to:

(a) A finding of risk of harm, pursuant to WAC 296-20-01100;

(b) Having been excluded, expelled or suspended from any federally or state funded programs including, but not limited to, medicare or medicaid programs;

(c) Having been convicted of a felony or pled guilty to a felony for a crime and the felony has not been expunged from the provider's record including, but not limited to, health care fraud, patient abuse and the unlawful manufacture, distribution, prescription or dispensing of controlled substances;

(d) Sexual misconduct as defined in profession specific rules of any state or jurisdiction, including Washington state department of health.

(2) Providers who are denied or removed from the network or terminated for any other reason than those set forth in subsection (1) of this section are not eligible to reapply for enrollment in the network for five years. The department may grant an exception where the reason for denial or removal is related to pending actions or charges which have been resolved or deemed by the department to be minor or clerical in nature.

NEW SECTION

WAC 296-20-01080 Management of the provider network. (1) Appropriate action(s) by the department to monitor quality of care and assure efficient management of the provider network may include, but are not limited to:

- (a) Monitoring the provider;
- (b) Mentoring the provider;
- (c) Restricting payment for services rendered by the provider;
- (d) Suspending the provider from the network; or
- (e) Removing the provider from the network.

(2) The department must first notify the provider, and may take action in any order or combination, depending on the severity of the issue or risk of harm.

(3) For risk of harm issues, where imminent or actual harm is not life-threatening or substantially disabling, the department may provide an opportunity for the provider to change through education or other less severe actions first. Where the department action includes suspension or removal from the network for risk of harm issues, the department may also request expedited hearing and immediate suspension of authority to provide services under RCW 51.52.075.

(4) In taking appropriate action for risk of harm issues, the department will take into account unique mitigating circumstances related to the clinical severity and complexity of the providers' patient population. Unique mitigating circumstances could include practice at a care facility recognized for its receipt of particularly severe cases, such as catastrophic injuries. Duration of disability and/or chronic pain shall not, in and of themselves, be considered uniquely mitigating.

The department may not take action against a provider for risk of harm, if the harm was related to an isolated instance of health care service delivery that was conducted within coverage policies and treatment guidelines established by the department or other evidence-based coverage decisions made by the Washington state health technology committee, or the prescription drug program and appropriate to the patient's specific circumstances.

(5) The department may also terminate a provider network contract for cause based on the provider's professional qualifications, billing, and practice history including, but not limited to, the following:

(a) The provider fails to maintain the minimum health care provider network standards per WAC 296-20-01030;

(b) The provider fails to comply with health care provider network continuing requirements per WAC 296-20-01040;

(c) The provider engages in action or inaction for which the department may deny an application;

(d) The provider violates the terms of the contract; or

(e) A finding of risk of harm, pursuant to WAC 296-20-01100 including, but not limited to, prescribing drug therapy in an unsafe manner and/or failure to identify substance abuse/addiction or failure to refer the patient for substance abuse treatment once abuse/addiction is identified.

(6) The department will notify the provider of contract termination according to the terms of the contract, identify the reason for contract termination, and include an effective date of termination. If a provider contract is terminated for

cause, the department or self-insurer will pay for authorized services provided only up to the date specified in the notice.

NEW SECTION

WAC 296-20-01090 Request for reconsideration of department decision. (1) A provider may request reconsideration of the department's decision to deny enrollment or remove or suspend a provider from the health care provider network. The request for reconsideration must be received by the department within sixty calendar days from the date the department's decision is communicated to the provider.

(2) A provider must:

(a) Specify the department decision(s) that the provider is disputing;

(b) State the basis for disputing the department's decision; and

(c) Include documentation to support the provider's position.

(3) The department may request additional information or documentation. The provider must submit the additional information within thirty calendar days of the date on the department's request.

(4) The department will review the original decision, information supporting the original decision, the provider's reconsideration request and supporting documentation and will notify the provider of the status of its reconsideration decision within ninety days.

NEW SECTION

WAC 296-20-01100 Risk of harm. (1) It is the intent of the department, through authority granted by RCW 51.36.010 to protect workers from physical or psychiatric harm by identifying, and taking appropriate action, including removal of providers from the statewide network, when:

(a) There is **harm**; and

(b) There is a **pattern(s) of low quality care**; and

(c) The harm is related to the pattern(s) of low quality care.

(2) It is not the intent of the department to remove or otherwise take action when providers are practicing within department policies and guidelines, or within best practices established or developed by the department, or established in collaboration with its industrial insurance medical and chiropractic advisory committees.

(3) The department may permanently remove a provider from the statewide network or take other appropriate action when that provider's treatment of injured workers exhibits a **pattern or patterns** of conduct of **low quality care** that exposes patients to a risk of physical or psychiatric **harm** or death.

(4) **Harm** is defined as (intended or unintended) physical or psychiatric injury resulting from, or contributed to, by health care services that result in the need for additional monitoring, treatment or hospitalization or that worsens the condition(s), increases disability, or causes death. Harm includes increased, chronic, or prolonged pain or decreased function.

(5) **Pattern or patterns** of low quality care is/are defined as including one or more of the following:

(a) For health services where the department can calculate normative data on frequency, a provider's cases are in the lowest decile (at or below the tenth percentile); or

(b) For health services where the department cannot calculate normative data on frequency, at least twenty percent of requested or conducted services meet the definition of low quality care; or

(c) For health services where department data or scientific literature has reported expected rates of adverse events, a provider's adverse event rates are at least twenty percent above the expected rate; or

(d) A review of a random sample of the provider's cases demonstrates that at least twenty percent of cases do not meet peer matched criteria for acceptable quality; or

(e) Two or more deaths or life-threatening events; or

(f) Provider behavior(s) and/or practices that result in revocation or limitation of hospital privileges or professional licensure sanctions.

(6) Low quality care in the statewide workers' compensation network is defined as treatments or treatment regimens:

(a) That have not been shown to be safe or effective or for which it has been shown that the risks of harm exceed the benefits that can reasonably be expected, based on available peer-reviewed scientific studies; or

(b) That uses diagnostic tests or treatment interventions not in compliance with the department's policies, the department's applicable utilization review criteria, or the department's guidelines; or

(c) That includes repeated unsuccessful surgical or other invasive procedures; or

(d) That is outside the provider's scope of practice or training; or

(e) That results in revocation or limitation of hospital privileges or in professional licensure sanctions; or

(f) That fails to include or deliver appropriate and timely health care services as identified in available department guidelines or policies; or

(g) That includes repetitive provision of care that is not curative or rehabilitative per WAC 296-20-01002 for extended periods that does not contribute to recovery, return to work, or claim resolution; or

(h) That includes repeated testing including, but not limited to, routine use of a diagnostic test or procedure by either the provider prescribing or the provider performing the test, when any of the following apply:

(i) The test(s) have been demonstrated to be unsafe or of poor quality; or

(ii) High quality, peer-reviewed scientific studies do not show that the test has the technical capacity (reliable and valid) and accuracy to result in successful clinical outcomes for their intended use (utility); or

(iii) The test is conducted or interpreted in a manner inconsistent with high quality evidence based clinical practice guidelines; or

(iv) The test is likely to lead to treatment that does not meet department guidelines or policies or is otherwise harmful.

WSR 11-22-079
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed November 1, 2011, 10:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-01-083.

Title of Rule and Other Identifying Information: Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations, governs employers who are permitted to self-insure their workers' compensation obligations pursuant to Title 51 RCW. This filing modifies WAC 296-15-360 Qualifications of personnel, which governs how an individual becomes a certified claims administrator, as well as how they maintain that status. The rule currently requires that certified claims administrators choosing to renew via continuing education earn a total of seventy-five credits, including a minimum number of credits in five different categories. The modification reduces the number of categories to three without reducing the total number of credits required.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501-5414, on December 13, 2011, at 8:30 a.m.

Date of Intended Adoption: January 17, 2012.

Submit Written Comments to: Margaret Conley, P.O. Box 44890, Olympia, WA 98504-4890, e-mail Margaret.Conley@Lni.wa.gov, fax (360) 902-6977, by 5 p.m. on December 13, 2011.

Assistance for Persons with Disabilities: Contact Margaret Conley by November 29, 2011, TTY (800) 833-6388 or (360) 902-6723.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule currently requires that a department-approved claims administrator choosing to renew their status via continuing education earn a total of seventy-five credits, including a minimum number of credits in five different categories. This rule making reduces the number of credit categories to three, simplifying the continuing education requirements. Department-approved claims administrators will still need to earn seventy-five credits.

Reasons Supporting Proposal: This rule making was requested and is supported by the Washington Self-Insurers Association whose members' claims administrators must comply with these rules.

Statutory Authority for Adoption: RCW 51.04.020, 51.14.030.

Statute Being Implemented: RCW 51.14.030.

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

Name of Proponent: Washington Self-Insurers Association, private.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: AnnaLisa Gellermann, 243 Israel Road S.E., Tumwater, WA 98501, (360) 902-6907.

No small business economic impact statement has been prepared under chapter 19.85 RCW. As discussed in the cost-benefit analysis of this rule making, these proposed rule

changes will not impose more than minor costs on the affected businesses, so a small business economic impact statement is not needed for this rule making per RCW 19.85.030(1).

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Yuanlong Ge, P.O. Box 4320, Olympia, WA 98504-4320, phone (360) 902-5139, fax (360) 902-4249, e-mail Yuanlong.Ge@Lni.wa.gov.

November 1, 2011

Judy Schurke
 Director

AMENDATORY SECTION (Amending WSR 07-17-162, filed 8/22/07, effective 10/1/07)

WAC 296-15-360 Qualifications of personnel. (1) How ~~((does an individual))~~ do I initially become a ~~((department approved))~~ certified claims administrator for self-insured claims?

In order to become a ~~((department approved))~~ certified claims administrator, ~~((an individual))~~ you must first have a minimum of three years of experience in the administration of time loss claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to ~~((the))~~ your filing of the application to take the "self-insurance claims administrator" test.

~~((An individual))~~ You must then take and pass the department's "self-insurance claims administrator" test. After passing the test, ~~((an individual is))~~ you are designated a ~~((department approved))~~ certified claims administrator. The initial designation of ~~((department approved))~~ certified claims administrator is valid for five years.

(2) How ~~((does an applicant))~~ do I receive approval to take the test? To be approved to take the "self-insurance claims ~~((administration))~~ administrator" test, ~~((an applicant))~~ you must ~~((submit a completed application form))~~ apply to the department ~~((Form F207-177-000))~~. The application must be received by the department no less than forty-five days prior to the next scheduled test date.

The department will review ~~((the))~~ your application and determine if ~~((the applicant))~~ you meet~~((s))~~ the minimum requirements to take the test. ~~((Notification of approval to take the test will be mailed to the applicant))~~ We will respond to your application no less than fourteen days prior to the next scheduled test date.

(3) What happens ~~((when an applicant))~~ if I fail~~((s))~~ the test? ~~((When an applicant))~~ If you are not currently a certified claims administrator and you fail~~((s))~~ the test, ~~((the applicant))~~ you must reapply to take the test again. ~~((An applicant))~~ You will not be permitted to retake the test until six months have passed after the failed result.

~~((The most recent test results will determine an individual's status as a claims administrator.))~~ If you are a certified claims administrator and you fail the test, your approval will be revoked. You must then reapply to take the test again. You will not be permitted to retake the test until six months have passed after the failed result.

(4) How does a ~~((department approved))~~ certified claims administrator maintain their ~~((approved))~~ certi-

filed status beyond the initial five-year designation?
 ((An)) A certified claims administrator may maintain ((approved)) certified status by:

(a) Retaking and passing the "self-insurance claims administrator" test as outlined in subsections (1) and (2) of this section; or

(b) ~~((Providing documentation to the department that the individual has remained))~~ Remaining employed for a minimum of three of the last five years in the administration of, or the oversight of, claims under Title 51 RCW, and ((meeting)) earning the required continuing education ((criteria-

~~To meet continuing education criteria, the administrator))~~ credits as outlined in subsection (5) of this section.

(5) What is required if I choose to maintain my certified status using continuing education credits?

(a) You must ((submit verification to the department that)) earn a minimum of seventy-five credits ((have been obtained)) prior to lapse of the ((approved)) certified status. Extensions will not be granted.

Credits must be earned in the following categories:

(i) ~~((Twenty))~~ Forty claims ((process/procedure)) management credits;

(ii) Twenty legal credits;

(iii) ~~((Twenty medical credits;~~

~~iv) Two ethics credits; and~~

~~(v) Thirteen))~~ Fifteen elective credits (e.g., industry-specific training). Excess claims management or legal credits may be applied toward the elective credit requirement.

The seventy-five credits must include any training designated as mandatory by the department. If ~~((an administrator))~~ you fail((s)) to ((complete)) earn sufficient continuing education credits, ((he or she)) you will be required to retake the written test to maintain your certified status.

(b) Assignment of course credit will be determined by the department review committee.

(c) Courses approved prior to the effective date of this rule change that were assigned different credit categories will be applied as follows:

(i) Claims process/procedure credits will apply toward claims management credits.

(ii) Medical credits will apply toward claims management credits.

(iii) Ethics credits will apply toward elective credits.

(d) Individuals whose ~~((department approved))~~ certified status expires between October 1, ((2008)) 2011, and September 30, 2012, and who exercise the continuing education option in lieu of retaking the test, must meet the following modified requirements. If the individual's certification expiration date falls between:

(i) ~~((10/1/2008 — 3/31/2009: Earn a minimum of thirty credits (eight process/procedure credits, eight legal credits, eight medical credits, one ethics credit, and five elective credits);~~

~~(ii) 4/1/2009 — 9/30/2009: Earn a minimum of thirty-five credits (ten process/procedure credits, ten legal credits, ten medical credits, one ethics credit, and four elective credits);~~

~~(iii) 10/1/2009 — 3/31/2010: Earn a minimum of forty credits (eleven process/procedure credits, eleven legal credits, eleven medical credits, one ethics credit, and six elective credits);~~

~~(iv) 4/1/2010 — 9/30/2010: Earn a minimum of forty-five credits (twelve process/procedure credits, twelve legal credits, twelve medical credits, two ethics credits, and seven elective credits);~~

~~(v) 10/1/2010 — 3/31/2011: Earn a minimum of fifty credits (fourteen process/procedure credits, fourteen legal credits, thirteen medical credits, two ethics credits, and seven elective credits);~~

~~(vi) 4/1/2011 — 9/30/2011: Earn a minimum of fifty-five credits (fifteen process/procedure credits, fifteen legal credits, fifteen medical credits, two ethics credits, and eight elective credits);~~

~~((vii))~~ 10/1/2011 - 3/31/2012: Earn a minimum of sixty credits (((sixteen process/procedure)) thirty-two claims management credits, sixteen legal credits, ((sixteen medical credits, two ethics credits;)) and ((ten)) twelve elective credits;

~~((viii))~~ (ii) 4/1/2012 - 9/30/2012: Earn a minimum of sixty-five credits (((eighteen process/procedure)) thirty-six claims management credits, eighteen legal credits, ((eighteen medical credits, two ethics credits;)) and ((nine)) eleven elective credits.

~~((5) How does an approved administrator report earned continuing education credit to the department? Each department approved administrator))~~ (e) You must track and report earned credits at the department's ((online)) on-line data base. ((The approved administrator)) You must obtain and retain signed verification of courses attended. Verification of earned credits must be received by the department by the date the ((approved)) certified claims administrator's certification expires. Extensions will not be granted.

(f) The department may audit the reported credits of any ~~((approved))~~ certified claims administrator at random, or "for cause." Falsification of reported credits will result in revocation of the individual's ((approved)) certified claims administrator status, and may result in the department's refusal of future applications to take the self-insurance claims administrator test.

(6) ~~((The department approved))~~ How often must certified claims administrators notify the department of changes to their contact information? Certified claims administrators must notify the department within thirty calendar days of the effective date of a change in mailing address, work location, or name. Changes must be reported using the department's on-line data base.

WSR 11-22-085

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed November 1, 2011, 2:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-20-165.

Title of Rule and Other Identifying Information: WAC 182-533-0300 Services under First Steps, 182-533-0320 Maternity support services—Client eligibility, 182-533-0325 Maternity support services—Provider requirements, 182-

533-0370 Infant case management—Eligibility, 182-533-0380 Infant case management—Covered services, and 182-533-0390 Childbirth education (CBE) classes.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room 107, Pear 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 December 6, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than December 7, 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 December 6, 2011.

Assistance for Persons with Disabilities: Contact Kelly Richters by November 28, 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: HCA is revising chapter 182-533 WAC pursuant to ESHB 1086, which reduces funding for maternity support services and mandates HCA to prioritize evidence-based practices for delivery of maternity support services and to target funding for maternity support services by leveraging local public funding for those services. In addition, upon order of the governor, HCA must reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent.

While WAC 182-533-0390 is not part of this budget reduction, HCA has reorganized the section and rewritten it to make it clearer. No policy was changed.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Chapter 5, Laws of 2011, ESHB 1086.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R. P. Crabbe, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1346; Implementation and Enforcement: Beth Blevens, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1293.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule amendments are exempt from the small business economic impact statement per RCW 34.05.328 (5)(b).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

November 1, 2011
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-533-0300 Services under First Steps. (1) Under the 1989 Maternity Care Access Act, and RCW

74.09.760 through 74.09.910, the ((department)) agency established First Steps to provide access to services for eligible women and their infants.

(2) The rules for the:

(a) Maternity support services (MSS) component of First Steps are found in WAC ((388-533-0310)) 182-533-0310 through ((388-533-0345)) 182-533-0345.

(b) Infant case management (ICM) component of First Steps are found in WAC ((388-533-0360)) 182-533-0360 through ((388-533-0386)) 182-533-0386.

(c) Childbirth education (CBE) component of First Steps are found in WAC ((388-533-0390)) 182-533-0390.

(3) Other services under First Steps include:

(a) Medical services, including full medical coverage, prenatal care, delivery, post-pregnancy follow-up, ((dental; vision;)) and twelve months family planning services post-pregnancy;

(b) Ancillary services, including but not limited to, expedited medical eligibility determination((, case finding and outreach)); and

(c) Alcohol and drug assessment and treatment services for pregnant women available statewide and administered by the division of behavioral health and recovery (see WAC ((388-533-0701)) 182-533-0701).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-533-0320 Maternity support services—Client eligibility. (1) To receive maternity support services (MSS), a client must:

(a) Be covered under one of the following medical assistance programs:

(i) Categorically needy ((program (CNP))) ((CN));

(ii) ((CNP—Children's health insurance program)) Children's health care as described in WAC 388-505-0210;

(iii) Medically needy program (MNP); or

(iv) A pregnancy medical program as described in WAC 388-462-0015.

(b) Be within the eligibility period of a maternity cycle as defined in WAC ((388-533-0315)) 182-533-0315; and

(c) Meet any other eligibility criteria as determined by the ((department)) agency and published in the ((department's)) agency's current billing instructions and/or numbered memoranda.

(2) Clients who meet the eligibility criteria in this section may receive:

(a) An in-person screening by a provider who meets the criteria established in WAC ((388-533-0325)) 182-533-0325. Clients are screened for risk factors related to issues that may impact their birth outcomes.

(b) Up to the maximum number of MSS units of service allowed per client as determined by the ((department)) agency and published in the ((department's)) agency's current billing instructions and/or numbered memoranda. The ((department)) agency may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment of maternity support services for any specific biennium.

(3) Clients meeting the eligibility criteria in this section who are enrolled in ~~((a department contracted))~~ an agency-contracted managed care ((plan)) organization (MCO), are eligible for MSS outside their plan.

(4) See chapter ~~((388-534))~~ 182-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.

(5) Clients receiving MSS before ~~((July 1, 2009))~~ March 1, 2011, are subject to the transition plan as determined and published by the ~~((department))~~ agency in numbered memoranda.

(6) Clients who do not agree with ~~((a department))~~ an agency decision regarding eligibility for MSS have a right to a fair hearing under chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-533-0325 Maternity support services—Provider requirements. (1) To be paid for providing maternity support services (MSS) and infant case management (ICM) services to eligible clients, an agency or entity must:

(a) Be currently approved as an MSS/ICM provider by the ~~((department of health (DOH)))~~ medicaid agency;

(b) Be enrolled as an eligible provider with the ~~((department of social and health services' (department's) health and recovery services administration (HRSA)))~~ medicaid agency (see WAC ~~((388-502-0010))~~ 182-502-0010);

(c) Ensure that staff providing services meet the minimum regulatory and educational qualifications for the scope of services provided; and

(d) Meet the requirements in this chapter, chapter ~~((388-502))~~ 182-502 WAC and the ~~((department's))~~ medicaid agency's current published billing instructions and numbered memoranda.

(2) An individual or service organization that has a written agreement with an agency or entity that meets the requirements in subsection (1) of this section may also provide MSS and ICM services to eligible clients.

(a) The ~~((department))~~ medicaid agency requires the agency or entity to:

(i) Keep a copy of the written agreement on file;

(ii) Ensure that an individual or service organization staff member providing MSS/ICM services meets the minimum regulatory and educational qualifications required of an MSS/ICM provider;

(iii) Assure that the individual or service organization provides MSS/ICM services under the requirements of this chapter; and

(iv) Maintain professional, financial, and administrative responsibility for the individual or service organization.

(b) The agency or entity is responsible to:

(i) Bill for services using the agency's or entity's assigned provider number; and

(ii) Reimburse the individual or service organization for MSS/ICM services provided under the written agreement.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-533-0370 Infant case management—Eligibility. (1) To receive infant case management (ICM), an infant must:

(a) Be covered under one of the medical assistance programs listed in WAC ~~((388-533-0320))~~ 182-533-0320(1);

(b) Meet the age requirement for ICM which is the day after the maternity cycle (defined in WAC ~~((388-533-0315))~~ 182-533-0315) ends, through the last day of the month of the infant's first birthday;

(c) Reside with at least one parent (see WAC ~~((388-533-0315))~~ 182-533-0315 for definition of parent);

(d) Have a parent(s) who needs assistance in accessing medical, social, educational and/or other services to meet the infant's basic health and safety needs; and

(e) Not be receiving any case management services funded through Title XIX medicaid that duplicate ICM services.

(2) Infants who meet the eligibility criteria in subsection (1) of this section, and the infant's parent(s), are eligible to receive:

(a) An in-person screening by a provider who meets the criteria established in WAC ~~((388-533-0375))~~ 182-533-0375. Infants and their parent(s) are screened for risk factors related to issues that may impact the infant's welfare, health, and/or safety.

(b) Up to the maximum number of ICM units of service allowed per client as determined by the ~~((department))~~ agency and published in the ~~((department's))~~ agency's current billing instructions and/or numbered memoranda. The ~~((department))~~ agency may determine the maximum number of units allowed per client when directed by the legislature to achieve targeted expenditure levels for payment in any specific biennium.

(3) Clients meeting the eligibility criteria in subsection (1) of this section who are enrolled in ~~((a department contracted))~~ an agency-contracted managed care ((plan)) organization (MCO) are eligible for ICM services outside their plan.

(4) See chapter ~~((388-534))~~ 182-534 WAC for clients eligible for coverage under the early periodic screening, diagnosis and treatment (EPSDT) program.

(5) Clients receiving ICM before ~~((July 1, 2009))~~ March 1, 2011, are subject to the transition plan as determined and published by the ~~((department))~~ agency in numbered memoranda.

(6) Clients who do not agree with ~~((a department))~~ an agency decision regarding eligibility for ICM have a right to a fair hearing under chapter 388-02 WAC.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-533-0380 Infant case management—Covered services. (1) The ~~((department))~~ agency covers infant case management (ICM) services subject to the restrictions and limitations in this section and other applicable WAC.

(2) Covered services include:

(a) An initial in-person screening for ICM services which includes an assessment of risk factors, and the development of an individualized care plan;

(b) Case management services and care coordination;

(c) Linking and referring the infant and parent(s) to other services or resources;

(d) Advocating for the infant and parent(s);

(e) Follow-up contact(s) with the parent(s) to ensure the care plan continues to meet the needs of the infant and parent(s); and

(f) Additional services as determined and published in the maternity support services/infant case management (MSS/ICM) billing instructions.

(3) The ~~((department))~~ agency pays for covered ICM services according to WAC ~~((388-533-0386))~~ 182-533-0386.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-533-0390 Childbirth education (CBE) classes ~~((CBE))~~. (1) Purpose. The purpose of childbirth education ~~((services described in this section are intended to))~~ (CBE) classes is to help prepare the ~~((pregnant))~~ client and her support person(s):

(a) For ~~((labor and delivery))~~ the physiological, emotional, and psychological changes experienced during and after pregnancy;

(b) To develop self-advocacy skills;

(c) To increase knowledge about and access to local community resources;

(d) To improve parenting skills; and

(e) To improve the likelihood of positive birth outcomes.

(2) Definitions. The ~~((following))~~ definitions ~~((apply to))~~ in chapter 182-500 WAC, medial assistance definitions, and WAC ((388-533-0390:

(a) Approved instructor—A childbirth instructor meeting specific criteria set by the Washington department of health (DOH) maternal and infant health section and approved by the DOH health education consultant to provide childbirth education to pregnant clients.

(b) Childbirth education classes (CBE)—A series of educational sessions offered in a group setting; with a minimum of eight hours of instruction and led by an approved instructor to prepare a pregnant woman and her support person for an upcoming childbirth.

(c) Social services payment systems (SSPS)—The payment method used by the department of social and health services (DSHS) for certain social services and independent providers)) 182-533-0315, maternity support services definitions, also apply to this section.

(3) Client eligibility. ~~((Childbirth education))~~ To be eligible for CBE classes ~~((under WAC 388-533-0390 are available to women who are)), a client must be:~~

(a) Pregnant; and

(b) Covered under one of the ~~((following))~~ medical assistance ~~((administration (MAA)))~~ programs ~~((:~~

(i) Categorically needy program (CNP);

(ii) Categorically needy program—Children's health insurance program; (CNP—Children's health insurance program); or

(iii) Categorically needy program—emergency medical only (CNP—Emergency medical only)) described in WAC 182-533-0320 (1)(a)(i) and (iv).

(4) Provider requirements. ((A childbirth educator providing services under WAC 388-533-0390)) To be paid for providing CBE classes to eligible clients, an approved instructor must:

(a) ((Be an approved CBE provider (individual or agency) with an assigned SSPS/CBE billing number, and a signed program assurances document on file with MAA;

(b)) Have a core provider agreement on file with the health care authority (the agency);

(b) Ensure that individuals providing CBE classes have credentials and/or certification as outlined in the agency's current published billing instructions;

(c) Deliver CBE ~~((services))~~ classes in a series of group sessions; ((e) Bill the medical assistance administration (MAA):

(i) Using the assigned SSPS/CBE billing number; and

(ii) According to the form and instruction requirements in MAA's CBE billing instructions; and

(d) Accept the MAA fee as final and complete payment for a client.

(5) Covered services. MAA covers childbirth education when the instruction is:

(a) Provided to clients eligible under WAC 388-533-0390(3);

(b) Delivered in group sessions with a minimum of eight hours of instruction; and

(c) Delivered according to a curriculum approved by the MAA/DOH program managers.

(6) Nonecovered services. The following are considered nonecovered services under childbirth education:

(a) Any services beyond the scope of CBE; and

(b) Any education about childbirth that is provided during a one-to-one home or office visit. (CBE provided in a one-to-one home or office visit must be billed according to WAC 388-533-0340 and 388-533-0345, Maternity support services rules.)) and

(d) Provide curriculum containing topics outlined in the agency's CBE curriculum checklist found in the agency's current published billing instructions. Topics include, but are not limited to:

(i) Pregnancy;

(ii) Labor and birth;

(iii) Newborns; and

(iv) Family adjustment.

(5) Documentation. Providers must:

(a) Follow the health care record requirements found in WAC 182-502-0020; and

(b) Maintain the following additional documentation:

(i) An original signed copy of each client's Freedom of Choice/Consent for Services form;

(ii) A client sign-in sheet for each class; and

(iii) Names and ProviderOne Client ID numbers of eligible clients attending CBE classes and the date(s) they participated in each CBE class.

(6) Coverage.

(a) The agency covers one CBE class series per client, per pregnancy. The client must attend at least one CBE session for the provider to be paid.

(b) CBE classes must include a minimum of eight hours of instruction and are subject to the restrictions and limitations in this section and other applicable WAC.

(7) ((Reimbursement)) Payment. ((MAA reimburses)) The agency pays for the CBE ((services subject to the following terms and limitations)) classes described in subsection (6) of this section on a fee-for-service basis subject to the following:

(a) ((Reimbursement)) CBE must:

(i) ((Is limited to one series per client, per pregnancy;

(ii) Must be for the clients specifically enrolled in the session; and

(iii)) Include((s)) all classes, core materials, publications, and educational materials provided throughout the class series. ((MAA)) Clients must receive the same materials as are offered to other attendees((-)); and

(ii) Be billed according to the agency's current published billing instructions.

(b) ((A client must attend at least one CBE session in order for the provider to be reimbursed for the CBE services to the client.)) The provider must accept the agency's fee as payment in full for classes provided to a client in accordance with 42 CFR § 447.15.

WSR 11-22-089**PROPOSED RULES****DEPARTMENT OF HEALTH**

[Filed November 1, 2011, 3:37 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-294 WAC, Drinking water operating permits and WAC 246-290-990 Water system evaluation and project review and approval fees.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98504, on December 14, 2011, at 1:00 p.m.

Date of Intended Adoption: December 21, 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 December 14, 2011.

Assistance for Persons with Disabilities: Contact Theresa Phillips by November 30, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to implement SSB 5364 passed by the 2011 legislature which requires the department of health (department) to establish public water system operating permit fees by rule. The department is proposing to amend WAC 246-294-070 to increase fees pursuant to legislative direction and is proposing to amend WAC 246-294-010 and 246-294-030

to make clarifications in support of the fee changes. The department is also proposing to eliminate monitoring waiver fees for water quality testing for chemical contaminants with no potential health risk under WAC 246-290-990 (1)(h).

Reasons Supporting Proposal: The legislation removed the operating permit fee schedule from RCW 70.119A.110 and allows the department to adopt a fee increase and reform the fee structure to spread the costs more fairly to public water systems. The department is proposing to eliminate monitoring waiver fees to help reduce the impact of the drinking water operating permit fee increase.

Statutory Authority for Adoption: RCW 70.119A.110.

Statute Being Implemented: RCW 70.119A.110.

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

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

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, P.O. Box 47822, Olympia, WA 98504-7822, (360) 236-3147; Implementation and Enforcement: Kristin Bettridge, P.O. Box 47822, Olympia, WA 98504-7822, (360) 236-3166.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

November 1, 2011

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 10-16-108, filed 8/2/10, effective 9/2/10)

WAC 246-290-990 Water system evaluation and project review and approval fees. (1) The fees for the review and approval of water system plans, project reports, construction documents, existing systems, and related evaluations required under chapters 246-290, 246-291, 246-293, 246-294, and 246-295 WAC are:

(a) Water system plans required under WAC 246-290-100, 246-290-105, 246-291-140, 246-293-220, and 246-293-230.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Water system plan (New and Updated)	\$138	\$491	\$1,206	\$2,280	\$3,705	\$5,484
Minor water system plan alteration	\$31	\$115	\$293	\$565	\$919	\$1,349

(b) Satellite management agency (SMA) plans for Group A and Group B water systems required under WAC 246-295-040.

Project Type	Total Active or Approved Services					
	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services	
SMA plan for ownership (New and Updated)	\$491	\$1,206	\$2,280	\$3,705	\$5,484	
SMA approval amendment	\$102 per hour or appropriate fee from category above, whichever is less					
SMA plan for operation only (New and Updated)	\$1,206	\$1,206	\$1,206	\$1,206	\$1,206	

Note: SMAs owning water systems and submitting planning documents to the department for review shall be charged only the SMA fee.

(c) New plan elements required under WAC 246-290-100, 246-290-105, 246-290-125, 246-290-132, 246-290-135, 246-290-691, and 246-291-140 including:

(i) Water use efficiency; and

(ii) Wellhead protection, shall be reviewed separately by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on one hundred two dollars per hour. After the initial submittal, updated information shall be reviewed as part of the updated water system plan and the review fee shall be included in the applicable updated plan review fee listed under (a) or (b) of this subsection.

(d) Project reports required under WAC 246-290-110 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete water system (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$491	\$778	\$1,137	\$1,564	\$2,061
System modifications requiring a detailed evaluation to determine whether the system, as modified, will comply with regulations (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$348	\$565	\$851	\$1,206	\$1,626

Note: In accordance with WAC 246-290-125, project reports are not required for minor projects that are described in sufficient detail in an approved water system plan, and have been reviewed as part of the process for approving the water system plan.

(e) Special reports or plans required under WAC 246-290-230, 246-290-235, 246-290-250, 246-290-470, 246-290-636, 246-290-640, 246-290-654, 246-290-676, 246-291-230 including:

- (i) Corrosion control recommendation report;
- (ii) Corrosion control study;
- (iii) Plan to cover uncovered reservoirs;
- (iv) Predesign study;
- (v) Uncovered reservoir plan of operation;
- (vi) Tracer study plan;
- (vii) Surface water or GWI treatment facility operations plan;
- (viii) Filtration pilot study; or

(ix) GWI determination reports, shall be reviewed by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on one hundred two dollars per hour.

(f) Construction documents required under WAC 246-290-120 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete new water system except treatment (an additional fee shall be assessed for review of treatment facility, if any)	\$281	\$633	\$919	\$1,279	\$1,709	\$2,204
New source only (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$382	\$525	\$710	\$919	\$1,172
One or more of the following submitted as a package and not requiring a detailed evaluation as determined by the department: Water line installation, booster pump station, modifications to source pumping, piping-valving, controls or storage reservoir (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$241	\$382	\$565	\$778	\$1,027
Documents submitted for projects such as water line installation, booster pump stations, modifications to source pumping, piping/valving, controls or storage reservoirs as determined by the department where such projects: Comply with design standards established by the department; Are prepared by a professional engineer in accordance with WAC 246-290-040; and Do not require a detailed evaluation by the department.	\$64	\$118	\$198	\$281	\$389	\$512

(g) Existing system approval required under WAC 246-290-140 and 246-291-130. For the purpose of this subsection the department shall determine whether a system is expanding or nonexpanding.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
NONEXPANDING system not requiring a detailed evaluation by the department	\$268	\$539	\$811	\$1,083	\$1,355	\$1,626
NONEXPANDING system requiring a detailed evaluation as determined by the department	\$404	\$811	\$1,229	\$1,626	\$2,034	\$2,441
EXPANDING system not requiring a detailed evaluation by the department	\$539	\$1,083	\$1,626	\$2,169	\$2,714	\$3,256
EXPANDING system requiring a detailed evaluation as determined by the department	\$676	\$1,355	\$2,034	\$2,714	\$3,391	\$4,072

(h) (~~Monitoring waivers requested under WAC 246-290-300.~~)

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Inorganic chemical monitoring-waiver	Not applicable	\$88 per source	\$123 per source	\$155 per source	\$188 per source	\$221 per source
Organic chemical monitoring-waiver	Not applicable	\$161 per source	\$226 per source	\$294 per source	\$359 per source	\$425 per source
Use-waiver	Not applicable	\$193 per source	\$260 per source	\$334 per source	\$392 per source	\$459 per source
Area-wide waiver renewal	Not applicable	\$193 per source	\$240 per source	\$287 per source	\$334 per source	\$369 per source
Inorganic chemical monitoring-waiver renewal	Not applicable	\$48 per source	\$62 per source	\$75 per source	\$88 per source	\$102 per source
Organic chemical monitoring-waiver renewal	Not applicable	\$95 per source	\$135 per source	\$176 per source	\$215 per source	\$254 per source
Use-waiver renewal	Not applicable	\$135 per source	\$181 per source	\$226 per source	\$273 per source	\$320 per source
Coliform monitoring-waiver-including departmental-inspection requested by purveyor	Not applicable	\$414	\$512	\$652	\$830	Not applicable
Coliform monitoring-waiver-with-third-party-inspection-report	Not applicable	\$128	\$128	\$128	\$128	Not applicable

(+) Other evaluations and approvals. As applicable, these fees will be charged in addition to the basic fees assessed under (a) through (h) of this subsection.

Project Type	Group B	Group A				
		<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Well-site evaluation and approval including the site inspection and hydrogeologic information review.	\$205	\$309	\$363	\$451	\$565	\$710
Regulatory monitoring plan ¹	No plan required	\$198	\$268	\$337	\$404	\$471
Unfiltered system annual comprehensive report	Not applicable	\$404	\$676	\$947	\$1,218	\$1,489
Water system compliance report	\$115	\$115	\$115	\$115	\$115	\$115

¹A comprehensive document containing coliform, inorganic chemical and organic chemical monitoring plans in accordance with WAC 246-290-300.

(2) To determine the appropriate fee for a noncommunity system, calculate the service equivalent by taking the average population served each day of operation and dividing by twenty-five for a transient noncommunity (TNC) system and two and one-half for nontransient noncommunity (NTNC) system. Use the number of service equivalents to find out what Group A size category to look under and submit the appropriate fee. (All noncommunity systems are Group A systems as described in WAC 246-290-020.)

(3) Additional review and approval fees may be assessed as follows:

(a) The basic fee covers an evaluation, or the review of an initial submittal and one resubmittal if required. If addi-

tional resubmittals are required, an additional twenty-five percent of the original fee will be assessed for each additional resubmittal. For water system plan and SMA plan preparation the basic fee also covers a preplanning conference;

(b) Fees for department project approval based on local technical review will be determined on a case-by-case basis as outlined in the applicable memorandum of understanding between the department and the respective local agency;

(c) Fees may be assessed for services which the department determines are not described under subsection (1) of this section. If assessed, the fees will be calculated based on a rate of one hundred two dollars per hour.

Examples of these services include, but are not limited to:

- (i) Collection of water quality samples requested by purveyor;
 - (ii) Review of alternate technologies requested by purveyor, manufacturer or authorized representative;
 - (iii) Sanitary surveys, including the time spent as part of the annual on-site inspections for systems under WAC 246-290-690(3) that is in addition to the time necessary to assess watershed control and disinfection treatment;
 - (iv) Well field designations; or
 - (v) Transfers of ownership under WAC 246-290-035 or 246-294-060.
- (d) Additional fees assessed by the department shall be billed to the purveyor using an itemized invoice.

(4) If the legislature revises the water system operating permit fee under RCW 70.119A.110 to incorporate into it one or more fees for service currently assessed separately under this section, and the purveyor has paid that consolidated fee, the department shall not assess or collect a separate fee under this section for any such service.

(5) All fees required under this section except as noted in subsection (3) of this section, shall be submitted prior to the department's approval. Payment of fees shall be in the form of a check or money order made payable to: The Department of Health, P.O. Box 1099, Olympia, Washington 98507-1099. Payment of a fee shall not guarantee approval of the submitted document or evaluation request.

(6) Purveyors unable to determine the appropriate fee payment to submit should contact the department.

AMENDATORY SECTION (Amending WSR 04-06-047, filed 3/1/04, effective 4/1/04)

WAC 246-294-010 Definitions, abbreviations, and acronyms. ((Abbreviations:

~~EPA – Environmental Protection Agency~~

~~MCL – maximum contaminant level~~

~~NTNC – nontransient noncommunity~~

~~SMA – satellite management agency~~

~~SSNC – state significant noncomplier~~

~~TNC – transient noncommunity~~

~~VOC – volatile organic chemical~~

~~WFI – water facilities inventory))~~ The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "**Adequacy**" means an assessment, based upon evaluation of the department's records, of a water system's current ability to provide safe and reliable drinking water in accordance with applicable drinking water statutes and regulations.

(2) "**Community water system**" means any Group A water system:

(a) With fifteen or more services used by residents for one hundred eighty or more days within a calendar year, regardless of the number of people; or

(b) Regularly serving twenty-five or more residents for one hundred eighty or more days within the calendar year, regardless of the number of services.

(3) "**Department**" means the Washington state department of health.

(4) "**Drinking water regulations**" means the provisions of chapter 70.119A RCW, chapter 246-290 WAC, state board of health drinking water regulations and chapter 246-292 WAC, water works operator certification regulations, that help assure Group A public water systems provide safe and reliable drinking water.

(5) "**Dwelling unit**" means a structure, or unit within a structure, with independent living facilities for one or more persons that include permanent provisions for living, sleeping, eating, cooking, and sanitation. A dwelling unit includes, but is not limited to:

(a) A single family residence; or

(b) Each unit of an apartment building or multiplex building.

(6) "**EPA**" means the Environmental Protection Agency.

(7) "**ERU (equivalent residential unit)**" means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.

(8) "**Group A water systems**" are defined as community and noncommunity water systems.

(a) Community water system means any Group A 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 year-round (i.e., more than one hundred eighty days per year) residents.

(b) Noncommunity water system means a Group A water system that is not a community water system. Noncommunity water systems are further defined as:

(i) **Nontransient** (NTNC) water systems that provide service opportunity to twenty-five or more of the same non-residential people for one hundred eighty or more days within a calendar year.

(ii) **Transient** (TNC) water systems that serve:

(A) Twenty-five or more different people each day for sixty or more days 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 in a calendar year; or

(C) One thousand or more people for two or more consecutive days within a calendar year.

(9) "**MCL (maximum contaminant level ((MCL)))**" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 3.

(10) "**Nonresident**" means a person having access to drinking water from a public water system who lives elsewhere. Examples include travelers, transients, employees, students, etc.

(11) "**Nonresidential service connection**" means a connection to a public water system that provides potable water including, but not limited to a:

(a) Commercial property;

(b) Industrial property;

(c) Civic property;

(d) Municipal property;

(e) Institutional property;

(f) School; or

(g) Other authorized use that provides potable water to a nonresidential population.

(12) "NTNC" means nontransient noncommunity.

(13) "Owner" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that holds as property, a public water system.

(14) "Public water system" means any system, providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. The term includes:

(a) Collection, treatment, storage, and/or distribution facilities under control of the purveyor and used primarily in connection with the system.

(b) Collection or pretreatment storage facilities not under control of the purveyor, but primarily used in connection with the system.

(15) "Recreational service connection" means a connection to a public water system that provides potable water to each:

(a) Campsite; or

(b) Recreational vehicle site.

(16) "Resident" means an individual living in a dwelling unit served by a public water system.

(17) "Residential service connection" means a connection to a public water system that provides potable water to a residential population without clearly defined dwelling units. When the service connection provides water to a residential population without clearly defined dwelling units, the following formulas are used to determine the number of residential service connections to be included on the WFI form:

(a) Divide the average population served each day by two and one-half; or

(b) Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

(c) The calculated number of services is not less than one.

(18) "SMA (satellite management agency ((SMA)))" means an individual, purveyor, or entity that is approved by the department in accordance with chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems.

(19) "Service connection" means a ((connection to a public water system designed to provide potable water to a single-family residence, or other)) residential ((or)) nonresidential ((population. When the connection provides water to a residential population without clearly defined single-family residences, the following formulas shall be used in determining the number of services to be included as residential connections on the WFI form:

• Divide the average population served each day by two and one-half; or

• Using actual water use data, calculate the total ERU's represented by the service connection in accordance with department design guidance.

• In no case shall the calculated number of services be less than one)), or recreational service connection as defined in this section.

(20) "SSNC (state significant noncomplier ((SSNC)))" means a system that is violating or has violated department rules, and violations may create, or have created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeat violations of monitoring requirements, failure to address exceedance of permissible levels of regulated contaminants, failure to comply with treatment technique standards or requirements, failure to comply with water works operator certification requirements, or failure to submit to a sanitary survey.

(21) "TNC" means transient noncommunity.

(22) "WFI (water facilities inventory ((WFI)))" means the department form summarizing each public water system's characteristics.

AMENDATORY SECTION (Amending WSR 04-06-047, filed 3/1/04, effective 4/1/04)

WAC 246-294-030 Application and issuance of operating permits. (1) No person may operate and no owner shall permit the operation of a Group A water system unless the owner annually submits an application along with the required fee to the department and the department has issued an operating permit to the system owner. Any owner operating a system may continue to operate until the department takes final action on granting or denying the operating permit, in accordance with WAC 246-294-050.

(2) The department shall mail an application to water systems annually using a schedule that is based on the size and type of water system.

(3) In addition to the regularly scheduled issuance of annual operating permits, new or revised operating permits shall be required when:

(a) The owner of a new Group A system receives all required department approvals relating to water system operation (see WAC 246-294-030(4)); or

(b) Ownership of a Group A system changes (see WAC 246-294-060).

(4) The department may also issue a revised operating permit when there is a change in a systems compliance that necessitates a change to a different permit category.

(5) New Group A systems shall be sent operating permit applications at the time construction documents are submitted to the department for approval. The deadline for submitting the completed application and full payment to the department shall be the same date as:

(a) The *Construction Completion Report* required by WAC 246-290-120(5); or

(b) The existing system as-built approval required by WAC 246-290-140.

(6) Initial and renewal applications shall be based on information from the most recent WFIs on file with the department, and sent to owners on an annual basis. In the case of a SMA, the department will send a complete list of systems

owned, along with the corresponding system identification numbers. The SMA shall verify the information, make corrections or additions and then return the list with the application.

(7) Upon receipt of the application, the owner or other legally authorized person shall:

- (a) Complete portions of the form which need completing;
- (b) Ensure that information on the form is accurate;
- (c) Sign the form; and
- (d) Return the application to the department within seventy days of the department's mailing date, accompanied by the applicable fee.

(8) The applicable fee shall be in the form of a check or money order made payable to the "Department of Health" or successor organization as designated by the department and mailed in accordance with the directions on the application.

(9) Systems which do not return operating permit applications along with the required fee by the deadline specified on the notice shall:

- (a) Not be issued an operating permit; and
- (b) Be subject to the enforcement provisions in WAC 246-294-090.

(10) ~~The department shall add an additional late charge ((of ten percent or twenty five dollars, whichever is greater, shall be added))~~ to the applicable fee as listed in Table 2 of WAC 246-294-070 if the owner fails to return the completed application with applicable fee to the department within seventy days of the department's mailing date.

(11) The department shall review each submitted application. Any changes made on the application by the applicant shall be evaluated by the department and may result in an update of the system's WFI form, which would be reflected on the next renewal application.

(12) If after issuing an operating permit, the department determines that the permit holder has made false statements, the department may, in addition to taking other actions provided by law, revise both current and previously granted permit fee determinations and charge the owner accordingly.

(13) If the department discovers that an owner has been operating a system without an operating permit and such system is covered by the requirements of this chapter, the department may charge the owner an operating permit fee plus permit fees owed for each year, including late fees, since the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 04-06-047, filed 3/1/04, effective 4/1/04)

WAC 246-294-070 Fees. (1) The fees for Group A water system operating permits are authorized under RCW 70.119A.110 and are listed in Table 2.

(TABLE 2
OPERATING PERMIT FEES

Classification	Fee
0-14 services	None
15-49 services	\$25.00 per year
50-3,333 services	\$1.50 per service per year
3,334-53,333 services	\$4,999.50 + .10 per service over 3,333 services per year
53,334 or more services	\$10,000.00 per year
Satellite Management Agency (based on total services in all systems owned by SMA)	\$1.00 per service per year or the fee from the appropriate category above, whichever is less
Late charge	Additional 10% of applicable charge stated above or \$25.00, whichever is greater))

TABLE 2
OPERATING PERMIT FEES

Classification	2012	2013	2014 and following years
Base fee for all water systems	\$100.00	\$100.00	\$100.00
Per connection fee:			
14 or fewer services	\$0.65	\$0.98	\$1.30
15 - 99 services	\$0.63	\$0.94	\$1.25
100 - 499 services	\$0.60	\$0.90	\$1.20
500 - 999 services	\$0.58	\$0.86	\$1.15
1,000 - 9,999 services	\$0.55	\$0.83	\$1.10
10,000 - 95,000 services	\$0.53	\$0.79	\$1.05
95,001 or more services	\$50,000.00 per year	\$75,000.00 per year	\$100,000.00 per year
SMA	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee
Late fee (late fee is charged seventy days after the department mails the renewal application)	Add 10% to applicable fee or \$25.00, whichever is greater	Add 10% to applicable fee or \$25.00, whichever is greater	Add 10% to applicable fee or \$25.00, whichever is greater

~~(2) (If systems serve both resident and nonresident populations, the department shall determine the permit fee category by adding the number of services and an equivalent for the NTNC and TNC nonresident population served as calculated in subsection (3) of this section.) For purposes of determining the operating permit fee, service connections shall be counted as follows:~~

~~(a) For community water systems, the operating permit fee is based on the total number of residential service connections and nonresidential service connections.~~

~~(b) Nonresidential service connections are counted as one service connection for each property as defined in WAC 246-294-010(11) regardless of how many buildings are on the property.~~

(3) For NTNC and TNC systems, owners shall pay the fee in Table 2 based on equivalent number of service((s)) connections. Population information used in calculating equivalent number of service((s)) connections shall come from the WFI. The department shall use the following formulas to determine equivalent number of service((s)) connections:

(a) For NTNC populations, divide the average population served each day by two and one-half; and

(b) For TNC populations, which include recreational service connections, divide the average population served each day by twenty-five.

~~((4) Any county or SMA assuming ownership of a Group A water system, or court appointed receiver of a Group A water system is exempt from the operating permit fee for one year after the next renewal date.))~~

WSR 11-22-091
PROPOSED RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE

[Filed November 1, 2011, 3:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-11-074.

Title of Rule and Other Identifying Information: The environmental and land use hearings office (ELUHO), the successor agency resulting from the administrative consolidation of environmental hearings office (EHO) and the growth management hearing[s] board (GMHB), is required by RCW 42.56.040 to have public records rules for the agency. These rules are proposed for adoption as chapter 198-14 WAC.

Hearing Location(s): ELUHO, 1111 Israel Road S.W., Tumwater, WA 98501, on December 7, 2011, at 2:00 p.m.

Date of Intended Adoption: January 10, 2012.

Submit Written Comments to: Kay Brown, P.O. Box 40903, Tumwater, WA 98501, e-mail Kayb@ELUHO.Wa.Gov., fax (360) 586-2253, by December 6, 2011.

Assistance for Persons with Disabilities: Contact Robyn Bryant by phone (360) 664-9166.

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

chapter 198-14 WAC, will provide public records rules for the ELUHO agency as required by RCW 42.56.040. The changes are necessary to reflect the legislatively driven administrative consolidation of the EHO and GMHB into the ELUHO, and the legislative direction that all agencies adopt public records procedures.

Statutory Authority for Adoption: RCW 42.56.040, 43.21B.005, 43.21B.090, 36.70A.270(7).

Statute Being Implemented: RCW 42.56.040, 43.21B.-005.

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

Name of Proponent: ELUHO, governmental.

Name of Agency Personnel Responsible for Drafting: Kay Brown, ELUHO, (360) 664-9160; Implementation and Enforcement: Kathleen Mix, ELUHO, (360) 664-9160.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No statement is required for adoption of rules described in RCW 34.05.310 (4). These proposed rules and rule amendments meet the requirements of RCW 34.05.310 (4)(b) and (e).

A cost-benefit analysis is not required under RCW 34.05.328. These rules and rule amendments are exempt from the requirement under RCW 34.05.328 based on RCW 34.05.328 (5)(b)(ii), (iv), (v).

November 1, 2011

Kathleen D. Mix

Agency Director

Chapter 198-14 WAC

PUBLIC RECORDS

NEW SECTION

WAC 198-14-010 Authority and purpose. The Public Records Act (act), chapter 42.56 RCW, applies to the environmental and land use hearing office (ELUHO), a state agency, and the boards within that agency. The purpose of these rules is to establish the procedures ELUHO, and the boards, will follow in order to provide full access to public records concerning the conduct of government. These rules provide information to persons wishing to request access to public records of ELUHO and the boards within ELUHO, and also establish processes for both requestors and ELUHO employees that are designed to best assist members of the public in obtaining access to public records. In carrying out its responsibilities under the act, ELUHO will be guided by the provisions of the act describing its purposes and interpretation. The act and these rules will be interpreted in favor of disclosure.

NEW SECTION

WAC 198-14-020 Definitions. (1) "Environmental and land use hearing office (ELUHO)" means the single state agency comprised of the pollution control hearings board, the shorelines hearings board, and the growth management hearings board. Where appropriate, the term ELUHO also refers to the employees of the agency.

(2) "Public records" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(3) "Public records officer" means the administrative manager of ELUHO. The public records officer serves as the point of contact for members of the public and oversees compliance with the act but, may designate another ELUHO employee to serve as the point of contact for members of the public and to process requests for public records.

(4) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

NEW SECTION

WAC 198-14-030 Agency description—Contact information—Public records officer. (1) The environmental land use hearing office (ELUHO) is a single quasi-judicial environmental, land use and adjudicatory agency comprised of three boards: The pollution control hearings board, created in RCW 43.21B.010, the shoreline hearings board, created in RCW 90.58.170, and the growth management hearings board, created in RCW 36.70A.250. Each board provides for the expeditious and efficient disposition of environmental and/or land use appeals within its respective area of statutory jurisdiction.

(2) Any person wishing to request access to public records of ELUHO, or seeking assistance in making such a request, shall contact the public records officer of ELUHO, or the board maintaining such records at the offices of ELUHO. Information identifying ELUHO's public records officer and the specific physical and mailing addresses for the agency is available on ELUHO's web site: www.eluho.wa.gov.

The ELUHO office is located at:

1111 Israel Road S.W.
Tumwater, WA 98501
Phone: 360-664-9160

(3) ELUHO, through its public records officer or designee(s), will provide the "fullest assistance" to requestors; create and maintain an index to public records of ELUHO for use by the public and ELUHO officials; ensure that public records are protected from damage or disorganization; and ensure that responses to public records requests do not cause excessive interference with essential functions of the ELUHO.

NEW SECTION

WAC 198-14-040 Availability of public records. (1) Hours for inspection of records. Public records are avail-

able for inspection and copying during normal business hours of ELUHO, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the offices of ELUHO or the offices of the boards that comprise ELUHO.

(2) **Records index.** An index of public records is available for use by members of the public, including final orders, declaratory orders, interpretive statements, and statements of policy. The index may be accessed on-line at www.eluho.wa.gov.

(3) **Organization of records.** ELUHO and the boards of the ELUHO will maintain records in a reasonably organized manner. ELUHO and the boards will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from the offices at which the records are maintained without the permission of the public records officer or designee. Many records are available on the ELUHO web site at www.eluho.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

NEW SECTION

WAC 198-14-050 Requests for public records. (1) Any person wishing to inspect or copy public records of ELUHO or the boards of ELUHO should make the request in writing on ELUHO's request form, or by letter, fax, or e-mail addressed to the public records officer and include the following information:

- (a) Name of requestor;
- (b) Address of requestor;
- (c) Other contact information, including telephone number and an e-mail address, if available;
- (d) Identification of the public records adequate for the public records officer or designee to locate the records; and
- (e) The date and time of the request.

(2) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or pay a deposit as provided for in WAC 198-14-090.

(3) Forms are available for use by requestors at the office of ELUHO and on-line at www.eluho.wa.gov.

(4) The public records officer or designee may accept requests for public records by telephone or in person, if the request contains the above information. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

WAC 198-14-060 Processing of public records requests—General. (1) Providing "fullest assistance." By statute, ELUHO must adopt rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the

order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone or in writing. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request and provide a written statement specifying the reasons for denial.

(3) **Failure to respond.** If ELUHO does not respond in writing within five business days of receipt of the request for disclosure, the requestor is encouraged to contact the public records officer to inquire into the status of the public records request.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If ELUHO believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption relied upon and provide a brief explanation of why the record or a portion of the record is being withheld from disclosure. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor the basis for redaction.

(6) **Inspection of records.**

(a) Consistent with other demands, ELUHO shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. Access to file cabinets, shelves, or storage areas is restricted to ELUHO employees, who shall be present during the inspection. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of ELUHO's notification to him or her that the records are available for inspection or copying. ELUHO will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the

records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, ELUHO may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee may provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records, or one or more of the installments that have been made available for inspection, the public records officer or designee may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that ELUHO has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that ELUHO has closed the request.

(11) **Later discovered documents.** If, after ELUHO has informed the requestor that it has provided all available records, ELUHO becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

NEW SECTION

WAC 198-14-070 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by ELUHO and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by RCW 43.105.280 and WAC 198-14-090(2).

(3) **Customized access to data bases.** With the consent of the requestor, the agency may provide customized access to an agency data base under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. ELUHO may charge a fee consistent with RCW 43.105.280 for such customized access, which

may include reasonable charges for staff time necessary to conduct customized searches of the agency data bases.

NEW SECTION

WAC 198-14-080 Exemptions. (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure.

(2) ELUHO incorporates by reference the exemptions to the act including, but not limited to, the following:

RCW 42.56.230 Personal information;

RCW 42.56.250 Employment and licensing;

RCW 42.56.270 Financial, commercial, and proprietary information;

RCW 42.56.280 Preliminary drafts, notes, recommendations, and intra-agency memorandums;

RCW 42.56.290 Agency party to controversy;

RCW 42.56.600 Mediation communications;

RCW 5.60.060 Attorney client privilege.

(3) ELUHO is prohibited by statute from disclosing lists of individuals for commercial purposes.

NEW SECTION

WAC 198-14-090 Costs of providing copies of public records. (1) **Costs for paper copies.**

(a) There is no fee for inspecting public records. Photocopies of thirty-five pages or more will be charged at fifteen cents per page and, nonstandard copies, including planning or engineering documents, oversized maps, and photographs, will be charged at the actual cost of reproduction. ELUHO may, in its discretion, send records to a commercial copying center for duplication. The requestor is required to pay the actual cost of copying performed by a copying vendor. Actual cost will be charged for manuals and nonprinted materials, such as audio or video tapes or CDs.

(b) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. ELUHO will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be the actual cost of medium and preparation, including the actual cost of any necessary scanning. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies, such as a scanning fee. ELUHO may charge a fee consistent with RCW 43.105.280 and WAC 198-14-070(3) for customized access of electronic records.

(3) **Costs of mailing.** ELUHO may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to ELUHO.

NEW SECTION

WAC 198-14-100 Review of denials of public records. (1) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if ELUHO denies access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may ask the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(2) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550, as amended, regardless of any internal administrative appeal. Final agency action, for the purposes of judicial review, shall be deemed completed at the end of the second business day following the denial.

WSR 11-22-094

PROPOSED RULES

THE EVERGREEN STATE COLLEGE

[Filed November 1, 2011, 4:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-03-026.

Title of Rule and Other Identifying Information: Student conduct code.

Hearing Location(s): The Evergreen State College, Seminar II Room A2107, 2700 Evergreen Parkway N.W., Olympia, WA 98505, on December 7, 2011, at 3:00-4:00 p.m.

Date of Intended Adoption: January 9, 2012.

Submit Written Comments to: Holly Colbert Joseph, The Evergreen State College, Library 3213, 2700 Evergreen Parkway N.W., Olympia, WA 98505, e-mail colberth@evergreen.edu, fax (360) 867-6557, by December 6, 2011.

Assistance for Persons with Disabilities: Contact Wendy Endress by December 3, 2011, TTY (360) 867-6834 or (360) 867-6291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule articulates standards for student conduct and procedures for adjudicating allegations of student misconduct.

Reasons Supporting Proposal: This proposed rule is intended to communicate expectations for student conduct and processes for responding to misconduct in order to preserve teaching and learning and health and safety for students, employees and visitors to The Evergreen State College.

Statutory Authority for Adoption: RCW 28B.40.120.

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

Name of Proponent: The Evergreen State College, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Endress, Library 3009, 2700 Evergreen Parkway N.W., Olympia, WA, (360) 867-6296; Implementation: Art Costantino, Library 3009, 2700 Evergreen Parkway N.W., Olympia, WA, (360) 867-6296; and Enforcement: Andrea

Seabert Olsen, Library 3009, 2700 Evergreen Parkway N.W., Olympia, WA, (360) 867-6296.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule imposes no costs on small businesses as defined by chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The Evergreen State College is not among the agencies required to prepare a cost-benefit analysis as specified in RCW 34.05.328.

November 1, 2011
John Carmichael
Executive Associate
to the President

Chapter 174-123 WAC

STUDENT CONDUCT CODE

NEW SECTION

WAC 174-123-010 The Evergreen State College student conduct code. This chapter will be known as the student conduct code (code) for The Evergreen State College.

BACKGROUND

NEW SECTION

WAC 174-123-020 Purpose. The Evergreen State College can thrive only when all members of the community participate in the social contract, which prizes academic and interpersonal honesty, conveys our commitment to resolving differences with a strong will toward collaboration, and protects community values and individual rights. The student conduct code articulates specific procedures and standards for upholding the values and aspirations expressed in the social contract. Specifically, the code strives to afford opportunities for informal resolution and to support students to be accountable for their decisions and actions. The code has been crafted in the spirit of education and compassion, with the aim of healing individuals, preserving our common interests, and protecting each other from harm.

NEW SECTION

WAC 174-123-030 Student rights and responsibilities. (1) Every student has a duty to know, understand and abide by the rules and policies of the college.

(2) In most cases, students will have the opportunity to resolve alleged violations informally through mediation, arbitration, or restorative justice conference.

(3) Students alleged to have violated the code have the following rights under the code:

(a) To be informed of the charges against them and know who the complainant is;

(b) To request an informal resolution of the complaint;

(c) To participate in developing a mutually agreed upon contract of accountability with the student conduct administrator;

(d) To appeal a determination of responsibility and/or required resolution and sanctions, issued by a student conduct administrator, to the student conduct appeals board;

(e) To hear and respond to information upon which a charge is based;

(f) To call relevant persons to provide information at hearings before the student conduct code appeals board;

(g) To request that any person serving as a student conduct code administrator, or serving as a student conduct code appeals board member, be replaced as provided in the code on the grounds of bias, prejudice, or conflict of interest.

(4) Complainants have the following rights under the code:

(a) To participate in an informal resolution of the complaint;

(b) To inquire about the status of the complaint;

(c) To appeal a determination of responsibility and/or required resolution and sanctions, issued by a student conduct administrator, to the student conduct appeals board and to call relevant persons to provide information before the student conduct code appeals board in cases where a complaint alleges sexual misconduct, sexual harassment, or physical abuse;

(d) To request that any person serving as a student conduct code administrator, or serving as a student conduct code appeals board member, be replaced as provided in the code on the grounds of bias, prejudice, or conflict of interest.

NEW SECTION

WAC 174-123-040 Definitions. (1) "**College**" means The Evergreen State College.

(2) "**Student**" means:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submittal of the application through official enrollment;

(b) Any applicant accepted for admission or readmission to the college;

(c) Any person currently enrolled at the college;

(d) Any person enrolled at the college in a prior quarter or summer session, and eligible to continue enrollment in the quarter or summer session that immediately follows; or

(e) Any person who was enrolled for violations of the code that occurred while enrolled; or

(f) Any person not employed by the college on a permanent basis who resides in college housing.

(3) "**Faculty member**" means any person employed by the college to conduct teaching activities or who is otherwise considered by the college to be a member of the faculty.

(4) "**Staff member**" means any person employed by the college for nonteaching purposes.

(5) "**College official**" means any person employed by the college performing assigned teaching, administrative or professional responsibilities.

(6) "**Member of the college community**" means any person who is a student or faculty or staff member. A person's status in a particular situation will be determined by the vice-president for student affairs.

(7) **"Guest"** means any person who is not a member of the college community on college premises at the invitation and/or hosting of a student.

(8) **"College premises"** means all land, buildings, facilities, and other property in the possession of or owned, used, leased or controlled by the college including adjacent streets and sidewalks.

(9) **"College-sponsored event or activity"** means activities or events involving planning or funding, or other authorized participation by the college.

(10) **"Recognized organization"** means any group which has complied with the formal requirements for college recognition and is an officially recognized college organization. A group's status in a particular situation will be determined by the vice-president for student affairs.

(11) **"Policy"** means the official written policies and procedures of the college published on the college's web site or in the college catalog; or the individual requirements of a department or office, posted anywhere on college premises or at college-sponsored events or activities.

(12) **"Vice-president for student affairs"** is the person designated by the college president to oversee the administration of the code, and for performing the other duties and obligations of the position.

(13) **"Senior student conduct administrator"** means the primary college official authorized by the vice-president for student affairs responsible for administering the code.

(14) **"Student conduct administrator"** means a college official authorized by the vice-president for student affairs to administer the code in response to a complaint.

(15) **"Complainant"** means any person who submits a complaint alleging that a student violated the code and/or a student who believes they have been the victim of another student's misconduct.

(16) **"Respondent"** means any student alleged to have violated the code.

(17) **"Restorative justice conference"** means an informal process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things right as possible.

(18) **"No contact order"** means a directive of no contact with a member of the college community which may require a student to organize their activities in order to avoid contact with designated individuals.

(19) **"Conduct hold"** means a hold placed on the student's official record with the registrar by the senior student conduct code administrator prohibiting a student from registering for academic credit or receiving a copy of their transcript until the hold is removed by the senior student conduct code administrator or the vice-president for student affairs.

(20) **"Resolution and sanction(s)"** means those tasks or consequences, and associated deadlines, the respondent must complete to address violations of the code articulated in the contract of accountability.

(21) **"Contract of accountability"** means a written mutual agreement between the respondent and student conduct administrator which states the violations of the code and the resolution and sanction(s).

(22) **"Determination of responsibility"** means a decision of the student conduct administrator regarding whether or not the respondent is responsible for the alleged violation(s) of the code.

(23) **"Required resolution and sanction"** means the decision of the student conduct administrator regarding the resolution and sanction(s) appropriate to the level of responsibility for violating the code as conveyed in the determination of responsibility.

(24) **"Final determination"** means a decision by the student conduct appeals board stating the outcome of the hearing.

(25) **"Written notice"** means written communication personally provided to the student or delivered via the student's assigned college account electronic mail address.

(26) **"Served notice"** means written communication personally provided to the student, or upon deposit in the United States mail addressed to the student at his or her last known address. A student's last known address will be the current address on file with the registrar unless a student has provided written notice of a different address to the office of the vice-president for student affairs.

(27) **"Calendar day"** means every day of the month including weekends and state holidays.

(28) **"Business day"** means any calendar day, exclusive of weekends and federal and school holidays, in which the college is open to the public for the conduct of business.

NEW SECTION

WAC 174-123-050 Jurisdiction. (1) The code applies to:

(a) Prohibited conduct that occurs on college premises or at college-sponsored events or activities; and applies in all locations of the college, including locations other than Olympia, Washington; and

(b) Prohibited conduct that does not occur on college premises or in the context of college-sponsored events or activities where it is reasonable to conclude the conduct causes, or threatens to cause, substantial and material disruption or interference with teaching by the college and student learning; or where the conduct causes, or threatens to cause, a substantial and material danger to the health, welfare, or personal safety of any member of the college community, or to college property. The vice-president for student affairs will determine whether the code will be applied to conduct occurring off campus on a case-by-case basis.

(2) Each student is responsible for their conduct from the time of application for admission through the actual awarding of a degree as follows:

(a) Before a program or course of study begins or after it ends;

(b) During the academic year; and

(c) During periods between terms of actual enrollment, even if the person's conduct is reported after a degree is awarded.

(3) The code applies to a student's conduct even if the student withdraws from the college while a complaint is pending.

(4) Alleged misconduct by a student organization will be addressed by student activities' policies and procedures.

(5) Nothing herein will be construed as being intended to create a legal obligation on the part of the college to protect any person or class of persons from injury or harm, or to deny students their legal and/or constitutionally protected rights.

NEW SECTION

WAC 174-123-060 Computation of time. In computing any period of time in these rules, the day from which the designated period begins to run will not be included. The last day of the period will be included unless it is a Saturday, Sunday, or holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or holiday.

NEW SECTION

WAC 174-123-070 Prohibited conduct. Students are expected to engage in responsible conduct that reflects credit upon the college community and to model good citizenship. Students are expected to preserve college functions, maintain academic integrity, provide honest and accurate information, prevent harm to self or others, foster a safe community, protect and preserve college and personal property, and to adhere to published policies, contracts, and local, state and federal laws. Attempting or engaging in any of the following conduct is specifically prohibited under the code.

(1) Academic dishonesty which includes, but is not limited to, the following:

(a) Plagiarism defined as appropriating or incorporating any other person's published or unpublished work in one's own work without full, clear and correct acknowledgment;

(b) Copying from another person's academic work without proper acknowledgment;

(c) Using assistance or materials that are expressly forbidden to complete an academic product or assignment;

(d) The unauthorized collaboration with any other person during the completion of independent academic work;

(e) Knowingly falsifying or assisting in falsifying in whole, or in part, the contents of one's academic work;

(f) Permitting any other person to substitute oneself to complete academic work; or

(g) Engaging in any academic behavior specifically prohibited by a faculty member in the course covenant, syllabus, or individual or class discussion.

(2) Conduct that obstructs or disrupts any college learning, teaching, research, administration, adjudicative process, public service functions or college-sponsored events or activities.

(3) Failure to be truthful to the college or a college official. This includes, but is not limited to, knowingly making false charges against another member of the college community; and providing false or misleading information in an application for admission, to gain employment, or in a college investigation, hearing or process.

(4) Forgery, alteration, or the misuse of college documents, records or identification cards.

(5) Failure to comply with the direction of or failure to identify yourself to a college official or other public official acting in the performance of their duties.

(6) Physical abuse of any person including, but not limited to, physical assault with bodily injury or the threat of physical harm to another person.

(7) The recording of any private conversation, by any device, without the consent of all persons engaged in the conversation except as permitted by state law chapter 9.73 RCW. For purposes of this section, the term "consent" will be considered obtained only when one party has announced to all other parties engaged in the communication or conversation that such communication or conversation will be recorded or transmitted; and the announcement itself is recorded as part of the conversation or communication.

(8) Viewing, photographing, or filming another person without that person's knowledge and consent, while the person being photographed, viewed or filmed is in a place where he or she would have a reasonable expectation of privacy.

(9) Unauthorized entry into or onto, or the unauthorized remaining in, or upon, any college premises; or the unauthorized possession, duplication, or use of a college key or other access device.

(10) Intentional sounding of a false alarm which includes, but is not limited to, initiating or causing to be initiated any false report, warning or threat, such as that of fire, explosion or emergency that intentionally causes a false emergency response; and the improper use or disabling of safety equipment and signs.

(11) Failure to evacuate during a fire alarm; the improper use or damaging of fire prevention or safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations, or emergency exits; or the unauthorized setting of fires.

(12) The possession, use, manufacture, or distribution of alcohol except as expressly permitted by law or college policy; or public appearance on college premises while intoxicated. Alcoholic beverages may not, in any circumstance, be used, possessed, consumed by, or distributed to, any person under the legal age.

(13) Possession, use, manufacture, cultivation, packaging, distribution, selling, or the providing of any controlled substance as identified in chapter 69.50 RCW; or the possession or use of drug paraphernalia as defined in RCW 69.50.102; use of a prescription drug other than as prescribed, use of a prescription drug not issued to the student, or the distribution or sale of a prescription drug to a person to whom the prescription was not originally issued; or public appearance while under the influence of a controlled or illegal substance.

(14) Damaging, defacing, destroying, or tampering with, college property or other personal or public property. This includes, but is not limited to, graffiti and vandalism.

(15) The attempted or actual theft of property or services. This includes, but is not limited to, taking, attempting to take, possessing, or aiding another to take college property or services, or property belonging to any person, without express permission.

(16) Possessing firearms or other dangerous weapons other than to secure them with police services; the unauthorized use, possession or storage of any explosives, fireworks, dangerous chemicals, or substances; or the use of any instrument designed to cause harm, or realistic replica of such

instrument, in such a manner which might reasonably threaten or cause fear or alarm to others.

(17) Sexual misconduct which includes the following:

(a) The actual or attempted sexual intercourse or sexual contact that is unwanted or forced upon another, without the consent of that person. Sexual contact is any intentional contact with the breasts, buttock, groin or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts. Sexual intercourse means any anal, oral or vaginal intercourse, however slight, with any object. Consent means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating a voluntary and mutually understandable agreement between the parties to engage in the action(s) or behavior(s). Consent may not be given or granted when one's capacity for effective decision making has been diminished by the use of alcohol or drugs, or a person is unconscious, or is experiencing some other cognitive impairment. Consent is not considered voluntary when obtained through threats, intimidation, or coercion. Sexual misconduct can occur with any combination of genders, gender expressions and sexual orientations.

(b) The photographing or filming of the intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

(c) The indecent exposure of a person's genitals when done in a place where such exposure is likely to be an offense against generally accepted standards of decency.

(d) Sexual exploitation which occurs when one takes nonconsensual or abusive sexual advantage of another for another's advantage or benefit and that behavior does not otherwise constitute one of the other sexual misconduct prohibitions. Sexual exploitation includes, but is not limited to, going beyond the boundaries of consent (such as allowing others to view otherwise consensual sexual activity).

(18) Harm, which is behavior directed at an individual that is sufficiently severe, pervasive, or persistent such that it diminishes or interferes with the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college or an employee to engage in their work duties.

(19) Stalking which is defined as repeatedly engaging in a course of conduct directed at another individual that would cause a reasonable person to experience alarm, fright or determine that their safety, or the safety of those affiliated or associated with them is at risk.

(20) Harassment which is defined as conduct against a person on the basis of race, color, ethnicity, national origin, religious affiliation, sex, gender identity or expression, disability, age, military status, or sexual orientation that is sufficiently severe, pervasive, or persistent to create an objectively hostile environment that interferes with or diminishes the ability of an individual to participate in or benefit from the services, activities, or privileges provided by the college, or an employee to engage in work duties.

(21) Failing to monitor the behavior of a visitor or guest to assure their adherence to the code.

(22) Violation of any college policy including, but not limited to, residential and dining services policies.

(23) Knowingly assisting another person to violate the code or failing to report to a college official conduct that constitutes significant damage to property or a serious danger to the health or personal safety of an individual.

(24) Tampering with the election of any student organization or group.

(25) Hazing which is conduct that includes any activity or method of initiation into a recognized organization or student social, living, learning, or athletic group that causes, or is likely to cause, bodily danger or physical, mental, or emotional harm to any member of the college community.

(26) Being charged with violation of federal, state, or local law by law enforcement, or conviction of a felony or misdemeanor, under circumstances where it is reasonable to conclude that the presence of the person on college premises would constitute a danger to the health, or personal safety of members of the college community.

NEW SECTION

WAC 174-123-080 Emergency suspension. (1) The vice-president for student affairs, or designee, may immediately suspend a student from the college for an interim period prior to the completion of an investigation of an alleged code violation by the student conduct administrator, if the student's alleged act of misconduct is of such a serious nature that continued enrollment at the college presents a threat to the safety, health, or welfare of any member of the college community, or the protection of personal or college property.

(2) A student placed on emergency suspension will be served notice of the suspension, the reason for imposing an emergency suspension, and advised of the date, time and place for a hearing regarding the suspension before the vice-president of student affairs, or their designee. The hearing will take place no later than ten business days from the effective date of the emergency suspension.

(3) The respondent may request to proceed with a conduct conference with the senior conduct administrator prior to the emergency suspension hearing. The resolution of the conduct conference may result in removal of the emergency suspension with the vice-president's approval.

(4) Failure of a student to appear at the time and place scheduled in the served notice will result in the issuance of an order of default and in the loss of the student's right to a hearing challenging the emergency suspension.

STUDENT CONDUCT CODE PROCEDURES

NEW SECTION

WAC 174-123-090 Purpose. The procedures governing a student conduct administrator's handling of complaints under the code are designed to afford complainants and respondents informal resolution options and a fair and accessible process. The process educates students about their rights and responsibilities, holds students accountable for their actions, and provides due process.

NEW SECTION

WAC 174-123-100 Submitting a complaint. (1) Any person may submit a complaint against a student alleging a violation of the code. The complaint must be submitted in writing to the senior student conduct administrator or to any other college official. A complaint should be submitted as soon as possible after the event has taken place.

(2) The senior conduct administrator, or designee, will be responsible for addressing alleged violations of the code. If there is a question about who should be responsible for addressing a complaint, the vice-president for student affairs, or designee, will assign responsibility for handling the complaint and if necessary, serve as a student conduct administrator.

(3) A complainant or respondent may request, in writing to the vice-president for student affairs, to have a complaint addressed by an alternate student conduct administrator if a bias, prejudice, or conflict of interest is identified. The vice-president of student affairs will have the final authority to determine the appropriate student conduct administrator to assign in this case.

NEW SECTION

WAC 174-123-110 Notification to respondent. (1) The respondent will meet with the student conduct code administrator for a conduct conference as directed in a written notice.

(2) The student conduct administrator may impose interim restrictions on the respondent prior to, or at any stage during, a conduct conference, when the health or safety of the complainant or any member of the college community is deemed at risk. The interim restriction may include a no contact order and/or loss of privileges limiting access to community members who may be at risk due to the respondent's presence.

A student issued an interim restriction that includes loss of privileges will receive written notice of the interim restriction, the reason for imposing an interim restriction, and advised of the date, time and place for a hearing regarding the interim restriction before the student conduct administrator, or their designee. The hearing will take place no later than three business days from the effective date of the interim restriction.

(3) The interim restriction will remain in place until a contract of accountability exists, an appeal board issues a final determination, or the student conduct administrator notifies the respondent in writing that the interim restriction has been modified or is no longer in effect.

NEW SECTION

WAC 174-123-120 Conduct conference. (1) During the conduct conference, which may occur over a series of meetings, the student conduct administrator will explain to the respondent the process for addressing complaints under the code, advise the respondent of their rights and responsibilities, and review with the respondent the complaint and alleged violation(s) of the code.

(2) If there is more than one respondent involved in the complaint, the student conduct administrator, at their discretion, may conduct the conferences concerning each respondent either separately, or jointly.

(3) Failure to meet with the student conduct administrator at the appointed time during the conduct conference process may subject a respondent to a conduct hold. If the respondent fails to meet with the student conduct administrator as required, a determination of responsibility and required resolution and sanctions may be determined in the respondent's absence.

(4) In addition to information sought from the respondent regarding the allegations, the student conduct administrator may seek additional information from other persons with information relevant to the investigation of the complaint.

(5) If the complaint is determined to have merit, the student conduct administrator will proceed with informal resolution, enter into a contract of accountability with the respondent, or complete an investigation and issue a determination of responsibility and required resolution and sanction(s). If the student conduct administrator determines that the respondent is not responsible for violating the code, no action will be taken and the complaint will be dismissed.

NEW SECTION

WAC 174-123-130 Informal resolution. If the student conduct administrator concludes that efforts at informal resolution are appropriate to resolve a complaint, the administrator will take whatever steps are useful to that end, including mediation, arbitration or a restorative justice conference. The complainant may end the informal resolution process at any time and request formal resolution of the complaint.

If an informal resolution is reached and the respondent complies with the agreed terms and conditions, if any, no further action against the respondent will be taken and the matter will be closed. If a resolution is not reached, or the respondent fails to comply with the agreed terms and conditions of the resolution, the student conduct code administrator may proceed to take action necessary to resolve the complaint.

NEW SECTION

WAC 174-123-140 Contract of accountability. (1) The student conduct administrator may work with any respondent who acknowledges responsibility for engaging in prohibited conduct to identify the resolution and sanction(s). If an agreement is reached, the resolution and sanction(s) will be contained in a written contract of accountability signed by both the respondent and the student conduct administrator.

(2) A respondent who enters into a contract of accountability will comply with the resolution and sanction(s) set forth in the contract and will have no further right of appeal under the code. A respondent's failure to comply with a contract of accountability may be the basis for a separate violation of misconduct under the code and may result in the student conduct administrator issuing a conduct hold. The conduct hold will remain in effect until such time that the student satisfactorily completes all of the requirements of the contract of accountability. If a complaint alleges sexual miscon-

duct, sexual harassment, or physical abuse, the complainant is to be informed of the contract of accountability.

NEW SECTION

WAC 174-123-150 Notice of determination of responsibility and required resolution and sanctions. (1) If a complaint is not resolved through informal resolution or by entering into a contract of accountability, the student conduct administrator will issue a determination of responsibility based on a standard of more likely than not and if appropriate, a required resolution and sanction(s).

(2) The determination of responsibility will identify the specific conduct that has violated the code. The required resolution and sanction(s) will provide for those tasks or consequences, and associated deadlines, the respondent must execute to address violations of the code.

(3) The student conduct administrator's determination of responsibility and required resolution and sanction(s) will be final unless the respondent files a timely appeal to the student conduct appeals board. If a complaint alleges sexual misconduct, sexual harassment, or physical abuse, the complainant is to be informed of the final determination and any sanction imposed against the respondent and may file a timely appeal to the student conduct appeals board.

NEW SECTION

WAC 174-123-160 Resolution and sanctions. The following resolution and sanctions may be agreed to by, or required of, a respondent found to have violated the code. More than one resolution and sanction may be imposed for any single violation. Resolution and sanctions are based on the unique aspects of each situation and should be appropriate to the violation, taking into consideration the context and seriousness of the violation. History, patterns, and frequency of misconduct; severity and level of impact on the community; and a student's motivation and response all determine the resolution and sanction for each individual respondent.

(1) **Warning.** This is a written notice that the student is violating, or has violated, the code.

(2) **Educational and discretionary actions.** This includes, but is not limited to, work assignments, essays, behavior assessment and recommended treatment, completion of a workshop or training, restorative justice conference, or service to the college.

(3) **Probation.** A written reprimand and notice that for a designated period of time a student will be on special status with conditions imposed that include the probability of additional required resolution and sanctions if the student is found to violate the code during the probationary period of time.

(4) **Loss of privileges.** This may include, but is not limited to, limited access or restriction from college premises, college-sponsored activities or events, use of equipment, student employment, or participation in cocurricular activities.

(5) **Restitution.** Compensation for loss, damage, or expenses for injury incurred by the college or persons resulting from a violation of the code. This may take the form of appropriate service, monetary or material replacement, or a combination of both.

(6) **No contact order.** A directive that a student may have no contact with other stated members of the college community. In the case where a "no contact order" is issued, a student may be required to organize their activities in order to avoid contact with designated individuals.

(7) **Residence hall suspension.** Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions allowing for a student to return to the residence hall may be specified in the suspension.

(8) **Residence hall expulsion.** Permanent separation of the student from the residence halls.

(9) **College suspension.** Separation of the student from the college for a definite period of time, after which the student is eligible to return, provided that the student has complied with all conditions imposed as part of the suspension and the student is otherwise qualified for reenrolling. Conditions for reenrollment may be specified in the suspension.

(10) **College expulsion.** Permanent separation of the student from the college with a notation on the student's transcript.

(11) **Withholding admission or degree.** The withholding of admission to, or the withholding of a degree awarded from, the college for a specified amount of time.

(12) **Revocation of admission or degree.** The revocation of the admission to or the revocation of a degree from the college in those cases in which egregious academic dishonesty is discovered subsequent to a student's graduation. Degree revocation must be approved by the board of trustees and will be noted on the student's academic record.

(13) **Records hold.** The placement of a records hold on the student's academic record prohibiting the release of any transcripts, diploma(s) or other records until a student satisfies the terms and conditions of any required resolution and sanction.

STUDENT CONDUCT APPEALS

NEW SECTION

WAC 174-123-170 Filing of appeal. (1) A respondent may appeal a student conduct administrator's determination of responsibility and required resolution and sanction(s) to the student conduct appeals board. A complainant, in cases where a complaint alleges sexual misconduct, sexual harassment, or physical abuse may also appeal a student conduct administrator's determination of responsibility and required resolution and sanction(s) to the student conduct appeals board. An appeal must be in writing and received by the vice-president for student affairs within twenty calendar days of written notice of the student conduct administrator's determination of responsibility and required resolution and sanction(s).

(2) Except in cases of an emergency suspension, the respondent's enrollment status, and rights as an enrolled student, will not be altered if a timely appeal is filed with the student conduct appeals board under subsection (1) of this section.

NEW SECTION

WAC 174-123-180 Notice of hearing. (1) After receipt of a timely request for a hearing, the vice-president for student affairs, or designee, will schedule a hearing before the student conduct appeals board and provide served notice to the respondent at least seven business days in advance of the hearing. The seven days advance notice may be waived by the vice-president for student affairs, or designee, with the student's permission.

(2) The served notice provided to the respondent will include the following:

(a) The date, time, location, and nature of the proceeding;

(b) A date by which the respondent and student conduct administrator must identify advisors and/or individuals who will be involved in sharing information on their behalf as well as requests for reasonable accommodations, if any, for these individuals;

(c) A date by which the student conduct administrator and respondent must provide copies of any documents to be provided to the board at the hearing. The date for providing documents must be at least two business days prior to the hearing date.

NEW SECTION

WAC 174-123-190 Procedure at hearing. The procedures to be followed at hearings conducted by the student conduct appeals board are as follows:

(1) All procedural questions and other decisions are subject to the final decision of the chair of the board unless otherwise provided for in these rules. The chair will ensure that the proceeding is held in an orderly manner such that the rights of all parties to a full, fair and impartial proceeding that adheres to the code is achieved.

(2) The hearing is a closed proceeding which includes only members of the board; the advisor to the board, if any; the student conduct administrator and their advisor, if any; the complainant and the respondent and their advisor(s), if any; and persons requested to provide information at the hearing. Admission of any other person to the hearing is at the discretion of the board's chair and subject to the requirement set forth in subsection (8) of this section.

(3) The complainant and the respondent are neither encouraged nor required to be assisted by an advisor of their choosing at their own expense. The student conduct administrator and respondent are expected to present all information during the proceedings. Proceedings will not be automatically delayed due to the scheduling conflicts of an advisor. In cases where the complaint alleges sexual misconduct, sexual harassment, or physical abuse, the complainant may present information during the proceedings.

(4) There will be a single verbatim sound recording of the hearing, and the record will be on file with the vice-president for student affairs and is the property of the college.

(5) The respondent's failure to cooperate with or attend a hearing will not preclude the board from proceeding and issuing a final determination or upholding the determination of the student conduct administrator.

(6) Only those materials and information presented at the hearing will be considered. The chair may exclude or limit ineffectual, irrelevant, or unduly repetitious information.

(7) Any person disrupting the proceeding will be duly warned and subsequently may be excluded from the hearing by the chair. Any student engaging in such interference will be in violation of the student conduct code.

(8) The chair is authorized to take reasonable measures to maintain control over the proceedings in order to elicit relevant information, to prevent the mistreatment of participants, to insure that proceedings are not disrupted and the interests of fairness are served. This may include regulating the timing, length and manner of presentations, declaring recesses in the proceedings, and taking other appropriate actions.

(9) Only members of the student conduct appeals board and the advisor to the board, if any, will be present for deliberations. Deliberations are not recorded. During deliberations the board will consider all the information presented and decide by majority vote whether it is more likely than not that the respondent is responsible for violating each section of the code the respondent is charged with violating and/or what resolution and sanction(s) to impose.

NEW SECTION

WAC 174-123-200 Board composition. (1) The board will be composed of five members consisting of one faculty member, one staff member, and three students. One member will be designated by the vice-president to serve as the chair of the board for a hearing.

(2) The faculty agenda committee will designate faculty members to serve on the student conduct appeals board as needed.

(3) The vice-president for student affairs will be responsible for designating the student and staff members serving on the board. The student members, including the selection of alternate members to serve as necessary, will be done through an open selection process established by the vice-president.

(4) A respondent, complainant, and/or the student conduct administrator may request removal of a member of the board at the commencement of the hearing for reasons of bias, prejudice or conflict of interest. The chair of the board will be responsible for making decisions regarding removal, unless the student is requesting removal of the chair. When there is a request to remove the chair, and the chair does not voluntarily step down, a quorum of the remaining members will decide whether removal is warranted. If a member is removed, an appropriate alternate member (i.e., faculty, student or staff) will serve on the board for the excused member.

NEW SECTION

WAC 174-123-210 Final determination. The board will issue a final determination that:

(1) Upholds part, or all, of the determination of responsibility; and upholds the required resolution and sanction(s), or modifies or develops an alternate resolution and sanction(s); or

(2) Determines that it is more likely than not that the student is not responsible for violating the code, reverse the determination of responsibility issued by the student conduct administrator, and dismiss the case.

The final determination will be provided to the respondent by served notice. If a complaint alleges sexual misconduct, sexual harassment, or physical abuse, the complainant will be informed of the final determination and any sanction imposed against the respondent by written notice.

NEW SECTION

WAC 174-123-220 Reconsideration. (1) Within ten business days of the served notice of the final determination, the complainant or the respondent may submit a petition for reconsideration with the student conduct appeals board. The petition must state the specific grounds upon which relief is requested.

(2) The petition will be deemed submitted on the day of actual receipt by the board. Service on the board can be made by one of the following means:

(a) E-mail received by the office of the vice-president for student affairs; or

(b) By deposit in the United States mail, postage prepaid, addressed as follows: The Evergreen State College, Student Conduct Appeals Board, Office of the Vice-President for Student Affairs, 2700 Evergreen Parkway N.W., Olympia, Washington 98505; or

(c) By personal service on the student conduct appeals board which will be deemed accomplished by hand delivering the petition to the office of the vice-president for student affairs during regular business hours at the address listed in (b) of this subsection.

(3) The final determination issued by the student conduct appeals board will remain in effect during the time period that a petition for reconsideration is under review by the board. The board will respond within twenty business days from the date the petition is submitted.

MAINTENANCE OF STUDENT CONDUCT CODE RECORDS

NEW SECTION

WAC 174-123-230 Retention. (1) A student's conduct record may be retained for seven years after the final disposition of the case unless the college is required to retain the record for a longer period of time under another provision of state or federal law. When the resolution and sanction(s) includes college expulsion or revocation of a degree the record will be retained in perpetuity. Final disposition is defined as when:

(a) A respondent fulfills the contract of accountability or the required resolution and sanction(s) issued by the student conduct appeals board; or

(b) A case is closed at the discretion of the student conduct administrator when the respondent has not completed the required resolution and sanction and has not been enrolled for twelve months.

(2) Other than college expulsion, degree revocation, or withholding of a degree, resolution and sanctions will not be made part of the student's permanent academic record, but will be part of the student's conduct record.

SIMULTANEOUS CIVIL OR CRIMINAL PROCEEDINGS

NEW SECTION

WAC 174-123-240 Simultaneous civil or criminal proceedings.

(1) Student conduct code proceedings may be instituted and carried out without regard to any criminal or civil litigation or external processes with which the student may be involved. Issuance of a determination of responsibility or required resolution and sanction(s) by the student conduct administrator or appeals board will not be subject to change because criminal charges or civil litigation from the same facts resulting in an allegation of violation of the code were dismissed, reduced, or resolved in favor of or against the respondent.

(2) If a respondent charged with misconduct under this code has been charged with a crime for the same act or closely related acts by federal, state, or local authorities, or if it appears that such criminal charge is under consideration, the respondent may petition the vice-president for student affairs to postpone action on the complaint until there has been a disposition of the criminal charge or of the consideration of filing such charge. The vice-president will have the discretion to grant or deny the request.

(3) When a respondent is charged by federal, state, or local authorities with a violation of law, the college will not request or agree to special consideration for the individual because of their status as a student. If the alleged criminal offense is also being addressed under the code, the college may advise off-campus authorities of the existence of the code and how such matters are typically handled within the college community.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 174-120-015	Purpose.
WAC 174-120-025	Definitions.
WAC 174-120-035	Student conduct code—Specific examples of student conduct code violations.
WAC 174-120-045	Student conduct code—Levels of resolution.
WAC 174-120-055	Student conduct code—Grievance officer review process.
WAC 174-120-065	Student conduct code—Formal hearing notice, process and rights.

WAC 174-120-075	Student conduct code— Examples of corrective action.
WAC 174-120-085	Student conduct code—Pro- cedural appeals.

WSR 11-22-096**PROPOSED RULES****DEPARTMENT OF AGRICULTURE**

[Filed November 2, 2011, 7:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-021.

Title of Rule and Other Identifying Information: Chapter 16-610 WAC, Livestock brand inspection.

Hearing Location(s): Big Bend Community College, 7611 Bolling Street N.E., ATEC Building 1800, Masto Conference Center 1870, Moses Lake, WA 98837, on December 6, 2011, at 8:30 a.m.; and at the Natural Resources Building, 1111 Washington Street S.E., First Floor, Conference Room 172, Olympia, WA 98504, on December 12, 2011, at 9:00 a.m.

Date of Intended Adoption: January 2, 2012.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., December 12, 2011.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by November 30, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-610 WAC, Livestock brand inspection, to align with recently enacted legislation. The 2011 legislative session passed SHB 1538 which directed the department to adopt rules designating when inspection certificates, certificates of permit, or other transportation documents must designate a physical address of a destination. The proposed amendments will designate when cattle and horses must be delivered or transported to the physical address designated on the inspection certificate, certificate of permit, or other transportation documents, establish exemptions to the requirements, and establish a base penalty for diversion violations.

Reasons Supporting Proposal: The proposed amendments are necessary to aid in animal disease traceability when an adverse animal health event occurs. The requirement/validation that animals are delivered to the physical address noted on official transportation documents is critical in supporting animal disease traceability.

Statutory Authority for Adoption: Chapters 16.57 and 34.05 RCW.

Statute Being Implemented: Chapter 16.57 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lynn Briscoe, Olympia, (360) 902-1987; and Enforcement: Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 2, 2011

Leonard E. Eldridge, DVM
State Veterinarian

NEW SECTION**WAC 16-610-053 Physical address requirements.** (1)

Livestock inspection certificates, certificate of permits, and equine bill of sales shall contain a destination physical address except where specifically exempted in this section. For purposes of this section, a physical address is the actual street location of the destination.

(2) All cattle and horses must be transported and delivered directly to the physical address noted on a livestock inspection certificate, certificate of permit, and/or equine bill of sale. Cattle and horses shall not be diverted to any other physical address or location except for:

(a) A temporary destination due to a medical emergency where the immediate health of the animal is in jeopardy; or

(b) A category two restricted holding facility as defined in chapter 16-30 WAC if the cattle will be transported and delivered to a lot of like status.

(3) If the destination physical address cannot be determined due to no physical address assigned by the appropriate county jurisdiction or local emergency services, the following can be used:

(a) Descriptive driving directions to the physical location of where the cattle or horse(s) is being transported and delivered to; or

(b) The global positioning system (GPS) coordinates of the physical location of where the cattle or horse(s) is being transported and delivered to. GPS coordinates must contain two latitude or three longitude digits to the left of the decimal point and six digits to the right of the decimal point.

(4) Failing to provide the required destination physical address or acceptable alternative as defined in subsection (3) of this section or diverting cattle and horses from the destination physical address may result in a civil infraction per WAC 16-610-095.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-095 Penalty schedule for notices of infraction. (1) If any person fails to comply with the requirements of chapters 16-610 WAC and 16.57 RCW (Identification of livestock), the director may issue that person a notice of infraction and may assess a penalty.

(2) The following infractions have the base penalty listed, not including statutory assessments.

Livestock Identification Program
Civil Infraction Schedule for Violations of Chapter 16.57
RCW

Violation	Base Penalty
RCW 16.57.260	Removal of cattle and horses from Washington state without an inspection certificate.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.267	Failing to present an animal for mandatory inspection.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.270	Refusing to assist in establishing ownership and identity.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
RCW 16.57.350	Interfering with the director in the performance of livestock identification duties.
First offense	\$100.00
2nd offense within three years	\$150.00
3rd offense within three years	\$250.00
<u>Chapter 204, Laws of 2011</u>	<u>Transporting or delivering cattle or horses to any destination other than the designated physical address.</u>
<u>First offense</u>	<u>\$100.00</u>

Violation	Base Penalty
<u>2nd offense within three years</u>	<u>\$150.00</u>
<u>3rd offense within three years</u>	<u>\$250.00</u>
RCW 16.57.050	Using an unrecorded brand.
Each offense	\$37.00
<u>Chapter 204, Laws of 2011</u>	<u>Failing to designate a physical address</u>
<u>Each offense</u>	<u>\$37.00</u>
RCW 16.57.243	Moving cattle without proof of ownership.
Each offense	\$37.00
RCW 16.57.275	Transporting a carcass without proof of ownership.
Each offense	\$37.00
RCW 16.57.277	Failing to attach custom slaughter tags.
Each offense	\$37.00
RCW 16.57.410	Acting as a registering agency without a permit.
Each offense	\$37.00

WSR 11-22-097
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed November 2, 2011, 7:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-16-020.

Title of Rule and Other Identifying Information: Chapter 16-54 WAC, Animal importation.

Hearing Location(s): Big Bend Community College, 7611 Bolling Street N.E., ATEC Building 1800, Masto Conference Center 1870, Moses Lake, WA 98837, on December 6, 2011, at 8:30 a.m.; and at the Natural Resources Building, 1111 Washington Street S.E., First Floor, Conference Room 172, Olympia, WA 98504, on December 12, 2011, at 9:00 a.m.

Date of Intended Adoption: January 2, 2012.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., December 12, 2011.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist by November 30, 2011, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to add a new section to chapter 16-54 WAC to align with recently enacted legislation. The 2011 legislative session passed SHB 1538 which directed the department to adopt rules designating when a certificate of veterinary inspection, permit, and other transportation documents require a physical address for the destination when importing animals into Washington and when those animals must be delivered or transported directly to the physical address of that destination. Animals that are not transported and delivered to the physical address on the official animal health document may be assessed a civil penalty in accordance with chapter 16-90 WAC.

Reasons Supporting Proposal: This new section is necessary for the validation that animals are delivered to the physical address noted on official animal health documents and to aid in animal disease traceability when the department receives information that infectious and communicable diseases are present in Washington animals and the department needs to identify what animals have been exposed.

Statutory Authority for Adoption: RCW 16.36.040 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.36 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jodi Jones, Olympia, (360) 902-1889; and **Enforcement:** Leonard E. Eldridge, DVM, Olympia, (360) 902-1881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the proposed revisions and has concluded that they do not impose more than minor costs on small businesses in the regulated industry, and, therefore, a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

November 2, 2011

Leonard E. Eldridge, DVM
State Veterinarian

NEW SECTION

WAC 16-54-031 Physical address requirements. (1)

Certificate of veterinary inspection, entry permit, movement permit, and temporary grazing permits shall contain the destination physical address for animals entering Washington state except where specifically exempted in this section. For purposes of this section, a physical address is the actual street location of the destination.

(2) All animals must be transported and delivered directly to the physical address noted on the certificate of veterinary inspection, entry permit, movement permit, or temporary grazing permit.

(a) Animals shall not be diverted to any other physical address except for a temporary destination due to a medical emergency where the immediate health of the animal is in jeopardy. If a physical address destination change is necessary for a medical emergency, the notification requirements listed in subsection (3) of this section shall apply.

(b) Notification requirements listed in subsection (3) of this section will apply to category two restricted holding facilities, as defined in chapter 16-30 WAC, when cattle are not transported and delivered to the destination physical address as permitted on the original entry permit. Category two restricted holding facilities may only change the destination physical address as permitted on the original permit if the cattle will be transported and delivered to a lot of like status.

(3) Requirements for reporting changes to physical address destinations noted in subsection (2) of this section.

(a) Contact the department within twenty-four hours by phone at 360-902-1878 or by e-mail at ahealth@agr.wa.gov.

(b) Report the official document number and the physical address to where the animal(s) was transported and delivered to.

(4) Failing to provide the required destination physical address or acceptable alternative per subsection (5)(a) of this section or diverting animals from the destination physical address may result in a civil penalty as authorized by RCW 16.36.113 and defined in chapter 16-90 WAC.

(5) Exemptions to destination physical address requirements.

(a) If the destination physical address cannot be determined due to no physical address assigned by the appropriate county jurisdiction or local emergency services, the following shall apply:

(i) Descriptive driving directions to the physical location of where the animal(s) is being transported and delivered to must be included on the certificate of veterinary inspection, entry permit, movement permit or temporary grazing permit; or

(ii) The global positioning system (GPS) coordinates of the physical location of where the animal(s) is being transported and delivered to must be included on the certificate of veterinary inspection, entry permit, movement permit or temporary grazing permit. GPS coordinates must contain two latitude or three longitude digits to the left of the decimal point and six digits to the right of the decimal point.

(b) Poultry, or other animals, that are permitted under this chapter and chapter 16.30 RCW and are approved by the United States Postal Service's (USPS) list of mailable live animals are exempt from the destination physical address requirement. For a list of mailable live animals, please visit http://pe.usps.com/text/pub52/pub52c5_007.htm.

WSR 11-22-098

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 2, 2011, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-095.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks. The department is proposing to adopt:

(1) The 2011 edition of the National Institute of Standards and Technology (NIST) Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices) as required by RCW 19.94.195;

(2) The 2011 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality) as required by RCW 19.112.140;

(3) The 2011 edition of NIST Handbook 133 (Checking the Net Contents of Packaged Goods); and

(4) Modifications to increase rule clarity and readability.

Hearing Location(s): Washington State Department of Agriculture (WSDA), 1111 Washington Street S.E., Natural Resources Building, Conference Room 259, Olympia, WA 98504-2560, on December 8, 2011, at 2:00 p.m.

Date of Intended Adoption: December 15, 2011.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail hgonzales@agr.wa.gov, fax (360) 902-2094, by December 8, 2011.

Assistance for Persons with Disabilities: Contact Henri Gonzales by December 1, 2011, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to adopt the most recent version of NIST Handbook 44, 130, and 133. These handbooks are national consensus codes that establish industry standards for weighing and measuring devices, metrology, engine fuel quality, and net contents of packaged goods.

Reasons Supporting Proposal: RCW 19.94.195 requires that the most current version of NIST Handbook 44 be adopted every year. RCW 19.112.140 requires that the most current version of NIST Handbook 130 be adopted all or in part every year. The department also adopts the current version of NIST Handbook 133 in order to maintain uniformity with other states.

Statutory Authority for Adoption: Chapters 19.94, 19.112, and 34.05 RCW.

Statute Being Implemented: Chapters 19.94 and 19.112 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry Buendel, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency must prepare a small business economic impact statement (SBEIS) for proposed rules that impose a more than minor cost on small businesses in an industry. Analysis of the economic effects of the proposed rule amendments demonstrate that the changes will not be more than a minor cost to the regulated industry and, therefore, an SBEIS is not required. These handbooks are national consensus codes that establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

November 2, 2011

Mary A. Martin Toohey

Assistant Director

AMENDATORY SECTION (Amending WSR 09-19-007, filed 9/3/09, effective 10/4/09)

WAC 16-662-100 (~~What is the purpose of this chapter?~~) Purpose. (1) This chapter establishes requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and that are in effect in other states.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in the *National Institute of Standards and Technology (NIST) NIST Handbook 44*;

(b) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(c) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(d) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

(e) Uniform examination procedure for price verification addressed in *NIST Handbook 130*; and

(f) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*.

(3)(a) *NIST Handbook 44*, *NIST Handbook 130* and *NIST Handbook 133*, may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. They are also available on the National Institute of Standards and Technology web site at (~~http://ts-nist.gov/WeightsAndMeasures/index.cfm~~) <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm>.

(b) For information regarding the contents and application of these publications, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 10-18-088, filed 9/1/10, effective 10/2/10)

WAC 16-662-105 (~~What national weights and measures~~) Standards (~~are~~) adopted by the Washington state department of agriculture (WSDA) (~~(?)~~). Except as otherwise modified in this chapter, the WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((2010)) 2011 Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	((Fourth)) 2011 Edition ((January 2005)) of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((2009)) 2011 Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> . ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1 Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation.)) Specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2009)) 2011 Edition. ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1 Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation.))
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2009)) 2011 Edition. ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1—

National standard for:	Contained in the:
	Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation))
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2009)) 2011 Edition. ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1— Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation))
(d) Definitions and requirements for standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2009)) 2011 Edition. ((Effective June 1, 2011, the 2010 Amendments to the 2009 Edition of NIST Handbook 130 to Section 2.1 Gasoline and Gasoline-Oxygenate Blends in the Engine Fuels and Automotive Lubricants Regulation.))

AMENDATORY SECTION (Amending WSR 10-18-088, filed 9/1/10, effective 10/2/10)

WAC 16-662-110 ~~((Does the WSDA modify))~~ Modifications to NIST Handbook 44((?)). The WSDA adopts the following modifications to *NIST Handbook 44*, which is identified in WAC 16-662-105(1):

Modified Section:	Modification:
General Code: Section G-UR.4.1. Maintenance of Equipment	In the last sentence of G-UR.4.1., Maintenance of Equipment, change the words "device user" to "device owner or operator." As a result of this modification, the last sentence of G-UR.4.1. will read: "Equipment in service at a single place of business found to be in error predominantly in a direction favorable to the device owner or operator (see also Introduction, Section Q) shall not be considered "maintained in a proper operating condition.""
Liquid-Measuring Devices: Section S.1.6.4.1. Unit Price	((Modify subsection (b) under section S.1.6.4.1. Unit Price, to read:)) <u>At the end of the first sentence of S.1.6.4.1.(b), Unit Price, add the words "or after prepayment for the product but prior to its delivery."</u> As a result of this modification, the sentence will read: "Whenever a grade, brand, blend, or mixture is offered for sale from a device at more than one unit price, then all of the unit prices at which that product is offered for sale shall be displayed or shall be capable of being displayed on the dispenser using controls available to the ((consumer)) <u>customer</u> prior to the delivery of the product or after prepayment for the product but prior to its delivery." ((It is not necessary that all of the unit prices for all grades, brands, blends, or mixtures be simultaneously displayed prior to the delivery of the product. This subsection shall not apply to fleet sales, other contract sales, or truck refueling sales (e.g., sales from dispensers used to refuel trucks.))

AMENDATORY SECTION (Amending WSR 10-18-088, filed 9/1/10, effective 10/2/10)

WAC 16-662-115 ~~((Does the WSDA modify))~~ **Modifications to NIST Handbook 130(?)**. The WSDA adopts the following modifications to the listed sections of the Uniform Regulation for the Method of Sale of Commodities requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
<u>(1) Section 2.20.1. ((Gasoline-Oxygenate Blends)) Method of Retail Sale</u>	Modify section 2.20.1. Method of Retail Sale. Type of Oxygenate must be Disclosed, to read: "All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol.)"
<u>(2) Section 2.20.2. Documentation for Dispenser Labeling Purposes</u>	Modify section 2.20.2. Documentation for Dispenser Labeling Purposes, to read: "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."

Modified Section:	Modification:
((2)) (3) Section 2.23. Animal Bedding	Add a new subsection which reads: ((2.23.1)) "2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."
((3)) (4) Section 2.31.2. Labeling of Retail Dispensers	Add a new subsection which reads: "2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."" Add a new subsection which reads: "2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend)."
((4)) (5) Section 2.31.4. Exemption	Delete section 2.31.4.

The WSDA adopts the following modifications to the listed sections of the Uniform Engine Fuels and Automotive Lubricants Regulation requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
(1) Section 2.12. Motor Oil	Delete section 2.12.
(2) Section 2.13. Products for Use in Lubricating Manual Transmissions, Gears, or Axles	Delete section 2.13.
(3) Section 2.14. Products for Use in Lubricating Automatic Transmissions	Delete section 2.14.
(4) Section 3.2.6. Method of Retail Sale. (Type of Oxygenate must be Disclosed)	Modify section 3.2.6. to read: " <u>Type of Oxygenate must be disclosed.</u> All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. For example, the label may read "contains ethanol." The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type). Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel. Ethanol at no less than one percent and no more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol." Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."

Modified Section:	Modification:
(5) Section 3.2.7. Documentation for Dispenser Labeling Purposes	Modify section 3.2.7. to read: "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."
(6) Section 3.8.2. Labeling Requirements	Add a new subsection which reads: "(c) Each retail dispenser of greater than ten percent fuel ethanol by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E85 Ethanol)."
(7) Section 3.9.2. Retail Dispenser Labeling	Add a new subsection which reads: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "methanol." (Example: M85 Methanol)."
(8) Section 3.13. Oil	Delete section 3.13.
(9) Section 3.14. Automatic Transmission Fluid	Delete section 3.14.
(10) Section 3.15.2. Labeling of Retail Dispensers	Add a new subsection which reads: "3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."" Add a new subsection which reads: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)."
(11) Section 3.15.4. Exemption	Delete section 3.15.4.
((12) Section 7. Test Methods and Reproducibility Limits	Add a new subsection which reads: 7.3. Biodiesel Blends. The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 "Liquid petroleum products – Determination of fatty methyl esters (FAME) in middle distillates – Infrared spectroscopy method." When ASTM develops a comparable standard test method, the ASTM method will become the standard method for purposes of this rule.)

AMENDATORY SECTION (Amending WSR 05-10-088, filed 5/4/05, effective 6/4/05)

WAC 16-662-120 ((How does the WSDA conduct))
Inspections of the net contents of packaged goods under NIST Handbook 133((?)), WSDA inspects packages using ~~((the))~~ either used dry tare or unused dry tare in accordance with the procedures outlined in *NIST Handbook 133*.

AMENDATORY SECTION (Amending WSR 05-10-088, filed 5/4/05, effective 6/4/05)

WAC 16-662-125 ((When does WSDA take))
Enforcement actions ((when conducting)) for price verification inspections under NIST Handbook 130((?)), WSDA uses *NIST Handbook 130*, Examination Procedure For Price Verification, ~~((Paragraph))~~ Section 11.2., Model Enforcement Levels. Overcharges will be used to determine

price accuracy for enforcement actions under chapter 19.94 RCW. ~~((WSDA may issue a civil penalty after failure of the third price accuracy inspection.))~~

WSR 11-22-100
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed November 2, 2011, 9:03 a.m.]

Original Notice.
 Preproposal statement of inquiry was filed as WSR 11-17-137.

Title of Rule and Other Identifying Information: To comply with the requirements in RCW 74.08A.040 and enact rules covering at a minimum the appropriate uses of state maintenance of effort (MOE) funds and annual reports on program operations by tribal TANF programs, the department is proposing to create new rules, chapter 388-315 WAC, in Title 388 WAC.

WAC 388-315-1000 Tribal TANF—Overview—Why do we need state rules regarding tribal temporary assistance for needy families (TTANF) program and state maintenance of effort funds?, 388-315-1050 Tribal TANF—Overview—What is state maintenance of effort?, 388-315-1100 Tribal TANF—Overview—Do tribal TANF programs receive state maintenance of effort funds?, 388-315-1150 Tribal TANF—Overview—How does a tribal TANF program qualify to receive state maintenance of effort funding?, 388-315-2000 Tribal TANF—State maintenance of effort requirements—What state and federal statutes or regulations regarding state maintenance of effort apply to tribal TANF programs?, 388-315-2050 Tribal TANF—State maintenance of effort requirements—What are some important concepts that must be considered when tribal TANF programs spend state maintenance of effort funds?, 388-315-2100 Tribal TANF—State maintenance of effort requirements—What are the four purposes of the TANF program?, 388-315-2150 Tribal TANF—State maintenance of effort requirements—Must tribal TANF programs use state maintenance of effort funds in a manner reasonably calculated to accomplish one of the four purposes of TANF?, 388-315-2200 Tribal TANF—State maintenance of effort requirements—May tribal TANF programs spend state maintenance of effort funds only on eligible families?, 388-315-2250 Tribal TANF—State maintenance of effort requirements—What are the special requirements that tribal TANF programs must meet when they spend state maintenance of effort funds on current state or local programs that also operated in 1995?, 388-315-2300 Tribal TANF—State maintenance of effort requirements—Do federal match and penalty funding restrictions apply to tribal TANF programs when they spend state maintenance of effort funds?, 388-315-2350 Tribal TANF—State maintenance of effort requirements—May tribal TANF programs spend state maintenance of effort funds to provide assistance to Native Americans who are Canadian citizens?, 388-315-2400 Tribal TANF—State maintenance of effort requirements—May tribal TANF programs spend state maintenance of effort funds to provide assistance to Native Americans who exceeded their TANF time limit?, 388-315-3000 Tribal TANF—Reporting requirements—Is a tribal TANF program required to report program data to the department?, 388-315-3050 Tribal TANF—Reporting requirements—When are the reports due?, 388-315-3100 Tribal TANF—Reporting requirements—What kinds of information must be included in the closed report?, 388-315-3150 Tribal TANF—Reporting requirements—What kinds of information must be included in the caseload report?, 388-315-3200 Tribal TANF—Reporting requirements—What kinds of information must be included in the performance measures report?, and 388-315-3250 Tribal TANF—Reporting requirements—Is a tribal TANF program required to submit quarterly reports after the end of an inter-governmental TANF agreement funding period?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on December 6, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 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 December 6, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 22, 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: It is necessary to adopt these rules so the department and the eligible tribes within Washington state upon approval of a tribal TANF program by the secretary of the federal Department of Health and Human Services have a clear understanding of what is required.

Reasons Supporting Proposal: These amendments are necessary to comply with RCW 74.08A.040.

Statutory Authority for Adoption: RCW 74.08A.040.

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: Mike Mowrey, P.O. Box 45857, Olympia, WA 98504-5857, (360) 725-4656.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses. The proposed rule making relates to requirements a tribal TANF program must follow concerning the appropriate uses of state MOE funds and annual reports on program operations by tribal TANF programs.

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)(v) which states: "Rules the content of which is explicitly and specifically dictated by statute." The proposed amendments are necessary to comply with RCW 74.08A.040.

October 24, 2011
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-315-1000 Tribal TANF—Overview—Why do we need state rules regarding tribal temporary assistance for needy families (TTANF) program and state maintenance of effort funds? (1) Under RCW 74.08A.040, the department of social and health services is required to adopt rules regarding state maintenance of effort and reporting requirements for tribal TANF programs.

(2) We are adopting these rules to set out procedures and processes so that everyone has an understanding of what is required.

NEW SECTION

WAC 388-315-1050 Tribal TANF—Overview—What is state maintenance of effort? State maintenance of effort is a federal TANF requirement that a state must spend at least a specified amount of state funds for benefits and services for members of needy families each year. A broad, but not unlimited, array of benefits and services for low-income families with children can count toward satisfying a state's maintenance of effort obligation.

NEW SECTION

WAC 388-315-1100 Tribal TANF—Overview—Do tribal TANF programs receive state maintenance of effort funds? Yes. Tribes may elect to operate a tribal TANF program under 45 CFR 286. Per RCW 74.08A.040, the department must transfer a fair and equitable amount of the TANF state maintenance of effort funds to eligible tribes within Washington State upon approval of a tribal TANF program by the secretary of the federal department of health and human services.

NEW SECTION

WAC 388-315-1150 Tribal TANF—Overview—How does a tribal TANF program qualify to receive state maintenance of effort funding? To qualify to receive state maintenance of effort funding, a tribal TANF program must:

- (1) Have a tribal family assistance plan approved by the federal Administration for Children and Families;
- (2) Complete an intergovernmental TANF agreement with the department;
- (3) Complete a data share agreement with the department; and
- (4) Complete an operational agreement with the department.

NEW SECTION

WAC 388-315-2000 Tribal TANF—State maintenance of effort requirements—What state and federal statutes or regulations regarding state maintenance of effort apply to tribal TANF programs? In addition to the rules found in this chapter of the Washington Administrative Code, there are many state and federal laws, rules and guidance documents which control how tribal TANF programs spend their state maintenance of effort funds. The department relies on the following noninclusive list of resources:

- (1) 42 USC 601(a).
- (2) 42 USC 609 (a)(7).
- (3) 45 CFR 260.20.
- (4) 45 CFR Part 263.
- (5) 45 CFR 92.
- (6) RCW 74.08A.040.
- (7) OMB circulars A-87 and A-133.

(8) Federal Register, Volume 64, Number 69 pages 17816 to 17838.

(9) Federal Register, Volume 73, Number 24, pages 6774 and 6817 to 6818.

(10) Administration for Children and Families policy announcements, program instructions and information memoranda.

NEW SECTION

WAC 388-315-2050 Tribal TANF—State maintenance of effort requirements—What are some important concepts that must be considered when tribal TANF programs spend state maintenance of effort funds? When tribal TANF programs spend state maintenance of effort funds, the following concepts apply:

(1) It must support the four purposes of the TANF program, as set forth in 45 CFR 260.20.

(2) It must comply with the federal definition of assistance as provided in 45 CFR 260.31.

(3) Use of funds must meet four basic conditions before the expenditure may be considered an allowable use of funds that counts toward state maintenance of effort:

(a) The spending must be reasonably calculated to accomplish one or more of the four purposes of TANF, as provided in WAC 388-315-2150;

(b) The funds must be spent on an eligible family, as provided in WAC 388-315-2200;

(c) The program must follow special rules for funding current state or local programs that also operated in federal fiscal year 1995, as provided in WAC 388-315-2250; and,

(d) The program must stay within federal match and penalty funding restrictions for the use of state maintenance of effort funds, as provided in WAC 388-315-2300.

(4) If the tribal TANF program commingles its federal TANF funds with its state maintenance of effort funds, the program must follow federal TANF spending rules for all of the commingled funds.

NEW SECTION

WAC 388-315-2100 Tribal TANF—State maintenance of effort requirements—What are the four purposes of the TANF program? According to 45 CFR 260.20, the TANF program has the following four purposes:

(1) To provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) To end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) To prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) To encourage the formation and maintenance of two-parent families.

NEW SECTION

WAC 388-315-2150 Tribal TANF—State maintenance of effort requirements—Must tribal TANF programs use state maintenance of effort funds in a manner reasonably calculated to accomplish one of the four purposes of TANF? Tribal TANF programs must use state maintenance of effort funds in a manner that is reasonably calculated to accomplish at least one of the four purposes of temporary assistance for needy families (TANF), as provided in WAC 388-315-2100. Such uses include but are not limited to:

- (1) Cash assistance;
- (2) Child care assistance;
- (3) Educational activities designed to increase self-sufficiency, job training or work;
- (4) Any other use reasonably calculated to accomplish the purposes of TANF; or
- (5) Related administrative costs.

NEW SECTION

WAC 388-315-2200 Tribal TANF—State maintenance of effort requirements—May tribal TANF programs spend state maintenance of effort funds only on eligible families? (1) According to 45 CFR 263.2 (b)(2) and (3) and federal guidance, state maintenance of effort rules restrict spending to "eligible families". An eligible family:

(a) Is a financially needy family that consists, at a minimum, of a child living with a custodial parent or other adult caretaker relative, or consists of a pregnant individual.

(b) Can include anyone defined as part of a "needy family", "tribal member family" or "Indian family" in the tribal TANF program's federally approved tribal family assistance plan.

(2) When determining financial need:

(a) Financial need must be based on the family's income.

(b) At their option, tribal TANF programs can also add a resource limit.

(c) Tribal TANF programs can use different need (income/resource) levels for different types of benefits as documented in their tribal family assistance plan.

(3) Under the Deficit Reduction Act of 2005 (S. 1932), states and tribes may use state maintenance of effort funds to provide specified pro-family nonassistance benefits that meet TANF purposes #3 or #4 regardless of financial need or family composition. Pro-family benefits are the benefits that can be provided under the Healthy Marriage Promotion and Responsible Fatherhood Grants as described in Part IV-A of the Social Security Act, sections 403 (a)(2)(A)(iii) and 403 (a)(2)(C)(ii).

NEW SECTION

WAC 388-315-2250 Tribal TANF—State maintenance of effort requirements—What are the special requirements that tribal TANF programs must meet when they spend state maintenance of effort funds on current state or local programs that also operated in 1995? A tribal TANF program may be able to expend state maintenance of effort funds on a current state or local program, such

as a childcare center, that also operated in federal fiscal year 1995 under certain conditions. If a tribal TANF program wishes to fund this type of program, it must notify the state before they use state maintenance of effort funds. The state will research former aid to families with dependent children rules and notify the tribal TANF program whether this is an allowable expenditure under the state maintenance of effort spending provisions in 45 CFR 263.5.

NEW SECTION

WAC 388-315-2300 Tribal TANF—State maintenance of effort requirements—Do federal match and penalty funding restrictions apply to tribal TANF programs when they spend state maintenance of effort funds? (1) Tribal TANF programs must stay within federal match and penalty funding restrictions for the use of state maintenance of effort funds. Under these federal rules, tribal TANF programs cannot spend state maintenance of effort for expenditures:

(a) Made as a condition of receiving federal funds under another program. "Another program" means any program that was not authorized under Title IV-A of the Social Security Act.

(b) Used to match federal welfare-to-work funds.

(c) Used to replace federal TANF dollars lost due to federal penalties.

(2) Tribal TANF programs may use state maintenance of effort funds to meet the Healthy Marriage Promotion and Responsible Fatherhood Grant match requirement since these programs are authorized under Title IV-A of the Social Security Act.

NEW SECTION

WAC 388-315-2350 Tribal TANF—State maintenance of effort requirements—May tribal TANF programs spend state maintenance of effort funds to provide assistance to Native Americans who are Canadian citizens? (1) A Native American who is a Canadian citizen may qualify for state maintenance of effort funded benefits if he or she meets the definition of a qualified alien as provided in 8 USC 1641. To be a qualified alien, the Native American must show evidence that she or he:

(a) Was born in Canada;

(b) Has at least fifty percent Native American blood; and

(c) Has established and maintained residence in the United States.

(2) A Native American who is a qualified alien, and who entered the United States on or after August 22, 1996, is barred from receiving federally-funded TANF benefits for five years from his or her date of entry. In the interim, the person may receive state maintenance of effort-funded benefits that have not been commingled with federal TANF funds.

NEW SECTION

WAC 388-315-2400 Tribal TANF—State maintenance of effort requirements—May tribal TANF programs spend state maintenance of effort funds to provide assistance to Native Americans who exceeded their TANF

time limit? Yes. Under 45 CFR 263.2 (b)(1)(ii), tribes are authorized to spend state maintenance of effort funds to provide assistance to persons who would be eligible for TANF assistance but for the time limit on the receipt of federally funded assistance.

NEW SECTION

WAC 388-315-3000 Tribal TANF—Reporting requirements—Is a tribal TANF program required to report program data to the department? Yes. A tribal TANF program must submit quarterly reports to the department specified in the intergovernmental TANF agreement. The reports provide program data in the following areas:

- (1) State maintenance of effort expenditure information;
- (2) Caseload information; and
- (3) Performance measures.

NEW SECTION

WAC 388-315-3050 Tribal TANF—Reporting requirements—When are the reports due? (1) A tribal TANF program must collect on a monthly basis, and submit to the department on a quarterly basis the required quarterly reports referenced in WAC 388-315-3000.

(a) For the reporting quarter, January 1st through March 31st, reports are due on May 10th.

(b) For the reporting quarter, April 1st through June 30th, reports are due on August 10th.

(c) For the reporting quarter, July 1st through September 30th, reports are due November 10th.

(d) For the reporting quarter, October 1st through December 31st, reports are due February 10th.

(2) For the required performance measures report referenced in WAC 388-315-3000(3), the department may agree to different reporting deadlines in the intergovernmental TANF agreement.

NEW SECTION

WAC 388-315-3100 Tribal TANF—Reporting requirements—Is there a required format for a tribal TANF program's quarterly state maintenance of effort expenditure report? A quarterly state maintenance of effort expenditure report from a tribal TANF program must report state maintenance of effort expenditures using a form mutually agreed upon by the tribal TANF program and the department.

NEW SECTION

WAC 388-315-3150 Tribal TANF—Reporting requirements—What kinds of information must be included in the caseload report? A quarterly caseload report from a tribal TANF program must include:

- (1) The total number of cases served for each month in the quarter;
- (2) The total number of child only cases served for each in the quarter;
- (3) The total single parent cases served for each month in the quarter;

(4) The total two parent cases served for each month in the quarter;

(5) State maintenance of effort funds expended by the tribe in the quarter; and

(6) Total unspent state maintenance of effort funds since the start of the program.

NEW SECTION

WAC 388-315-3200 Tribal TANF—Reporting requirements—What kinds of information must be included in the performance measures report? The performance measures report from a tribal TANF program must include a minimum of four separate performance measures quantifying the success and benefits derived from a specific TANF service or program provided for clients.

Each performance measure must be measurable and consistent with the tribal TANF program's federally approved tribal family assistance plan.

NEW SECTION

WAC 388-315-3250 Tribal TANF—Reporting requirements—Is a tribal TANF program required to submit quarterly reports after the end of an intergovernmental TANF agreement funding period? A tribal TANF program must continue to abide by all terms of the intergovernmental TANF agreement regarding state maintenance of effort use and reporting requirements until all of the funds have been expended if:

(1) State maintenance of effort funds remain unspent at the conclusion or termination of the intergovernmental TANF agreement funding period; and

(2) The tribal TANF program continues to operate.

WSR 11-22-101

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Financial Services Administration)

[Filed November 2, 2011, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-135.

Title of Rule and Other Identifying Information: The operations support and services division, background check central unit, is amending the following sections of chapter 388-06 WAC related to division of developmental disabilities long-term care fingerprint check requirements; WAC 388-06-0110(1) Who must have background checks? and 388-06-0150(5) What does the background check cover?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on December 6, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 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 December 6, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 22, 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 proposed changes are limited to changing the effective date for long-term care fingerprint check requirements for division of developmental disabilities services providers and reorganizing the subsections for clarity. This rule making is necessary to comply with ESHB 1548, passed by the legislature in 2011, which postpones the effective date for implementation of long-term care fingerprint check requirements to January 2014. These changes do not impose new background check requirements or change existing background check requirements except for changing the effective date for long-term care fingerprint checks.

Reasons Supporting Proposal: Same as above.

Statutory Authority for Adoption: RCW 43.43.832, 74.39A.055.

Statute Being Implemented: RCW 74.39A.050, 74.39A.055, 74.39A.095, 74.39A.260, 43.20A.710, 43.43.-837.

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: Cindy LaRose-Eatwell, P.O. Box 45025, Olympia, WA 98504-5025, (360) 902-8072; Implementation and Enforcement: Shaw Seaman, P.O. Box 45310, Olympia, WA 98504-5310, (360) 902-3443.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt under RCW 19.85.025(3): Rule amendments to WAC 388-06-0110(1) and 388-06-0150(5) are explicitly and specifically dictated by statute or rule amendments [to] clarify language without changing the effect.

A cost-benefit analysis is not required under RCW 34.05.328. WAC 388-06-0110(1) and 388-06-0150(5) of this rule are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(iv) and (v), rule content is explicitly and specifically dictated by statute or rule amendments [to] clarify language without changing the effect.

October 24, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0110 Who must have background checks? (1) Per RCW 74.15.030, the department requires

background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

~~(2) ((Per RCW 74.39A.055, the department requires state and federal background checks on all long-term care workers for the elderly or persons with disabilities hired or contracted after January 1, 2012.~~

~~(a) This does not include long-term care workers qualified and contracted or hired on or before December 31, 2011.~~

~~(b) Parents are not exempt from the long-term care background check requirements.~~

~~(3))~~ Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0150 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Except as required in WAC 388-06-0150 (4)(b) and (5), children's administration and division of developmental disabilities will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three years.

(3) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under

chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(5) The division of developmental disabilities requires fingerprint-based FBI background checks for all long-term care workers as defined in RCW 74.39A.009(16) hired or contracted on or after January 1, ~~(2012. These background checks must include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry)~~ 2014 per RCW 74.39A.055. Effective January 1, 2014 parents are not exempt from background check requirements. These fingerprint background checks include a review of Washington State Patrol criminal records and the national sex offender registry.

WSR 11-22-102
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 2, 2011, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-18-100.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance and 388-484-0006 TANF/SFA time limit extensions, to count months an ineligible parent receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance towards the parent's sixty month TANF/SFA time limit.

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on December 6, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 6, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 22, 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

proposing to count months an ineligible parent receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance towards the parent's sixty-month TANF/SFA time limit.

Reasons Supporting Proposal: These changes are required by sections 1 and 6 of ESSB 5921, Laws of 2011, and are necessary to comply with the department's appropriation for the 2011-2013 biennium, per RCW 34.05.350 as amended by EHB 1248 and as documented in the 2011-2013 TANF/WorkFirst spending plan.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sandy Jsames, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4648.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. The proposed rule is necessary to comply with the department's appropriation for the 2011-2013 biennium, per RCW 34.05.350 as amended by ESSB 1248 and as documented in the 2011-2013 TANF/WorkFirst spending plan.

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 counts months an ineligible parent receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance towards the parent's sixty-month TANF/SFA time limit.

October 24, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-013, filed 11/18/10, effective 12/19/10)

WAC 388-484-0005 There is a five-year (sixty-month) time limit for TANF, SFA and GA-S cash assistance. (1) What is the sixty-month time limit?

(a) You can receive cash assistance for temporary assistance for needy families (TANF), state family assistance (SFA), and general assistance for pregnant women (GA-S) for a lifetime limit of sixty months. The time limit applies to cash assistance provided by any combination of these programs, and whether or not it was received in consecutive months.

(b) If you receive cash assistance for part of the month, it counts as a whole month against the time limit.

(c) If you have received cash assistance from another state on or after August 1, 1997, and it was paid for with federal TANF funds, those months will count against your time limit.

(d) The time limit does not apply to diversion cash assistance, support services, food assistance or medicaid.

(2) When did the sixty-month time limit go into effect?

The sixty-month time limit applies to cash assistance received on or after August 1, 1997 for TANF and SFA. Although the GA-S program no longer exists, the time limit applies to GA-S cash assistance received from May 1, 1999 through July 31, 1999.

(3) Does the time limit apply to me?

The sixty-month time limit applies to you for any month in which you are a parent or other relative as defined in WAC 388-454-0010, or a minor parent emancipated through court order or marriage.

(4) Do any exceptions to the time limits apply to me?

The department does not count months of assistance towards the sixty-month time limit if you are:

(a) An adult caretaker, as described in WAC 388-454-0005 through 388-454-0010, who is not a member of the assistance unit and you are receiving cash assistance on behalf of a child, unless you are an ineligible parent. An ineligible parent is a natural, adoptive or step parent as defined in WAC 388-454-0010 who receives a TANF/SFA grant for his or her child but is ineligible to receive TANF/SFA assistance;

(b) An unemancipated pregnant or parenting minor living in a department approved living arrangement as defined by WAC 388-486-0005; or

(c) An adult and you are living in Indian country, as defined under 18 U.S.C. 1151, or an Alaskan native village and you are receiving TANF, SFA, or GA-S cash assistance during a period when at least fifty percent of the adults living in Indian country or in the village were not employed. See WAC 388-484-0010.

(5) What happens if a member of my assistance unit has received sixty months of TANF, SFA, and GA-S cash benefits?

Once any adult or emancipated minor in the assistance unit has received sixty months of cash assistance, the entire assistance unit becomes ineligible for TANF or SFA cash assistance, unless you qualify for a hardship extension and are eligible for an extended period of cash assistance called a TANF/SFA time limit extension under WAC 388-484-0006.

(6) What happens when an ineligible parent in the home has received sixty months of TANF, SFA, and GA-S cash benefits?

Once an ineligible parent in the home has received sixty months of cash assistance for themselves or their child, the entire assistance unit becomes ineligible for TANF/SFA cash assistance, unless the ineligible parent meets the criteria for a TANF/SFA time limit extension under WAC 388-484-0006.

(7) What can I do if I disagree with how the department has counted my months of cash assistance?

(a) If you disagree with how we counted your months of cash assistance, you may ask for a hearing within ninety days of the date we sent you a letter telling you how many months we are counting.

(b) You will get continued benefits (the amount you were getting before the change) if:

(i) You have used all sixty months of benefits according to our records; and

(ii) You ask for a hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(c) If you get continued benefits and the administrative law judge (ALJ) agrees with our decision, you may have to pay back the continued benefits after the hearing, as described in chapter 388-410 WAC.

~~((7))~~ (8) Does the department ever change the number of months that count against my time limit?

We change the number of months we count in the following situations:

(a) You repay an overpayment for a month where you received benefits but were not eligible for any of the benefits you received. We subtract one month for each month that you completely repay. If you were eligible for some of the benefits you received, we still count that month against your time limit.

(b) We did not close your grant on time when the division of child support (DCS) collected money for you that was over your grant amount two months in a row, as described in WAC 388-422-0030.

(c) An ALJ decides at an administrative hearing that we should change the number of months we count.

(d) You start getting worker's compensation payments from the department of labor and industries (L&I) and your L&I benefits have been reduced by the payments we made to you.

(e) You participated in the excess real property (ERP) program in order to get assistance and we collected the funds when your property sold.

(f) Another state gave us incorrect information about the number of months you got cash assistance from them.

AMENDATORY SECTION (Amending WSR 10-24-013, filed 11/18/10, effective 12/19/10)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

Effective February 1, 2011, you are eligible for a hardship TANF/SFA time limit extension if you are on TANF (~~(or)~~), are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or, if you are an ineligible parent, you are a supplemental security income recipient, a social security disability insurance recipient or meet the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(ii) Are working in unsubsidized employment for thirty-two hours or more per week; or

(iii) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) (~~(D)~~) When I have an individual responsibility plan, do my WorkFirst participation requirements change ((#)) when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

WSR 11-22-103

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 2, 2011, 9:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-08-099 [11-18-099] and 11-17-136.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-436-0002 If my family has an emergency, can I get help from DSHS to get or keep our housing or utilities?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on December 6, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 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 December 6, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 22, 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 amend WAC 388-436-0002 to reduce additional requirements for emergent needs (AREN) issuances from an annual to a lifetime limit, and issue AREN payments directly to registered vendors.

Reasons Supporting Proposal: These changes are necessary to uphold fiscal accountability for the 2012-2013 biennium.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 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 amendments are necessary to comply with mandated budget reductions to maintain program solvency through the 2011-2013 biennium.

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 changes will reduce AREN issuances from an annual to a lifetime limit, and issue AREN payments directly to registered vendors.

October 24, 2011
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-07-023, filed 3/8/04, effective 4/8/04)

WAC 388-436-0002 If my family has an emergency, can I get help from DSHS to get or keep our housing or utilities? DSHS has a program called additional requirements for emergent needs (AREN). If your family has an emergency and you need assistance to get or keep safe housing or utilities, you may be eligible. The special AREN payment is in addition to the regular monthly cash grant your family may already get.

(1) To get AREN, you must:

(a) Be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), or refugee cash assistance (RCA);

(b) Have an emergency housing or utility need; ~~(and)~~

(c) Have a good reason that you do not have enough money to pay your housing or utility costs; and

(d) Have not previously received the AREN maximum lifetime limit of seven hundred fifty dollars. We will count all AREN payments received since 1997 by any adult TANF recipient in your assistance unit when we calculate your lifetime AREN limit.

(2) To get AREN, you must be eligible for TANF, SFA, or RCA. This means you must:

(a) Get benefits through TANF, SFA, or RCA. For RCA you must also be pregnant or have an eligible child; or

(b) Apply for TANF, SFA, and RCA, and meet all eligibility criteria including:

(i) The maximum earned income limit under WAC 388-478-0035;

(ii) The requirement that your unearned income not exceed the grant payment standard;

(iii) The requirement that your countable income as defined under WAC 388-450-0162 must be below the payment standard in WAC 388-478-0020 when you have both earned income and unearned income;

(iv) The resource limits under chapter 388-470 WAC;

(v) The program summary rules for either TANF (WAC 388-400-0005); SFA (WAC 388-400-0010); or RCA (WAC 388-400-0030); and

(vi) The requirement that you must be pregnant or have an eligible child.

(3) If you do not get or do not want to get TANF, SFA or RCA, you cannot get AREN to help with housing or utility costs. We will look to see if you are eligible for diversion cash assistance (DCA) under WAC 388-432-0005.

(4) To get AREN, you must have an emergency housing or utility need. You may get AREN to help pay to:

(a) Prevent eviction or foreclosure;

(b) Get housing if you are homeless or need to leave your home because of domestic violence;

(c) Hook up or prevent a shut off of utilities related to your health and safety. We consider the following utilities to be needed for health and safety:

(i) Electricity or fuel for heating, lighting, or cooking;

(ii) Water;

(iii) Sewer; and

(iv) Basic local telephone service if it is necessary for your basic health and safety. If you receive TANF or SFA, the Washington telephone assistance program (WTAP) may be used to help you pay for basic local telephone service.

(d) Repair damage or defect to your home when it causes a risk to your health or safety:

(i) If you own the home, we may approve AREN for the least expensive method of ending the risk to your health or safety;

(ii) If you do not own the home, you must ask the landlord in writing to fix the damage according to the Residential Landlord-Tenant Act at chapter 59.18 RCW. If the landlord refuses to fix the damage or defect, we may pay for the repair or pay to move you to a different place whichever cost is lower.

(e) If you receive TANF or SFA, WorkFirst support services under WAC 388-310-0800 may be used to help you relocate to new housing to get a job, keep a job, or participate in WorkFirst activities. Nonhousing expenses that are not covered under AREN may be paid under WorkFirst support services. This includes expenses such as car repair, diapers, or clothing.

(5) To get AREN, you must have a good reason for not having enough money to pay for your housing or utility costs. You must prove that you:

(a) Did not have money available that you normally use to pay your rent and utilities due to an emergency situation that reduced your income (such as a long-term illness or injury);

(b) Had to use your money to pay for necessary or emergency expenses. Examples of necessary or emergency expenses include:

- (i) Basic health and safety needs for shelter, food and clothing;
- (ii) Medical care;
- (iii) Dental care needed to get a job or because of pain;
- (iv) Emergency child care;
- (v) Emergency expenses due to a natural disaster, accident, or injury; and
- (vi) Other reasonable and necessary expenses.

(c) Are currently homeless; or

(d) Had your family's cash grant reduced or suspended when we budgeted your expected income for the month, but the income will not be available to pay for the need when the payment is due. You must make attempts to negotiate later payments with your landlord or utility company before you can get AREN.

(6) In addition to having a good reason for not having enough money to pay for your costs, you must also explain how you will afford to pay for the on-going need in the future. We may deny AREN if your expenses exceed your income (if you are living beyond your means). We may approve AREN to help you get into housing you can afford.

(7) If you meet the above requirements, we decide the amount we will pay based on the following criteria.

(a) AREN payments may be made up to a maximum of seven hundred fifty dollars in a ~~((consecutive twelve month period))~~ lifetime.

(b) The number of AREN payments you can receive ~~((in a twelve month period))~~ is not limited, as long as the total amount received by all adults in the assistance unit does not exceed the seven hundred fifty ~~((dollars))~~ dollar lifetime limit. If you or another adult in your assistance unit have already received the lifetime limit, you may not be eligible to receive additional payments.

(c) ~~((The department may approve))~~ We will determine if any adult TANF/SFA recipient living in your household has already received the AREN lifetime limit.

(d) We have the discretion to approve an AREN payment above the seven hundred fifty dollar ~~((maximum for health and safety reasons))~~ lifetime limit when your health and safety are in imminent danger.

~~((e))~~ (e) The amount of AREN is in addition to the amount of your monthly TANF, SFA, or RCA cash grant.

~~((f))~~ (f) We will decide the lowest amount we must pay to end your housing or utility emergency. We will contact your landlord, utility company, or other vendor for information to make this decision. We may take any of the following steps when deciding the lowest amount to pay:

(i) We may ask you to arrange a payment plan with your landlord or utility company. This could include us making a partial payment, and you setting up a plan for you to repay the remaining amount you owe over a period of time.

(ii) We may have you use some of the money you have available in cash, checking, or savings to help pay for the expense. We will look at the money you have available as well as your bills when we decide how much we will pay.

(iii) We may consider income that is excluded or disregarded for cash assistance benefit calculations, such as SSI, as available to meet your emergency housing need.

(iv) We may consider money other individuals such as family or friends voluntarily give you. We will not count loans of money that you must repay to friends or family members.

(v) We may consider money from a nonneedy caretaker relative that lives in the home.

(vi) We may look at what other community resources you currently have to help you with your need.

~~((f))~~ (g) The seven hundred fifty dollar lifetime limit ~~((every twelve months))~~ applies to the following people even if they leave the assistance unit:

- (i) Adults; and
- (ii) Minor parents that get AREN when no adults are in the assistance unit.

(8) We pay AREN ~~((=~~ ~~(a))~~ directly to the landlord, mortgage company, utility, or other vendor ~~((whenever we can))~~.

~~((b) If we cannot pay AREN directly to the landlord or other vendor, we will issue the AREN as a part of your TANF, SFA, or RCA cash grant. If we issue the AREN as a part of your grant, you must use it for your emergency need.))~~

(9) We may assign you a protective payee for your monthly grant under WAC 388-460-0020.

WSR 11-22-104

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed November 2, 2011, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-18-066.

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

Hearing Location(s): Capitol Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98501 (copies of draft rules are available for viewing and printing on our web site at Rules Agenda), on December 6, 2011, at 10:00 a.m.

Date of Intended Adoption: December 13, 2011.

Submit Written Comments to: Mark Bohe, e-mail markbohe@dor.wa.gov, P.O. Box 47453, Olympia, WA 98504-7453, by December 6, 2011.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed WAC 458-40-660 will apply to the first half of 2012.

Further, RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The department proposes to amend the forest land values rule (WAC 458-40-540) to adjust the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2012.

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

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

Statute Being Implemented: RCW 84.33.091 and 84.33.140.

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

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

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #100, Olympia, WA, (360) 534-1300.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mark Bohe, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, e-mail markbohe@dor.wa.gov.

November 2, 2011

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-02-019, filed 12/29/10, effective 1/1/11)

WAC 458-40-540 Forest land values—((2011)) 2012. The forest land values, per acre, for each grade of forest land for the ((2011)) 2012 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2011)) 2012 VALUES ROUNDED
1	1	\$((204)) <u>195</u>
	2	((202)) <u>193</u>
	3	((189)) <u>181</u>
	4	((137)) <u>131</u>
2	1	((171)) <u>164</u>
	2	((166)) <u>159</u>
	3	((159)) <u>152</u>
	4	((114)) <u>109</u>

LAND GRADE	OPERABILITY CLASS	((2011)) 2012 VALUES ROUNDED
3	1	((134)) <u>128</u>
	2	((130)) <u>124</u>
	3	((129)) <u>123</u>
	4	((99)) <u>95</u>
4	1	((103)) <u>99</u>
	2	((100)) <u>96</u>
	3	((99)) <u>95</u>
	4	((75)) <u>72</u>
5	1	((74)) <u>71</u>
	2	((67)) <u>64</u>
	3	((66)) <u>63</u>
	4	((46)) <u>44</u>
6	1	((38)) <u>36</u>
	2	((35)) <u>34</u>
	3	((35)) <u>34</u>
	4	((33)) <u>32</u>
7	1	((17)) <u>16</u>
	2	((17)) <u>16</u>
	3	((16)) <u>15</u>
	4	((16)) <u>15</u>
8	1	1

AMENDATORY SECTION (Amending WSR 11-14-051, filed 6/29/11, effective 7/1/11)

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

(2) Stumpage value tables. The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July)) January 1 through ((December 31, 2011)) June 30, 2012:

((PROPOSED STUMPAGE VALUE TABLE STUMPAGE VALUE AREA 1))
July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽⁴⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$394	\$387	\$380	\$373	\$366
		2	394	387	380	373	366
		3	394	387	380	373	366
		4	394	387	380	373	366
Western-Redcedar ⁽²⁾	RC	1	701	694	687	680	673
Western-Hemlock ⁽³⁾	WH	1	371	364	357	350	343
		2	371	364	357	350	343
		3	371	364	357	350	343

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			4	371	364	357	350
Red Alder	RA	1	419	412	405	398	391
		2	388	381	374	367	360
Black Cottonwood	BC	1	94	87	80	73	66
Other Hardwood	OH	1	210	203	196	189	182
Douglas Fir Poles & Piles	DFL	1	665	658	651	644	637
Western Redcedar Poles	RCL	1	1358	1351	1344	1337	1330
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- ⁽⁴⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽⁵⁾ Includes Alaska Cedar.
- ⁽⁶⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this page.
- ⁽⁷⁾ Stumpage value per ton.
- ⁽⁸⁾ Stumpage value per cord.
- ⁽⁹⁾ Stumpage value per 8 lineal feet or portion thereof.
- ⁽¹⁰⁾ Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 2**
July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			\$425	\$418	\$411	\$404	\$397
Douglas Fir	DF	1	\$425	\$418	\$411	\$404	\$397
		2	425	418	411	404	397
		3	425	418	411	404	397
		4	425	418	411	404	397
Western Redcedar ⁽²⁾	RC	1	701	694	687	680	673
Western Hemlock ⁽²⁾	WH	1	381	374	367	360	353
		2	381	374	367	360	353
		3	381	374	367	360	353
		4	381	374	367	360	353
Red Alder	RA	1	419	412	405	398	391
		2	388	381	374	367	360
Black Cottonwood	BC	1	94	87	80	73	66
Other Hardwood	OH	1	210	203	196	189	182

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			665	658	651	644	637
Douglas Fir Poles & Piles	DFL	1	665	658	651	644	637
Western Redcedar Poles	RCL	1	1358	1351	1344	1337	1330
Chipwood ⁽⁴⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 3**
July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			\$399	\$392	\$385	\$378	\$371
Douglas Fir ⁽²⁾	DF	1	\$399	\$392	\$385	\$378	\$371
		2	399	392	385	378	371
		3	399	392	385	378	371
		4	307	300	293	286	279
Western Redcedar ⁽³⁾	RC	1	701	694	687	680	673
Western Hemlock ⁽⁴⁾	WH	1	334	327	320	313	306
		2	334	327	320	313	306
		3	334	327	320	313	306
		4	334	327	320	313	306
Red Alder	RA	1	419	412	405	398	391
		2	388	381	374	367	360
Black Cottonwood	BC	1	94	87	80	73	66
Other Hardwood	OH	1	210	203	196	189	182
Douglas Fir Poles & Piles	DFL	1	665	658	651	644	637
Western Redcedar Poles	RCL	1	1358	1351	1344	1337	1330
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska cedar.

⁽⁴⁾ Includes all Hemlock, Spruce, true Fir species and Pines, or any other conifer not listed in this page.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska Cedar.

⁽⁴⁾ Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this page.

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 4**

July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$436	\$429
		2	436	429	422	415	408
		3	436	429	422	415	408
		4	436	429	422	415	408
Lodgepole Pine	LP	1	123	116	109	102	95
Ponderosa Pine	PP	1	203	196	189	182	175
		2	147	140	133	126	119
Western Redcedar ⁽³⁾	RC	1	701	694	687	680	673
Western Hemlock ⁽⁴⁾	WH	1	324	317	310	303	296
		2	324	317	310	303	296
		3	324	317	310	303	296
		4	324	317	310	303	296
Red Alder	RA	1	419	412	405	398	391
		2	388	381	374	367	360
Black Cottonwood	BC	1	94	87	80	73	66
Other Hardwood	OH	1	210	203	196	189	182
Douglas-Fir Poles & Piles	DFL	1	665	658	651	644	637
Western Redcedar Poles	RCL	1	1358	1351	1344	1337	1330
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 5**

July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas-Fir ⁽²⁾	DF	1	\$417	\$410
		2	417	410	403	396	389
		3	417	410	403	396	389
		4	417	410	403	396	389
Lodgepole Pine	LP	1	123	116	109	102	95
Ponderosa Pine	PP	1	203	196	189	182	175
		2	147	140	133	126	119
Western Redcedar ⁽³⁾	RC	1	701	694	687	680	673
Western Hemlock ⁽⁴⁾	WH	1	353	346	339	332	325
		2	353	346	339	332	325
		3	353	346	339	332	325
		4	353	346	339	332	325
Red Alder	RA	1	419	412	405	398	391
		2	388	381	374	367	360
Black Cottonwood	BC	1	94	87	80	73	66
Other Hardwood	OH	1	210	203	196	189	182
Douglas-Fir Poles & Piles	DFL	1	665	658	651	644	637
Western Redcedar Poles	RCL	1	1358	1351	1344	1337	1330
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8

PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 5
 July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 6
 July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas Fir ⁽²⁾	DF	1	\$125	\$118
Lodgepole Pine	LP	1	123	116	109	102	95
Ponderosa Pine	PP	1	203	196	189	182	175
		2	147	140	133	126	119
Western Redcedar ⁽³⁾	RC	1	428	421	414	407	400
True Firs and Spruce ⁽⁴⁾	WH	1	123	116	109	102	95
Western White Pine	WP	1	150	143	136	129	122
Hardwoods	OH	1	32	25	18	11	4
Western Redcedar Poles	RCL	1	428	421	414	407	400
Small Logs ⁽⁵⁾	SML	1	18	17	16	15	14
Chipwood ⁽⁵⁾	CHW	1	4	3	2	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.25	0.25	0.25	0.25	0.25

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.25	0.25	0.25	0.25	0.25

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

PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 7
 July 1 through December 31, 2011

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
			Douglas Fir ⁽²⁾	DF	1	\$125	\$118
Lodgepole Pine	LP	1	123	116	109	102	95
Ponderosa Pine	PP	1	203	196	189	182	175
		2	147	140	133	126	119
Western Redcedar ⁽³⁾	RC	1	428	421	414	407	400
True Firs and Spruce ⁽⁴⁾	WH	1	123	116	109	102	95
Western White Pine	WP	1	150	143	136	129	122
Hardwoods	OH	1	32	25	18	11	4
Western Redcedar Poles	RCL	1	428	421	414	407	400
Small Logs ⁽⁵⁾	SML	1	18	17	16	15	14
Chipwood ⁽⁵⁾	CHW	1	4	3	2	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.25	0.25	0.25	0.25	0.25

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 10
July 1 through December 31, 2011**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$422	\$415	\$408	\$401	\$394
		2	422	415	408	401	394
		3	422	415	408	401	394
		4	422	415	408	401	394
Lodgepole Pine	LP	1	123	116	109	102	95
Ponderosa Pine	PP	1	203	196	189	182	175
		2	147	140	133	126	119
Western Redcedar ⁽³⁾	RC	1	687	680	673	666	659
Western Hemlock ⁽⁴⁾	WH	1	310	303	296	289	282
		2	310	303	296	289	282
		3	310	303	296	289	282
		4	310	303	296	289	282
Red Alder	RA	1	405	398	391	384	377
		2	374	367	360	353	346
Black Cottonwood	BC	1	80	73	66	59	52
Other Hardwood	OH	1	196	189	182	175	168
Douglas-Fir Poles & Piles	DFL	1	651	644	637	630	623
Western Redcedar Poles	RCL	1	1344	1337	1330	1323	1316
Chipwood ⁽⁵⁾	CHW	1	12	11	10	9	8
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska Cedar.
- (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed in this page.
- (5) Stumpage value per ton.

- (6) Stumpage value per cord.
- (7) Stumpage value per 8 lineal feet or portion thereof.
- (8) Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 1
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$397	\$390	\$383	\$376	\$369
		2	397	390	383	376	369
		3	397	390	383	376	369
		4	397	390	383	376	369
Western Redcedar ⁽²⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽³⁾	WH	1	423	416	409	402	395
		2	423	416	409	402	395
		3	423	416	409	402	395
		4	423	416	409	402	395
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁴⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 2**

January 1 through June 30, 2012

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$424	\$417	\$410	\$403	\$396
		2	424	417	410	403	396
		3	424	417	410	403	396
		4	424	417	410	403	396
Western Redcedar ⁽²⁾	RC	1	743	736	729	722	715
		2	425	418	411	404	397
		3	425	418	411	404	397
		4	425	418	411	404	397
Western Hemlock ⁽³⁾	WH	1	425	418	411	404	397
		2	425	418	411	404	397
		3	425	418	411	404	397
		4	425	418	411	404	397
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
		2	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁴⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 3**

January 1 through June 30, 2012

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$413	\$406	\$399	\$392	\$385
		2	413	406	399	392	385

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
		3	413	406	399	392	385
		4	413	406	399	392	385
Western Redcedar ⁽³⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽⁴⁾	WH	1	422	415	408	401	394
		2	422	415	408	401	394
		3	422	415	408	401	394
		4	422	415	408	401	394
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁵⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 4**

January 1 through June 30, 2012

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$432	\$425	\$418	\$411	\$404
		2	432	425	418	411	404
		3	432	425	418	411	404
		4	432	425	418	411	404
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽⁴⁾	WH	1	379	372	365	358	351
		2	379	372	365	358	351
		3	379	372	365	358	351
		4	379	372	365	358	351

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁵⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 5
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$405	\$398	\$391	\$384	\$377
		2	405	398	391	384	377
		3	405	398	391	384	377
		4	405	398	391	384	377
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	743	736	729	722	715
Western Hemlock ⁽⁴⁾	WH	1	395	388	381	374	367
		2	395	388	381	374	367
		3	395	388	381	374	367
		4	395	388	381	374	367
Red Alder	RA	1	489	482	475	468	461
		2	489	482	475	468	461
Black Cottonwood	BC	1	97	90	83	76	69
Other Hardwood	OH	1	237	230	223	216	209
Douglas-Fir Poles & Piles	DFL	1	735	728	721	714	707

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Western Redcedar Poles	RCL	1	1326	1319	1312	1305	1298
Chipwood ⁽⁵⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 6
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$140	\$133	\$126	\$119	\$112
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	457	450	443	436	429
True Firs and Spruce ⁽⁴⁾	WH	1	128	121	114	107	100
Western White Pine	WP	1	158	151	144	137	130
Hardwoods	OH	1	86	79	72	65	58
Western Redcedar Poles	RCL	1	457	450	443	436	429
Small Logs ⁽⁵⁾	SML	1	20	19	18	17	16
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

- ⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- ⁽²⁾ Includes Western Larch.
- ⁽³⁾ Includes Alaska-Cedar.

- (4) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (5) Stumpage value per ton.
- (6) Stumpage value per cord.
- (7) Stumpage value per 8 lineal feet or portion thereof.
- (8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- (9) Stumpage value per lineal foot.

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 7
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$140	\$133	\$126	\$119	\$112
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	457	450	443	436	429
True Firs and Spruce ⁽⁴⁾	WH	1	128	121	114	107	100
Western White Pine	WP	1	158	151	144	137	130
Hardwoods	OH	1	86	79	72	65	58
Western Redcedar Poles	RCL	1	457	450	443	436	429
Small Logs ⁽⁵⁾	SML	1	20	19	18	17	16
Chipwood ⁽⁵⁾	CHW	1	10	9	8	7	6
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

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

**PROPOSED STUMPAGE VALUE TABLE
STUMPAGE VALUE AREA 10
January 1 through June 30, 2012**

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$418	\$411	\$404	\$397	\$390
		2	418	411	404	397	390
		3	418	411	404	397	390
		4	418	411	404	397	390
Lodgepole Pine	LP	1	130	123	116	109	102
Ponderosa Pine	PP	1	156	149	142	135	128
		2	156	149	142	135	128
Western Redcedar ⁽³⁾	RC	1	729	722	715	708	701
Western Hemlock ⁽⁴⁾	WH	1	365	358	351	344	337
		2	365	358	351	344	337
		3	365	358	351	344	337
		4	365	358	351	344	337
Red Alder	RA	1	475	468	461	454	447
		2	475	468	461	454	447
Black Cottonwood	BC	1	83	76	69	62	55
Other Hardwood	OH	1	223	216	209	202	195
Douglas-Fir Poles & Piles	DFL	1	721	714	707	700	693
Western Redcedar Poles	RCL	1	1312	1305	1298	1291	1284
Chipwood ⁽⁵⁾	CHW	1	20	19	18	17	16
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	164	157	150	143	136
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

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

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

- (a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.
- (b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.
- (c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment

class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

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

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

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

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

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

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

The following harvest adjustment tables apply from ~~((July)) January 1 through ((December 31, 2011)) June 30, 2012:~~

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10**
~~((July)) January 1 through ((December 31, 2011)) June 30, 2012~~

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

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7**
~~((July)) January 1 through ((December 31, 2011)) June 30, 2012~~

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

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 5, and 10	\$ ((5-00)) <u>12.00</u>
Class 2:	SVA 6 and 7	\$0.00

Note: This adjustment only applies to published MBF sawlog values.

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

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

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

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

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

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

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

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

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

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

WSR 11-22-106
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed November 2, 2011, 10:05 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.03 (Applicability of Registration Program) and adopt Section 5.12 (Registration of Crushing Operations).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on December 15, 2011, at 8:45 a.m.

Date of Intended Adoption: December 15, 2011.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle,

WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by December 14, 2011.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010 by December 8, 2011, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend the Registration program to clarify when and how rock crushing operations must register with this agency.

Reasons Supporting Proposal: Clarify the emission performance requirements for rock crushing operations in the Puget Sound Clean Air Agency jurisdiction and provide a simplified and streamlined manner of administering these requirements.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

November 2, 2011

Craig Kenworthy

Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, and the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, and Subparts WWWW, CCCCC, HHH-HHH, WWWW, XXXXXX, YYYYYY, and ZZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{2.5} or PM₁₀), sulfur oxides (SO_x), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinyl ester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) Crushing operations subject to Section 9.18 (~~Reserved~~); or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥4" diameter inlet):

(A) Activated carbon adsorption;

(B) Afterburner;

(C) Barometric condenser;

(D) Biofilter;

(E) Catalytic afterburner;

(F) Catalytic oxidizer;

(G) Chemical oxidation;

(H) Condenser;

(I) Dry sorbent injection;

(J) Flaring;

(K) Non-selective catalytic reduction;

(L) Refrigerated condenser;

(M) Selective catalytic reduction; or

(N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥10" diameter inlet):

(A) Baghouse;

(B) Demister;

(C) Electrostatic precipitator;

(D) HEPA (high efficiency particulate air) filter;

(E) HVAF (high velocity air filter);

(F) Mat or panel filter;

(G) Mist eliminator;

(H) Multiple cyclones;

(I) Rotoclone;

(J) Screen;

(K) Venturi scrubber;

(L) Water curtain; or

(M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥27" diameter inlet);

(8) Sources with any of the following equipment:

(A) Asphalt batch plants;

(B) Burn-off ovens;

(C) Coffee roasters;

(D) Commercial composting with raw materials from off-site;

(E) Commercial smokehouses with odor control equipment;

(F) Concrete batch plants (ready-mix concrete);

(G) Galvanizing;

(H) Iron or steel foundries;

(I) Microchip or printed circuit board manufacturing;

(J) Rendering plants;

(K) Rock crushers or concrete crushers;

(L) Sewage treatment plants with odor control equipment;

(M) Shipyards;

(N) Steel mills;

(O) Wood preserving lines or retorts; or

(P) Dry cleaners using perchloroethylene; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

(1) Motor vehicles;

(2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;

(3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contam-

inants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

NEW SECTION

REGULATION I, SECTION 5.12 REGISTRATION OF CRUSHING OPERATIONS

(a) Applicability - This section applies to all crushing operations subject to registration under Section 5.03 of this regulation. Every site which has crushing equipment installed for operation shall be registered with this Agency prior to any crushing operation.

(b) Initial Registration

(1) New crushing operations shall be registered with this agency prior to operation commencing through submittal of the crushing operation information specified on registration forms provided by the agency. All information on the registration form shall be provided as specified. Incomplete registration form submittals will not be acceptable to create an active registration.

(2) Registration is not completed until all fees due are paid, as identified in Section 5.12 (c)(3) of this regulation.

(c) Fees

(1) Registration fees for crushing operations shall be assessed as identified in Section 5.07 of this regulation.

(A) Registered crushing operations may maintain registration through payment of the annual invoices sent to actively registered sources.

(B) Initial registration of a crushing operation shall be subject to the fees identified in Section 5.07 of this regulation. There is no proration of fees for registration of crushing operations that are less than a full year. Registration fees in Section 5.07 (and as identified on the forms provided by the Agency) shall be submitted with the initial registration. Inapplicable federal emission standard fees identified in Section 5.07 (c)(1) of this regulation will be refunded, as determined through review of the registration submittal.

(2) Unregistered crushing operations at a site are subject to the penalty provisions identified in Section 5.07(b).

(d) Operational Information - The owner or operation of a crushing operation shall maintain records of sites and dates crushing occurred in this Agency's jurisdiction. All records must be current, retained for at least 2 years, and available to Agency representatives upon request.

WSR 11-22-108 PROPOSED RULES PUGET SOUND CLEAN AIR AGENCY

[Filed November 2, 2011, 10:06 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 6.03 (Notice of Construction).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on December 15, 2011, at 8:45 a.m.

Date of Intended Adoption: December 15, 2011.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by December 14, 2011.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by December 8, 2011, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend the Notice of Construction (NOC) program to exempt rock crushing operations from preconstruction review.

Reasons Supporting Proposal: Clarify the emission performance requirements for rock crushing operations in the Puget Sound Clean Air Agency jurisdiction and provide a simplified and streamlined manner of administering these requirements.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

November 2, 2011

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has

been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), Subpart OOO (Nonmetallic Mineral Processing Plants), and Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) ~~((and Subpart OOO (Nonmetallic Mineral Processing Plants)))~~ for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicommercial Pulp Mills) pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCC (Gasoline Dispensing Facilities), Subpart HHHHH (Paint Stripping and Miscellaneous Surface Coating Operations), Subpart WWW-WWW (Plating and Polishing Operations), Subpart XXXXXX (Nine Metal Fabrication and Finishing Source Categories), Subpart YYYYYY (Ferroalloys Production Facilities), and Subpart ZZZZZZ (Aluminum, Copper, and Other Nonferrous Foundries);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the new sources identified in this section, provided that a complete notification is filed with the Agency. It shall be unlawful for any per-

son to cause or allow establishment of a new source identified in this section unless a complete notification has been filed with the Agency:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline dispensing and having a rated capacity of $\geq 1,001$ gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity $\geq 40,000$ gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, ~~((rock (or concrete) crushers.))~~ and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers to recover the cleaning solvent.

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with $\leq 6\%$ VOC by volume or $\leq 8.5\%$ if refrigerated to $< 60^\circ\text{F}$, and cleaning solvents with a vapor pressure $\leq 25\text{mm Hg}$ or a VOC content $\leq 30\%$ by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for reverse-air or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for mechanical or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

(9) Replacement of an existing paint spray booth that has previously received an Order of Approval, with like kind

equipment and for spray coating operations that continue to operate consistent with the previously issued Order of Approval. *All the conditions in the previously issued Order of Approval remain in effect.*

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) <10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane, biodiesel that meets ASTM D 6751 specifications (or any combination thereof);

(B) <0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) <1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) <50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated <500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89 and land-based nonroad compression engines subject to 40 CFR Part 1039.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity $\leq 1,000$ pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing >50% aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤ 450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity $\leq 1,000$ pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, siliconizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment and oxygen/gaseous fuel cutting equipment.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ≤ 50 grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or $\leq 12\%$ hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of $\leq 20\%$ by weight and using $\leq 10,000$ amp-hours per day, or phosphoric acid anodizing with a bath concentration of $\leq 15\%$ by weight of phosphoric acid and using $\leq 20,000$ amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enam-

eling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites. This exemption also applies to laser cutting, drilling, and machining of metals.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of $< 2,000$ cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloro-ethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons; or

(E) Using solutions with a Volatile Organic Compound (VOC) content of $\leq 1\%$ by weight and no identified Hazardous Air Pollutant (HAP), and are heated below the boiling point of the solution.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement strippers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED THAT it is not used to coat > 9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating and hand-held brush and rollers for coating application.

(60) Spray-coating equipment used exclusively for application of automotive undercoating or bed liner materials with a flash point $>100^\circ$ F.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing $<1\%$ VOC by weight and $<0.1\%$ HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (<1.5 lbs VOC per gallon, excluding water, or $<10\%$ VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, hot mix asphalt plants, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity $<20,000$ gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure <2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity $<40,000$ gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure <0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68° F; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity <60 gallons, except equipment transferring $>1,000$ gallons per day of liquid with a true vapor pressure >0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains $<1\%$ VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains $<1\%$ VOC by weight.

(88) Batch mixers with a rated working capacity ≤ 55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts $\geq 90\%$ of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving <15 pounds per year of benzene or vinyl chloride, <500 pounds per year of perchloroethylene, and <1,000 pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbeque units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products <10,000 pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package <1,000 tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate <1,000 tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle <1,000 tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing <3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable nonmetallic mineral processing plants (~~((sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤150 tons per hour))~~).

(113) Fixed nonmetallic mineral processing plants (~~((sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers ≤25 tons per hour))~~).

(114) (Reserved) (~~((Common clay plants and pumice plants with a cumulative rated capacity of all initial crushers of ≤10 tons per hour))~~).

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

(132) Laboratory testing and quality assurance/control testing equipment used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤ 2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

WSR 11-22-109

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed November 2, 2011, 10:06 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Adopt Regulation I, Section 9.18 (Crushing Operations).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on December 15, 2011, at 8:45 a.m.

Date of Intended Adoption: December 15, 2011.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle,

WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by December 14, 2011.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by December 8, 2011, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provide emission performance standards that apply to all rock crushing operations.

Reasons Supporting Proposal: Clarify the emission performance requirements for rock crushing operations in the Puget Sound Clean Air Agency jurisdiction and provide a simplified and streamlined manner of administering these requirements.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

November 2, 2011

Craig Kenworthy

Executive Director

NEW SECTION

REGULATION I, SECTION 9.18 CRUSHING OPERATIONS

(a) This section shall apply to all equipment processing nonmetallic minerals located at a source crushing nonmetallic minerals as defined in 40 CFR 60.671.

(b) General Requirements. It shall be unlawful for any person subject to the provisions of this section to cause or allow the emission of any air contaminant in excess of the following emission limits:

(1) The visible emission limits in (A), (B), and (C) are applicable for any period or periods aggregating more than 3 minutes in any one hour.

(A) Each grinding mill, screening operation, bucket elevator, transfer points on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station equipped with an operating water spray control equipment shall not exhibit greater than 7 percent opacity.

(B) Each crusher equipped with operating water spray control equipment shall not exhibit greater than 12 percent opacity.

(C) Each crusher, grinding mill, screening operation, bucket elevator, transfer points on belt conveyors, bagging

operation, storage bin, enclosed truck or railcar loading station exhausting particulate through a stack equipped with an operating fabric filter or operating wet scrubber exhaust shall not exhibit greater than 7 percent opacity.

(2) Each crusher, grinding mill, screening operation, bucket elevator, transfer points on belt conveyors, bagging operation, storage bin, enclosed truck or railcar loading station exhausting particulate through a stack shall meet a particulate matter limit of 0.01 grains per dry standard cubic foot of exhaust.

(3) Each crusher, grinding mill, screening operation, bucket elevator, transfer point on a conveyor belt, bagging operation, storage bin, enclosed truck or railcar loading station not equipped with operating control equipment (either water sprays, fabric filter, or wet scrubber) shall not exhibit visible emissions.

(4) For the purpose of determining compliance with Section 9.18 (b)(1)(A) and Section 9.18 (b)(3), transfer points on belt conveyors shall be considered equipped with operating water sprays if the nearest upstream crusher, grinding mill, screening operation, bucket elevator, transfer point on a conveyor belt, or storage bin, is equipped with properly operating water spray control equipment.

(c) Testing conducted to verify compliance with the requirements of this section shall be performed in accordance with the Puget Sound Clean Air Agency Regulation I, Section 3.07.

(d) Compliance with Other Regulations. Compliance with this regulation does not exempt any person from compliance with Regulation I, Sections 9.03, 9.11, 9.15 and all other applicable regulations including those of other agencies.

WSR 11-22-111
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed November 2, 2011, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-20-121.

Title of Rule and Other Identifying Information: Chapter 308-87 WAC, Limousine carrier businesses, to be replaced by new chapter 308-83 WAC, Limousine services.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501, on December 16, 2011, at 9:00 a.m.

Date of Intended Adoption: December 20, 2011.

Submit Written Comments to: James Dick, Department of Licensing, P.O. Box 1098, Olympia, WA 98507-1098, e-mail jdick@dol.wa.gov, fax (360) 570-7053, by December 14, 2011.

Assistance for Persons with Disabilities: Contact Margaret Vogeli by December 8, 2011, TTY (360) 664-0116 or (360) 664-1529.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal chapter 308-87 WAC and replace with new set of rules, chapter 308-83 WAC, to implement chapter 374, 2011 session law which becomes effective January 1, 2012.

State law requires the department of licensing to set standards in rule for regulating limousine services. The new rules define prearrangement and operational status, determine requirements for increased recordkeeping, set up examination and record-keeping processes for certifying chauffeurs, indicate the acceptable form and format for chauffeur and carrier records, define vehicle inspection standards, increase licensing fees, and add detail to licensing procedures and insurance requirements.

Reasons Supporting Proposal: Limousine laws require the department to regulate limousine services. New legislation, effective January 1, 2012, requires the department to establish additional, specific standards in rule. New chapter 308-83 WAC adds clarity to limousine law and fulfills legislative mandates to adopt rules required by chapter 374, 2011 session law.

Statutory Authority for Adoption: Chapter 374, Laws of 2011 (session law); chapters 46.72A, 46.04 RCW, RCW 43.24.086.

Statute Being Implemented: Chapter 374, Laws of 2011 (session law).

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

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

Name of Agency Personnel Responsible for Drafting: James Dick, Department of Licensing, Olympia, Washington, (360) 664-0213; Implementation and Enforcement: Harumi Tolbert, Department of Licensing, Olympia, Washington, (360) 664-1389.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department of licensing is not a named agency in RCW 34.05.0328 [34.05-328] (5)(a)(i).

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from the provisions of this law.

November 2, 2011

Nancy Skewis

Senior Administrator

Business and Professions Division

Chapter 308-83 WAC

LIMOUSINE SERVICES

PART 1
DEFINITIONS AND FEES

NEW SECTION

WAC 308-83-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and chapter 46.72A RCW.

(1) "Amenities" means equipment or features added to a vehicle for the comfort or convenience of the occupants:

(a) "Standard amenities" means standard factory amenities normally found in passenger cars;

(b) "Nonstandard amenities" means amenities not normally found in passenger cars. These amenities may include,

but are not limited to, a television, musical sound system, telephone, ice storage, refrigerator, power-operated dividers, or additional interior lighting.

(2) "Business license" means the license issued under chapter 19.02 RCW.

(3) "Business licensing service" means the program within the Washington state department of revenue authorized by chapter 19.02 RCW to issue the business license.

(4) "Business office" refers to a physical location where business records, such as a dispatch log are kept. The business office is the physical address on file with the business licensing service. The business office is the place where the business license is posted.

(5) "Business owner" means an individual, partnership, corporation, association, or other person(s), or group that holds a substantial interest in a limousine carrier business.

(6) "Chauffeur" means any person with a valid Washington state driver license, certified to drive a limousine under chapter 46.72A RCW and WAC 308-83-145. Chauffeur regulations and requirements apply to the business owner whenever the owner assumes the duties of a chauffeur.

(7) "Decal" means a sticker issued by the department to indicate the vehicle displaying the decal has a valid limousine license.

(8) "Department" means the Washington state department of licensing.

(9) "Dispatch log" refers to the record of passenger assignments kept at a limousine office. It includes all information from the passenger manifest, as well as the time each ride was arranged, passenger and carrier phone numbers used to make the arrangement, limousine, and the chauffeur assigned to the customer. The dispatch log also documents passenger assignments referred by or to other drivers or businesses.

(10) "Disqualification" means a prohibition against driving a limousine.

(11) "Drugs" are those substances as defined by RCW 69.04.009 including, but not limited to, those substances defined by 49 CFR 40.3.

(12) "Limousine" has the same meaning as in RCW 46.04.274 and includes vehicles that meet one of the following definitions:

(a) "Stretch limousine" means an automobile with a seating capacity of not less than four passengers and not more than fourteen passengers behind the driver, and a maximum wheelbase of two hundred eighty-five inches. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch limousine must be equipped with nonstandard amenities in the rear seating area.

(b) "Executive sedan" means a four-door sedan or crossover automobile having a seating capacity of not more than three passengers behind the driver and a minimum wheelbase of one hundred fourteen and one-half inches. An executive sedan must at a minimum be equipped with standard amenities, and the wheelbase may not be altered.

(c) "Executive van" means a van or minivan, having a seating capacity of not less than seven passengers and not more than fourteen passengers behind the driver.

(d) "Classic car" means a fine or distinctive, American or foreign automobile that is thirty years old or older.

(e) "Executive sport utility vehicle" means an automobile with a seating capacity of not less than three passengers and not more than six passengers behind the driver, and a minimum wheelbase of one hundred sixteen inches that has not been altered.

(f) "Stretch sport utility vehicle" means an automobile with a seating capacity of not less than four and not more than fourteen passengers behind the driver and a maximum wheelbase of three hundred twenty-five inches that has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch sport utility vehicle must be equipped with nonstandard amenities in the rear seating area.

(13) "Limousine carrier" or "carrier" is a business providing, or licensed by the department to provide limousine services, in accordance with RCW 46.04.276 and department regulations.

(14) "Nonresident" refers to a limousine carrier or vehicle owner whose place of business is not in Washington state, and does not have a valid Washington state limousine carrier license.

(15) "Operate" refers to a person engaging in the business of a limousine and includes driving, occupying, or otherwise using a limousine to wait for, pick up, transport, or drop off a passenger for compensation. Specific activities included in the definition of operating a limousine are contained in WAC 308-83-210.

(16) "Passenger capacity" means the maximum number of passengers that may be carried in a vehicle as determined by using the information found on the label that is required by the United States Department of Transportation to be affixed to the vehicle under 49 CFR, parts 567 and 568. This label must be affixed to the vehicle in accordance to 49 CFR, parts 567 and 568. In absence of the label, a member of the Washington state patrol or the department may determine the passenger capacity upon visual inspection of the vehicle.

(17) "Passenger manifest" refers to a daily record that verifies prearranged trips. Specific requirements for the passenger manifest are contained in WAC 308-83-200.

(18) "Person" or "persons" means an individual, a corporation, association, sole proprietorship, joint stock association, partnership, limited liability partnership, limited liability company, or other association of people organized to conduct business. It also includes their lessees, trustees, or receivers.

(19) "Prearranged" refers to a customer or customer's agent having secured and agreed to the services and fare. Prearranged means the agreement was made prior to the time of departure and at a place different than the place of departure.

(20) "Public highway" includes every public street, road, or highway in this state.

(21) "Solicit" means offering a limousine service to a person.

(22) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, train-

ing, and continuing education requirements of 49 CFR 40.281.

(23) "Unified business identifier" or "UBI" is a nine digit number that registers a business with several state agencies and allows an entity to do business in Washington state. It is sometimes called a tax registration number, a business registration number, or a business license number.

(24) "Vehicle certificate" is a document issued by the department, indicating that the vehicle is registered as a limousine. The vehicle certificate must be carried in the limousine at all times. The vehicle certificate is not the vehicle registration document.

NEW SECTION

WAC 308-83-020 Fees. (1) The limousine fees authorized in chapter 46.72A RCW are:

Limousine carrier business license application	\$350.00
Limousine carrier business license renewal	350.00
Vehicle certificate	75.00
Vehicle certificate renewal	75.00
Change of vehicle certificate	20.00
Duplicate vehicle certificate	20.00
Training course application	25.00

(2) Applications and renewals submitted to the business licensing service must also include the fees authorized in RCW 19.02.075 and 19.02.085.

**PART 2
CARRIERS**

NEW SECTION

WAC 308-83-100 License. (1) Applicants for a limousine carrier business license must apply through business licensing service. The department will issue a limousine carrier license only to a person who meets the requirements established in chapter 46.72A RCW and this chapter.

(2) All applications for a limousine carrier license must be on a business license application, and include the appropriate addendum form, chauffeur certification addendum, vehicle registration, vehicle inspection report and insurance documents. The application must be accompanied by the appropriate filing fee, as listed in WAC 308-83-020 and RCW 19.02.075.

(3) A limousine carrier license may not be leased, assigned, or otherwise transferred.

(4) The limousine carrier license must be renewed annually. The department will charge additional fees when the carrier license is renewed after the expiration date, as provided under RCW 19.02.085.

(5) A limousine carrier must have a valid limousine license before it can advertise, sell, or provide limousine services.

(6) A limousine carrier conducting business under a name other than the owner's full legal name must register its business name as a trade name with business licensing ser-

vice and pay the fees as required under WAC 308-300-230 and 308-300-280.

(7) The limousine carrier business license must be posted in a conspicuous place at the business office.

NEW SECTION

WAC 308-83-105 Nonresident. Nonresident business owners are subject to the same requirements and restrictions that apply to resident limousine carriers. Nonresident owners may not pick up passengers in Washington state without a valid Washington state limousine license and Washington state vehicle certificate. The department will accept nonresident insurance certificates, provided the insurance company is approved by the Washington state office of the insurance commissioner. The coverage must be valid in the state of Washington and meet, at least, the levels established in WAC 308-83-115.

NEW SECTION

WAC 308-83-110 Vehicle certificate and reports. (1) A limousine carrier must obtain a vehicle certificate for each vehicle to be operated as a limousine. An application for a new vehicle certificate must include a copy of the vehicle registration. All applications for new vehicle certificates and vehicle certificate renewals must also include:

- (a) A valid certificate of insurance issued in the exact name of the legal entity that appears or will appear on the business license;
- (b) A current vehicle inspection report no older than four months; and
- (c) The fees specified in WAC 308-83-020 and 204-95-030.

(2) The department will issue the vehicle certificate in the name of the limousine carrier. The department may allow continued operation of a limousine for up to sixty days if there is a minor error (for example, misspelling) in the vehicle registration, to allow time for the department to correct the registration document.

(3) Each limousine must display a decal permanently affixed to the back of the vehicle. The decal must be located to the left of the rear license plate, easily observable, and within twelve inches of the plate. The decal must not be affixed to the license plate or a light. The carrier must remove the decal upon the transfer of vehicle ownership, or the termination of the limousine vehicle certificate.

(4) The vehicle registration must have the use class recorded as "F/H."

(5) Vehicle certificates are renewed annually on or before the expiration date. Failure to renew prior to the expiration date may result in penalty fees as provided by chapter 19.02 RCW. A limousine with an expired vehicle certificate may not continue to operate as a limousine.

(6) A request to add a new vehicle, and procure a new vehicle certificate, must be made in writing to the business license service and include the fee as specified in WAC 308-83-020.

(7) A request for a duplicate vehicle certificate may be made by contacting the department. A fee as specified in

WAC 308-83-020 will be charged for duplicate vehicle certificates.

(8) A copy of the vehicle certificate must be carried in the vehicle at all times and must be displayed on request to any law enforcement officer or department representative.

(9) All limousine carriers must:

(a) Within one business day following a traffic collision involving a limousine, report the collision to the department's regulatory office if an accident report is required or was made under the provisions of RCW 46.52.030. Before a limousine involved in a collision may return to service, the business owner must forward to the department a new vehicle inspection report that was performed after the collision. This inspection may be performed by the Washington state patrol or other agency authorized by chapter 46.72A RCW to perform limousine inspections. Alternatively, the department may accept a structural inspection by an ASE Certified Master Collision Repair Technician. The department will not accept an ASE inspection for the initial or annual limousine inspection required under WAC 308-83-120.

(b) Report to the department within ten calendar days when any limousine that has been issued a vehicle certificate is taken out of service.

NEW SECTION

WAC 308-83-115 Insurance. (1) Limousine carriers are required to maintain liability and property damage insurance for each vehicle used by their company as noted below:

Type of Coverage	Minimum Coverage Amount
Combined single limit for bodily injury liability and property damage for one accident	\$1,050,000.00

(2) The certificate of insurance shall include the:

(a) Limousine carrier as the insured in the same manner as does or will appear on the business license;

(b) Effective and expiration dates of coverage;

(c) Name of the insurer;

(d) Name of producer;

(e) Coverage and limits;

(f) Thirty-day department notification clause;

(g) Department as certificate holder;

(h) Policy number; and

(i) Year, make, model, and vehicle identification number (VIN) of each vehicle.

(3) The insurance policy may not:

(a) Contain a deductible clause for any amount deductible, unless the policy clearly states that all claims under the policy will be paid by the insurer directly to the claimant, in full and including the deductible amount;

(b) Contain a clause restricting the insured's age in regard to insurance validity; or

(c) Be a "surplus line" policy, as determined by the office of the insurance commissioner and as described in RCW 48.15.040.

(4) In the event of cancellation of the coverage noted on the policy, the insuring company shall notify the department's limousine regulatory office not less than thirty days prior to the cancellation date.

(5) All liability and property damage insurance policies issued to limousine carrier businesses shall carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(6) A copy of the certificate of insurance must be carried in the vehicle at all times.

NEW SECTION

WAC 308-83-120 Vehicle inspections. The vehicle inspection report must certify that the vehicle meets the following standards:

(1) The legal definition of a limousine, as defined in WAC 308-83-010; and

(2) The standards and criteria set by the Washington state patrol for vehicle inspections, as established under chapter 204-95 WAC.

NEW SECTION

WAC 308-83-125 Leased vehicles. (1) Prior to using a leased or rented limousine, the lessee must provide the department with a release-of-interest letter from the lessor.

(2) A leased or rented vehicle must meet all of the requirements for a limousine vehicle certificate, as described in this chapter, with the following exception: A rental of less than thirty calendar days may be approved by the department without completion of the required vehicle inspection. For rentals of thirty calendar days or less, the department will consider documentation of an inspection and maintenance history for the past year, affirming that the limousine, at a minimum, meets the same limousine inspection standards and requirements set by the Washington state patrol. The short-term certificate may be used for any thirty-day period during the following four months, or upon expiration of the carrier's limousine license, whichever is shorter.

NEW SECTION

WAC 308-83-130 Records. (1) Each limousine carrier business must maintain business records, which must include, at a minimum:

(a) Vehicle inspection reports;

(b) Vehicle ownership registration records, including copies of records required for rental or leased vehicles;

(c) The certificate of vehicle insurance;

(d) Chauffeur records, as identified in WAC 308-83-140;

(e) Records of advertising activities including, but not limited to, any contracts entered into with companies that provide advertising services;

(f) Passenger manifests;

(g) Dispatch logs;

(h) Contracts for related services;

(i) Customer payment records;

(j) Vehicle maintenance records;

(k) Collision and injury reports; and

(1) Written customer comments or complaints received by the business, and responses to the complaints.

(2) A limousine carrier business must maintain records required under this section for at least three years from the date they are created or from the date they become obsolete, whichever date is later, with the exception of subsections (1)(f) and (g). Subsections (1)(f) and (g) must be maintained for at least one year from the date they are created.

(3) Upon the sale or transfer of a limousine carrier business, the business records must be transferred to the new owner and become the property and responsibility of the new owner. The new owner must retain these records for at least one year after sale or transfer.

(4) Records must be available for inspection by department representatives or enforcement officers at all business offices, including contracted business offices or services such as central or contracted dispatchers.

NEW SECTION

WAC 308-83-135 Audit of carrier records. (1) The department may request a carrier to provide records required by chapter 46.72A RCW and this chapter for department inspection for the purpose of determining compliance with this chapter.

(a) The department may request the business owner send copies of records to the department within fourteen calendar days of the request; or

(b) A department representative may examine the records at the carrier's business office on record with the department, or at a mutually agreed upon location. The records will be examined at a mutually agreed upon date and time that is within three business days of the department's request.

(2) Failure to provide requested records to the department shall be subject to administrative action under chapter 18.235 RCW.

NEW SECTION

WAC 308-83-140 Verifying chauffeur qualifications.

(1) A limousine carrier must obtain the information listed below and required under RCW 46.72A.090 for each of its chauffeurs. Additional documentation will be required for all chauffeurs six months after the effective date of these rules.

(2) The documentation for each chauffeur must include:

(a) A clear photocopy of both front and back of the chauffeur's valid Washington state driver license;

(b) A certificate of completed chauffeur training signed by a training provider approved by the department;

(c) Test scores for both the written and driving portions of the chauffeur training certified by the training provider;

(d) The results of a criminal background check obtained through the Washington state patrol. Six months after the effective date of this section, a criminal background check must be obtained from the Washington state patrol using the chauffeur's fingerprints for identification.

(e) A medical certificate, from a licensed physician, validating the chauffeur's fitness to drive a limousine, using department examination criteria on a two-year renewal cycle. Six months after the effective date of this rule, the medical

certificate must be a U.S. Department of Transportation Medical Examiner's Certificate completed within the previous ninety calendar days by an examiner meeting the U.S. Department of Transportation standards under 49 CFR 391.41-391.49. For chauffeurs with an approved medical examination on file, this requirement will be effective at the time of renewal, in accordance with a two-year renewal cycle.

(f) An Abstract of Complete Driving Record issued by the department within the previous sixty days. If the chauffeur has resided in another state within the past five years, the chauffeur must also provide a complete driving record from the previous state(s) of residence.

(g) Six months after the effective date of this rule, documentation must include a drug test report obtained within the previous ninety days from a facility meeting the U.S. Department of Transportation standards under 49 CFR 40;

(h) Six months after the effective date of this rule, documentation must include a report or certificate from a drug testing facility meeting the U.S. Department of Transportation standards under 49 CFR 382.305 stating that the chauffeur is participating in a random testing program. The carrier must obtain an updated report each year before recertifying the chauffeur with the annual license renewal application under WAC 308-83-145(2).

NEW SECTION

WAC 308-83-145 Certifying chauffeur qualifications. (1) Any person who is hired, assumes the duties of, or acts as a chauffeur either full-time, part-time, or in an intermittent hire capacity in Washington state, including a business owner, must meet the criteria listed in RCW 46.72A.-090.

(2) Before a chauffeur operates a limousine, the limousine carrier must submit to the business licensing service a signed statement on a form provided by the department certifying that the carrier possesses the required documentation under WAC 308-83-140. The carrier must also submit a copy of both the front and back of the chauffeur's valid Washington state driver license. With each annual carrier business renewal application, the limousine carrier must submit to the business license service an updated chauffeur certification statement listing each chauffeur employed by or driving for the carrier.

(3) Failure to submit a chauffeur's name and required identification on the certification statement form will result in the removal of a chauffeur from the carrier's limousine license record.

(4) No limousine carrier may allow, permit, or authorize a driver to drive a limousine motor vehicle during any period:

(a) In which the carrier does not have the required proof of all items under WAC 308-83-140;

(b) In which the chauffeur has a driver license suspended, revoked, or canceled by the state, has lost the privilege to drive a limousine in this state, or has been disqualified from driving a limousine; or

(c) In which the chauffeur has more than one driver license.

NEW SECTION

WAC 308-83-150 Disqualification of chauffeurs. As provided under RCW 46.72A.100, a person may be disqualified from driving as a chauffeur and the director may impose any of the sanctions specified in RCW 18.235.110 on the limousine carrier if the carrier employs someone whose documentation indicates that person is not qualified. Disqualification by the limousine carrier or the department is warranted if any of the following is true:

(1) A chauffeur fails to provide proof of meeting all of the criteria in RCW 46.72A.090 in the form and format described in WAC 308-83-140;

(2) A chauffeur is convicted of, or is found to have committed in the previous five years a serious traffic violation, as defined under RCW 46.25.010(1) and WAC 308-100-130, while driving a motor vehicle of any kind;

(3) The criminal background check reveals that the chauffeur has had, within the previous five years, a conviction of a crime pertaining to:

(a) Prostitution;

(b) Gambling;

(c) Physical violence;

(d) Use of a machine gun in a felony (RCW 9.41.225);

(e) Felonies not defined by Title 9A RCW, if the maximum sentence of imprisonment authorized by law upon the first conviction of such felony is twenty years or more (RCW 9.94A.035);

(f) Criminal attempt when the crime attempted is murder in the first, murder in the second, or arson in the first (RCW 9A.28.020);

(g) Criminal conspiracy when the object of the conspiratorial agreement is murder in the first (RCW 9A.28.040);

(h) Murder in the first (RCW 9A.32.030);

(i) Murder in the second (RCW 9A.32.050);

(j) Homicide by abuse (RCW 9A.32.055);

(k) Manslaughter in the first (RCW 9A.32.060);

(l) Assault in the first (RCW 9A.36.011);

(m) Assault of a child in the first (RCW 9A.36.120);

(n) Kidnapping in the first (RCW 9A.40.020);

(o) Rape in the first (RCW 9A.44.040);

(p) Rape in the second (RCW 9A.44.050);

(q) Rape of a child in the first (RCW 9A.44.073);

(r) Rape of a child in the second (RCW 9A.44.076);

(s) Child molestation in the first (RCW 9A.44.083);

(t) Arson in the first (RCW 9A.48.020);

(u) Burglary in the first (RCW 9A.52.020);

(v) Robbery in the first (RCW 9A.56.200);

(w) Rendering criminal assistance in the first if to a person who has committed or is being sought for murder in the first or any class A felony or equivalent juvenile offense (RCW 9A.76.070);

(x) Bail jumping if the person was held for, charged with, or convicted of murder in the first (RCW 9A.76.170);

(y) Leading organized crime as defined under RCW 9A.82.060 (1)(a);

(z) Malicious placement of an explosive in the first (RCW 70.74.270);

(aa) Malicious explosion of a substance in the first (RCW 70.74.280);

(bb) Malicious explosion of a substance in the second (RCW 70.74.280);

(cc) Homicide by watercraft (RCW 79A.60.050); or

(dd) Any crime directly related to the occupation of chauffeur, including: Crimes concerning honesty and integrity including, but not limited to, fraud, larceny, burglary, and extortion.

(4) A chauffeur is a registered sex offender;

(5) A chauffeur has been found to have exhibited past conduct in driving or operating a limousine that would lead the director to reasonably conclude that the applicant will not comply with the provisions of the chapter related to driver and operator conduct and the safe operation of the vehicle;

(6) The medical examiner's certificate is expired or is incomplete or the chauffeur's physical fitness has been called into question; or

(7) A report has been received by the department under RCW 46.72A.090 that the chauffeur has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 CFR 40. A report that a chauffeur has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 CFR 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this section.

NEW SECTION**WAC 308-83-151 Restoration after disqualification.**

(1) The limousine carrier must contact the department to request reinstatement of a disqualified chauffeur.

(2) A disqualification under WAC 308-83-150(7) remains in effect until the person undergoes a drug and alcohol assessment by a substance abuse professional meeting the requirements of 49 CFR 40, and the person presents evidence of satisfactory participation in or successful completion of a drug or alcohol treatment or education program as recommended by the substance abuse professional, and until the person has met the requirements of RCW 46.72A.090. The substance abuse professional must forward a diagnostic evaluation and treatment recommendation to the department for use in determining the person's eligibility for driving a limousine.

(3) When a chauffeur has been disqualified from operating a limousine based on a medical report under WAC 308-83-150(6), the person is not entitled to operate a limousine until the limousine carrier has received a medical examiner's certificate completed within the previous ninety days by an examiner meeting the U.S. Department of Transportation standards under 49 CFR 391.41-391.49. If at any time the chauffeur's physical fitness has been called into question, the department may require the person to undergo an additional physical medical examination.

(4) All costs associated with compliance with orders issued under this section are the responsibility of the chauffeur.

NEW SECTION

WAC 308-83-155 Reporting chauffeur fitness. All business owners must:

(1) Report to the department any driving or traffic-related incidents involving a chauffeur associated with the business. The notification must be received in writing within five business days of the incident and must include:

- (a) The chauffeur's name and driver license number;
- (b) The carrier's name, UBI number, and phone number.

(2) When available, all limousine business owners must also provide to the department notification in writing of any:

- (a) Conviction for a traffic violation; and
- (b) Suspension, revocation, cancellation, or denial of driving privileges.

(3) If a limousine carrier knows that a limousine driver in his or her employ has refused to submit to drug or alcohol testing, the carrier shall immediately, within one business day of knowing the fact, notify the department that the driver has refused to submit to the required testing.

(4) A carrier must notify the department regarding the employment status of any chauffeur who meets one or more of the conditions specified in RCW 46.72A.100 within one business day of becoming aware of the chauffeur meeting the condition(s).

PART 3 CHAUFFEURS

NEW SECTION

WAC 308-83-200 Prearrangement. (1) Chauffeurs must have a passenger manifest in their possession to operate a limousine:

(a) The passenger manifest must be available for immediate examination upon request from an enforcement officer. If the chauffeur is inside the limousine, the manifest must be inside the limousine. If the chauffeur is outside the limousine, the manifest must be carried by the chauffeur;

(b) The chauffeur must document with the limousine carrier business office, and note on the passenger manifest the times, to the hour and minute, when the chauffeur is on duty;

(c) Trips must be prearranged at least thirty minutes before the passenger is scheduled to be picked up.

(2) The passenger manifest may be a paper or electronic record and must contain information to verify prearrangement of limousine services. The records must be in English. The manifest must contain:

(a) The full name and daytime telephone number for the passenger who prearranged the limousine service;

(b) The time, date, and location where the passenger requested to be picked up;

(c) The destination point; and

(d) If payment was due or was prepaid.

(3) The manifest is to cover all rides that have been scheduled up to that point for that day.

(4) Carriers must ensure that chauffeurs operating their limousines do not:

(a) Pick up persons who have not prearranged services;

(b) Load passengers or their luggage into their vehicle without having a passenger manifest that includes the customer information for that passenger;

(c) Ask persons on the street if they want to hire the limousine or try to attract customers for immediate services;

(d) Use a third-party to provide passengers for them as a substitute for prearranging the service;

(e) Stand near doors or walkways to businesses or transportation centers in a manner so that persons must walk around them to enter or exit;

(f) Touch members of the public or touch their luggage or packages without consent; or

(g) Park and leave the limousine in a designated passenger load zone or overstay the time limit within a passenger load zone.

NEW SECTION

WAC 308-83-210 Operating a limousine. (1) A chauffeur is considered to be engaged in operating a limousine when:

(a) The chauffeur has documented with the limousine carrier business office the times when the chauffeur is on duty, which includes start and end of shift, meal breaks, and personal use of the vehicle;

(b) The chauffeur is displaying a sign showing the name of the passenger for whom they are waiting, while sitting in a parked limousine or standing away from the vehicle;

(c) The chauffeur has a passenger manifest showing the prearranged passenger name;

(d) The chauffeur's limousine is parked, stopped, or standing:

(i) In a designated passenger load zone, or public or private short-term parking located in the same or adjacent block of any transportation company, hotel, restaurant, sport stadium, convention center, or any other business that is regularly serviced by limousines; or

(ii) In a public street located in the same or adjacent block of any transportation company, hotel, restaurant, sport stadium, convention center, or any other business that is regularly serviced by limousines.

(e) The chauffeur is present for more than thirty minutes on the sidewalk or any public place located in the same or adjacent block of any transportation company, hotel, restaurant, sport stadium, convention center, or any other business that is regularly serviced by limousines;

(f) The chauffeur offers transportation services to persons including, but not limited to:

(i) Asking whether a person wants or needs a ride; asking whether a person wants or needs a cab, taxi or taxicab;

(ii) Stating to the person that the person can arrange for the chauffeur's service by calling a telephone number;

(iii) Asking whether the person is going to the airport or another destination;

(iv) Informing the person that the chauffeur has a vehicle available;

(v) Stating that the price for a trip is the same as a taxicab;

(vi) Stating a price to a person;

(vii) Reaching for or touching the person's bags or luggage;

(viii) Motioning for a person to come;

(ix) Honking a horn at a person; or

(x) Using any similar action or speech that a reasonable person would interpret as offering transportation services.

(2) At all times of operation, chauffeurs must carry on their person a valid Washington state driver's license and present it upon request to any enforcement officer.

(3) Any chauffeur or carrier accepting payment for a trip must provide a written receipt to the payor immediately upon payment or completion of the trip, showing:

- (a) The name, UBI number, and phone number of the carrier business;
- (b) The name of the chauffeur conducting the trip;
- (c) All fees and costs charged to the customers for their specific services;
- (d) Pickup and drop-off date, time, and location.

PART 4 TRAINING PROVIDERS

NEW SECTION

WAC 308-83-300 Training course. Each training provider must have their chauffeur training course approved by the department before engaging in training of chauffeurs. Providers must have their course approved even if they believe it is the same course used by another training provider.

(1) To ensure the quality of the training given, the department will provide written guidelines concerning course content. A training course acceptable to the department must include at least all of the following components:

- (a) The National Safety Council Defensive Driving course;
- (b) Situational awareness;
- (c) Knowledge of local surrounding area;
- (d) Laws and regulations pertaining to limousines;
- (e) Two hours of riding with a qualified limousine driver as an observer;
- (f) Three hours of street driving training during daylight hours;
- (g) Three hours of street driving training during hours of darkness;
- (h) Comprehensive written examination, administered in the chauffeur's preferred language if practicable; and
- (i) Driving skills examination.

(2) Courses which are submitted for approval must include a comprehensive examination(s) and answer key(s) of no fewer than fifteen questions for each training component listed in subsection (1) of this section, for a minimum of sixty questions. The course review submission must include a plan for cycling through the list of sixty questions to alter the examination from time to time, but still present at least five questions from each training component to a trainee at the course examination phase. The plan should also describe methods of keeping the examination questions and answers relatively secure from distribution outside the training environment.

(3) The passing score for each examination must be at least seventy percent correct answers.

(4) The provider's course application shall identify learning objectives and include a detailed course outline with any curriculum revision dates.

(5) Upon request by the department, the provider shall provide copies of materials used in the course such as textbooks and videos.

(6) Changes to course curriculum must be approved by the department prior to use.

NEW SECTION

WAC 308-83-310 Training course approval withdrawn. Effective April 30, 2012, the department withdraws approval of all limousine chauffeur training course applications approved by the department prior to January 1, 2012. A person wishing to provide limousine chauffeur training may reapply under the provisions of WAC 308-83-300 after January 1, 2012.

NEW SECTION

WAC 308-83-320 Training records. (1) The training provider must maintain individual student records. Student records shall document for each student:

- (a) Course starting and completion dates;
- (b) The dates and times for each session attended by the student;
- (c) The number of hours spent on each component of instruction covered;
- (d) Scores for both the written and driving examinations; and
- (e) The name and signature of the instructor who provided each session of instruction or training.

(2) Student records must be maintained by the training provider for three years from the date instruction or training ended and must be made available for inspection at the request of the department.

(3) Upon satisfactory completion of all components of the training course, the training provider must issue to the student a dated and numbered certificate of completion on a form prescribed by the department. The certificate must be signed by the training provider. A certificate issued under this subsection must be retained by the student and used to demonstrate to the carrier that the chauffeur has met the minimum requirements required under WAC 308-83-140 (2)(b) and (c).

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 308-87-010	Definitions.
WAC 308-87-020	Limousine carrier business liability and property damage insurance.
WAC 308-87-030	Nonresident.
WAC 308-87-040	Applications/vehicle certificates.
WAC 308-87-050	Licenses.
WAC 308-87-060	Fees.

WAC 308-87-070 Special needs vehicles and certificates.
 WAC 308-87-080 Chauffeurs.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

November 2, 2011
 Craig Kenworthy
 Executive Director

WSR 11-22-112
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed November 2, 2011, 10:33 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 3.03 (General Regulatory Orders).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on December 15, 2011, at 8:45 a.m.

Date of Intended Adoption: December 15, 2011.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by December 14, 2011.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by December 8, 2011, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Provide authority for the Air Pollution Control Officer (or a duly authorized representative) to issue a federally enforceable order to limit emissions in response to a request from a source to do so, and allow modifications to previously adopted orders for this purpose, if requested by the source.

Reasons Supporting Proposal: The benefits of this proposal are more efficient and timely processing of source requested orders to limit emissions. Approval would be more closely linked to the public comment period and not the board schedule. It should also provide some time efficiencies for agency staff associated with decreased preparation of documentation for board packages and briefings.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

AMENDATORY SECTION

REGULATION I, SECTION 3.03 GENERAL REGULATORY ORDERS

(a) **Purpose.** The Board may, by regulatory order, apply to a specific source or sources any applicable provision of chapter 70.94 RCW or the rules adopted thereunder. In addition, federally enforceable regulatory orders that limit the potential to emit any air contaminant(s) pursuant to WAC 173-400-091 and modifications to such orders are issued under Section 3.03(f) of this regulation.

(b) **Public Involvement Process.** The Board may issue a regulatory order after the following public involvement process has been completed:

(1) Public notice of the proposed regulatory order shall be published in a newspaper of general circulation in the area where the source that is the subject of the order is located. Notice shall also be sent to the U.S. Environmental Protection Agency Regional Administrator. The public notice shall include, at a minimum, the following information:

(A) The name and address of the owner or operator and the source;

(B) A brief description of the purpose of the proposed regulatory order and the requirements included in the proposed regulatory order;

(C) The deadline for submitting written comments to the Agency; and

(D) The opportunity for a public hearing if the Agency determines that there is significant public interest in the proposed regulatory order.

(2) The initial public comment period shall be at least 30 days.

(3) During the initial 30-day public comment period, any person may request a public hearing be held. Any such request shall be submitted in writing to the Agency, shall indicate the interest of the entity filing it, and describe why a hearing is warranted. The Agency may, at its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held before a hearing officer and upon such notice and at a time and place as the Agency deems reasonable. The hearing officer shall hear testimony at the public hearing and prepare a written summary of the testimony received at the hearing. The Agency shall provide at least 30 days prior notice of any hearing. If a public hearing is held, the public comment period shall extend through the hearing date.

(c) **Board Action.** The Board shall only issue a((#)) regulatory order under this section after:

(1) The public comment period has ended;

(2) Any public hearing scheduled has been held; and

(3) The Board has considered all information and data related to the proposed regulatory order received by the

Agency, including all written comments received and any summary of testimony prepared by the hearing officer.

The Board shall take action on a proposed regulatory order at a Board meeting. Unless otherwise ordered by the Board, a ~~(the)~~ regulatory order issued under this section shall be effective on the date the Board approves the regulatory order.

(d) **Appeals.** Regulatory ~~((the))~~ orders issued by the Board under this section may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

(e) **Fees.** When a ~~((general))~~ regulatory order is requested by an applicant, the Agency shall assess a fee of \$4,000 to cover the costs of processing and issuing a ~~((general))~~ regulatory order under this section. The Agency shall also assess a fee equal to the cost of providing public notice in accordance with Section 3.03(b) of this regulation. These fees shall be due and payable within 30 days of the date of the invoice and shall be deemed delinquent if not fully paid within 90 days of the invoice.

(f) When an applicant requests a federally enforceable regulatory order to limit the potential to emit any air contaminant or contaminants pursuant to WAC 173-400-091, or requests a modification to such an order, the Control Officer or a duly authorized representative may issue such order consistent with the requirements of WAC 173-400-091 and 173-400-171 and Section 3.03(e) above. Regulatory orders issued pursuant to this section are effective the day the Control Officer or representative approves the order and may be appealed to the Pollution Control Hearings Board pursuant to Section 3.17 of Regulation I and RCW 43.21B.310.

WSR 11-22-114

PROPOSED RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed November 2, 2011, 10:54 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Adopt Regulation I, Article 15 (Nonroad Engines) - Sections 15.01 (Special Definitions), 15.03 (Notice of Intent to Operate), and 15.05 (Emission Standards).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on December 15, 2011, at 8:45 a.m.

Date of Intended Adoption: December 15, 2011.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, #105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by December 14, 2011.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by December 8, 2011, TTY (800) 833-6388 or (800) 833-6385 (Braille).

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

for the Air Pollution Control Officer (or a duly authorized representative) to issue a federally enforceable order to limit emissions in response to a request from a source to do so, and allow modifications to previously adopted orders for this purpose, if requested by the source.

Reasons Supporting Proposal: There is no additional cost associated with the adoption of Article 15 of Regulation I, since WAC 173-400-035 is already in effect. The benefits associated with its adoption would be to help disseminate these new provisions and facilitate compliance with those requirements.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Gerry Pade, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4065; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

November 2, 2011

Craig Kenworthy

Executive Director

NEW SECTION

REGULATION I, ARTICLE 15 NONROAD ENGINES

REGULATION I, SECTION 15.01 SPECIAL DEFINITIONS

When used in this Article:

(a) **"Nonroad engine"** means any internal combustion engine that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. An internal combustion engine is not a nonroad engine if:

(1) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(2) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act; or

(3) The engine remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source

is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

NEW SECTION

REGULATION I, SECTION 15.03 NOTICE OF INTENT TO OPERATE

(a) **Applicability.** This section applies to any nonroad engines as defined in Section 15.01 of this Regulation, except for:

(1) Any nonroad engine that is:

(A) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function; or

(B) In or on a piece of equipment that is intended to be propelled while performing its function.

(2) Nonroad engines with a cumulative maximum rated brake horsepower of 500 bhp or less.

(3) Engines being stored in work centers, garages, or engine pool sites prior to being dispatched to the field for use and that do not provide back-up power at the work center, garage, or engine pool. Such engines may be operated at these facilities only for the purpose of engine maintenance, testing, and repair.

(b) **> 500 and ≤ 2000 BHP.** This paragraph applies to the installation and operation of nonroad engines with a cumulative maximum rated brake horsepower greater than 500 bhp and less than or equal to 2000 bhp.

(1) Notification of intent to operate is required before operations begin. The owner or operator must notify the Agency of their intent to operate prior to beginning operation. The notice must contain the following information:

(A) Name and address of owner or operator;

(B) Site address or location;

(C) Date of equipment arrival at the site;

(D) Cumulative engine maximum rated bhp.

(2) **Recordkeeping.** For each site, the owner or operator must record the following information for each nonroad engine:

(A) Site address or location;

(B) Date of equipment arrival at the site;

(C) Date of equipment departure from the site;

(D) Engine function or purpose;

(E) Identification of each component as follows:

(i) Equipment manufacturer, model number and its unique serial number;

(ii) Engine model year;

(iii) Type of fuel used with fuel specifications (sulfur content, cetane number, etc.).

(3) **Record retention requirements.** The owner or operator must keep the records of the current engine and equipment activity in hard copy or electronic form. These records can be maintained on-site or off-site for at least five years and must be readily available to the permitting authority on request.

(c) **>2000 bhp.** This paragraph applies to the installation and operation of any nonroad engine(s) with a cumulative maximum rated brake horsepower greater than 2000 bhp.

(1) **Notification of intent to operate.** Prior to operation, the owner or operator must notify the Agency of the intent to operate and supply sufficient information to enable the Agency to determine that the operation will comply with national ambient air quality standards as regulated by WAC 173-400-113 (3) and (4). This notification of intent to operate shall be submitted on forms provided by the Agency for this purpose. A notification fee of \$100.00 shall be paid prior to any review by the Agency.

(2) **Approval is required before operations begin.** The owner or operator must obtain written nonroad engine approval to operate, from the Agency, prior to operation.

(3) **Recordkeeping.** The owner or operator must meet all of the requirements of Sections 15.03 (b)(2) and 15.03 (b)(3) of this Regulation.

(4) **Appeals.** Final decisions and orders of the Agency may be appealed to the Pollution Control Hearings Board as provided in Chapters RCW 43.21B and WAC 371-08.

NEW SECTION

REGULATION I, SECTION 15.05 EMISSION STANDARDS

(a) **Fuel standards.** All nonroad engines must use ultra-low sulfur diesel or ultra-low sulfur biodiesel (a sulfur content of 15 ppm or 0.0015% sulfur by weight or less), gasoline, natural gas, propane, liquefied petroleum gas (LPG), hydrogen, ethanol, methanol, or liquefied/compressed natural gas (LNG/CNG). A facility that receives deliveries of only ultra-low sulfur diesel or ultra-low sulfur biodiesel is deemed to be compliant with this fuel standard.

(b) Nonroad engines are not subject to emission limits set by the state implementation plan.

WSR 11-22-115

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 2, 2011, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-100.

Title of Rule and Other Identifying Information: Title 308 WAC, Department of licensing, to include but not limited to new WAC 308-96A-077 Volunteer firefighter special vehicle license plate series.

Hearing Location(s): Department of Licensing (DOL), Conference Room 309, 1125 Washington Street S.E., Olympia, WA 98507, on December 6, 2011, at 11:00 a.m.

Date of Intended Adoption: December 7, 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 November 28, 2011.

Assistance for Persons with Disabilities: Contact Debra Then by November 28, 2011, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1136 passed during the 2011 legislative session requiring DOL to issue volunteer firefighter license plates to eligible applicants.

Reasons Supporting Proposal: A new license plate series for volunteer firefighters needs to be developed to comply with SHB 1136 which requires the development of this rule.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: Chapter 225, Laws of 2011.

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

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting: Debra Then, 1125 Washington Street S.E., Olympia, WA, (360) 902-4094; Implementation: Joann Davis, 1125 Washington Street S.E., Olympia, WA, (360) 902-3710.

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

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

November 2, 2011

Ben T. Shomshor
Rules Coordinator

NEW SECTION

WAC 308-96A-077 Volunteer firefighter special vehicle license plate series. (1) **Who may apply for the volunteer firefighters license plate(s)?** Any person that:

- Meets the requirements and has proven eligibility as per RCW 46.18.210;
- Is not requesting issue for a vehicle registered under chapter 46.87 RCW;
- Has paid all applicable fees and taxes.

The volunteer firefighters special license plate(s) will be issued upon proof of eligibility and receipt of all applicable fees.

(2) **What must be provided as proof that the applicant qualifies?** The applicant must provide documentation of service from the fire district(s) where they serve or have served.

(3) **When is proof required?** Upon initial application.

(4) **Can the volunteer firefighters special license plate(s) be retained if the applicant is no longer a volunteer firefighter?** Yes, if the license plate owner has at least ten years of service, the license plate can be retained and renewed.

(5) **If I have less than ten years of service, can I retain the plates if I am no longer a volunteer firefighter?** No, They must be surrendered at the next registration renewal date.

(6) **Is there a limit to the number of sets of license plates that a volunteer firefighter can have?** Yes, there is a maximum of two sets per applicant.

(7) **Are there any other circumstances when the volunteer firefighter plates must be surrendered?** Yes, if the

volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony. It is the responsibility of the license plate owner to notify the department and surrender the plates. However, if the department is notified of the conviction, the department has authority to cancel the plates under RCW 46.12.160.

(8) **When ownership of a vehicle issued volunteer firefighters license plate(s) is transferred, what happens to the plate(s)?** The special license plate owner must remove the plate(s) from the vehicle. The plate owner may transfer the special plate(s) to a replacement vehicle by visiting a vehicle licensing office. License plate transfer and other applicable fees apply.

(9) **What fees are charged when the volunteer firefighters license plate(s) are transferred to a replacement vehicle?** If the registration expiration date for the replacement vehicle is later than the registration expiration date of the current vehicle, an abated fee for the volunteer firefighters license plate will be charged. It is charged at the rate of one-twelfth of the annual volunteer firefighters license plate(s) fee for each month and partial month. If the new registration expiration date is sooner than the previous registration expiration date, a refund will not be made for the remaining registration period.

(10) **Will volunteer firefighters license plate(s) ever need replacing?** Yes, the volunteer firefighters license plate(s) are subject to the mandatory vehicle license plate replacement schedule.

(11) **When replacing volunteer firefighters license plate(s), is the same license plate number/letter combination issued?** No, unless the owner chooses to pay an additional fee to keep the same number. If the vehicle owner requests and pays the fees described in RCW 46.16.233, the volunteer firefighters license plate(s) may be replaced with the same number/letter combination as shown on the vehicle computer record.

(12) **Will my license plates that have been reported stolen be replaced with new license plates with the same number/letter combination?** If the license plate(s) has been reported as stolen or if the department record indicates the plate has been stolen, the same number/letter combination will not be issued. This is a law enforcement issue for the protection of the public.